AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# FEDERAL REGISTER

Vol. 86 Friday

No. 120 June 25, 2021

Pages 33479–33852

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

**How To Cite This Publication:** Use the volume number and the page number. Example: 86 FR 12345.

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

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

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

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

**Single copies/back copies:**

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

**FEDERAL AGENCIES**

**Subscriptions:**

Assistance with Federal agency subscriptions:

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

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

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 86, No. 120

Friday, June 25, 2021

**Agricultural Marketing Service**
**RULES**
Mango Promotion, Research and Information Order:
Removal of Frozen Mangos, 33491–33494
National Organic Program:
Amendments to the National List of Allowed and Prohibited Substances per April 2019 NOSB Recommendations (Livestock and Handling), 33479–33485
**NOTICES**
Requests for Nominations:
Peanut Standards Board, 33633
USDA Grain Inspection Advisory Committee, 33633–33634

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Animal and Plant Health Inspection Service
*See* Federal Crop Insurance Corporation
*See* Forest Service

**Air Force Department**
**NOTICES**
Record of Decision:
Fifth Generation Formal Training Unit Optimization, 33690

**Animal and Plant Health Inspection Service**
**PROPOSED RULES**
Handling of Animals; Contingency Plans, 33567–33570
**NOTICES**
Concurrence with World Organization for Animal Health's Risk Designation for Bovine Spongiform Encephalopathy, 33635
Environmental Assessments; Availability, etc.:
Importation of Plants in Approved Growing Media Into the United States, 33634–33635

**Army Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33690–33691

**Centers for Disease Control and Prevention**
**NOTICES**
Delegation of Authority, 33708

**Civil Rights Commission**
**NOTICES**
Meetings:
Connecticut Advisory Committee, 33637–33638
Georgia Advisory Committee, 33637–33639
Pennsylvania Advisory Committee, 33636–33637

**Coast Guard**
**RULES**
Safety Zone:
City of Port Aransas, Port Aransas 4th of July Fireworks, 33516
Conn Brown Harbor; Aransas Pass, TX, 33511–33512
Fireworks Displays in the Fifth Coast Guard District, 33515
Lights on the Lake Fourth of July Fireworks; South Lake Tahoe, CA, 33514–33515
PNSY Entrance Structure Heavy Lift Project—Piscataqua River, Portsmouth, NH, 33512–33514
San Francisco Giants Fireworks Display, San Francisco Bay, San Francisco, CA, 33515–33516
Safety Zones:
Northern California and Lake Tahoe Area Annual Fourth of July Fireworks Events, 33517–33518
**PROPOSED RULES**
Special Local Regulation:
St. Mary's River, St. George Creek, Piney Point, MD, 33598–33601

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
*See* Patent and Trademark Office

**Committee for Purchase From People Who Are Blind or Severely Disabled**
**NOTICES**
Procurement List; Additions and Deletions, 33687–33689

**Copyright Royalty Board**
**PROPOSED RULES**
Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV), 33601–33603

**Corporation for National and Community Service**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
AmeriCorps Enrollment and Exit Form, 33689–33690

**Defense Department**
*See* Air Force Department
*See* Army Department
*See* Navy Department
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33691–33694
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Construction Wage Rate Requirements – Price Adjustment (Actual Method), 33708

**Drug Enforcement Administration**
**RULES**
Schedules of Controlled Substances:
Placement of para-Methoxymethamphetamine (PMMA) in Schedule I, 33508–33510
**NOTICES**
Decision and Order:
Carol Hippenmeyer, M.D., 33748–33773
Robert Wayne Locklear, M.D., 33738–33748

**Education Department**
**RULES**
Office of Post-Secondary Education; CFR Correction, 33518

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Student Loan Program Deferment Request Forms, 33696

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Update on Reimbursement for Costs of Remedial Action at Uranium and Thorium Processing Sites, 33696–33697

**Environmental Protection Agency**
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Eastern Kern; 8-Hour Ozone Nonattainment Area Requirements, 33528–33539
California; Mendocino County Air Quality Management District; Stationary Source Permits, 33539–33541
California; San Joaquin Valley Unified Air Pollution Control District, 33542–33544
Illinois; Multi-Pollutant Standards Rule, Control of Emissions from Large Combustion Sources, 33527–33528
Indiana; Monitoring requirements, 33525–33526
Iowa; State Implementation Plan and State Plans for Designated Facilities and Pollutants, 33544–33547
Montana; Butte $PM_{10}$ Nonattainment Area Limited Maintenance Plan and Redesignation Request, 33547–33549
Nebraska; Revisions to Title 129 of the Nebraska Administrative Code; Chapter 39 Visible Emissions from Diesel-powered Motor Vehicles, 33541–33542
NOTICES
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 33705
IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds, 33704–33705
Requests for Nominations:
Clean Air Scientific Advisory Committee Particulate Matter Panel, 33703–33704

**Federal Accounting Standards Advisory Board**
NOTICES
Proposed Interpretation Exposure Draft, Debt Cancellation:
An Interpretation of Statement of Federal Financial Accounting Standards 7, Paragraph 313, 33705–33706

**Federal Aviation Administration**
RULES
Airworthiness Directives:
General Electric Company Turbofan Engines, 33494–33498
Leonardo S.p.a. Helicopters, 33498–33501
Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures:
Miscellaneous Amendments, 33501–33507
PROPOSED RULES
Airspace Designations and Reporting Points:
Belleville, IL, 33586–33588
Courtland, AL, 33585–33586
Red Hook, NY, 33584–33585
South Florida, 33581–33583
Tuscaloosa, AL, 33588–33590
Airworthiness Directives:
B–N Group Ltd. Airplanes, 33576–33579
The Boeing Company Airplanes, 33574–33576
Williams International Co., L.L.C. Turbofan Engines, 33579–33581
NOTICES
Intent to Rule on Request for Land Use Change:
7.6 Acres of Land at Lebanon Municipal Airport, Lebanon, NH, 33807

**Federal Communications Commission**
RULES
Modernizing the E-Rate Program for Schools and Libraries, 33549–33550
Television Broadcasting Services:
Freeport, IL, 33551
Hannibal, Mo; Correction, 33551–33552
PROPOSED RULES
Television Broadcasting Services:
Fredericksburg, TX, 33612
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33706

**Federal Crop Insurance Corporation**
RULES
Common Crop Insurance Regulations:
Small Grains Crop Insurance Provisions, 33485–33491

**Federal Deposit Insurance Corporation**
PROPOSED RULES
Real Estate Lending Standards, 33570–33574

**Federal Energy Regulatory Commission**
NOTICES
Application:
EONY Generation Ltd., 33699–33700
Combined Filings, 33697–33698
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Antelope Expansion 1B, LLC, 33697
Institution of Section 206 Proceeding and Refund Effective Date:
PJM Interconnection, L.L.C., 33699
State Voluntary Agreements to Plan and Pay for Transmission Facilities, 33700–33703

**Federal Reserve System**
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 33706–33707
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 33707

**Fish and Wildlife Service**
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Revision of a Nonessential Experimental Population of Black-footed Ferrets (Mustela nigripes) in the Southwest, 33613–33632
NOTICES
Draft Habitat Conservation Plan and Draft Categorical Exclusion for the Vintage Ranch Project:
Santa Barbara County, CA, 33725
Endangered and Threatened Species:
Initiation of 5-Year Status Reviews for 77 Species in Oregon, Washington, Idaho, and Hawaii, 33726–33728

**Food and Drug Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Class II Special Controls for Human Immunodeficiency Virus Serological Diagnostic and Supplemental Tests and Human Immunodeficiency Virus Nucleic Acid Diagnostic and Supplemental Tests, 33708–33710
Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donation Testing, Donor Notification, and ''Lookback'', 33713–33716
Prescription Drug Marketing; Administrative Procedures, Policies, and Requirements, 33717–33718
Environmental Impact Statements; Availability, etc.:
Certain Sunscreen Drug Products for Over-the-Counter Use; Reopening of Comment Period, 33712–33713
Guidance:
Cancer Clinical Trial Eligibility Criteria: Approach to Available Therapy in Non-Curative Settings, 33710–33712
Withdrawal of Approval of Abbreviated New Drug Applications:
Watson Laboratories, Inc., et al., 33718–33719

**Foreign-Trade Zones Board**
NOTICES
Authorization of Production Activity:
XPO Logistics; Foreign-Trade Zone 72; Indianapolis, IN, 33639

**Forest Service**
NOTICES
Meetings:
Shasta County Resource Advisory Committee, 33635–33636
Southwest Idaho Resource Advisory Committee, 33636

**General Services Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Construction Wage Rate Requirements—Price Adjustment (Actual Method), 33708

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* National Institutes of Health

**Homeland Security Department**
*See* Coast Guard

**Housing and Urban Development Department**
PROPOSED RULES
Reinstatement of Discriminatory Effects Standard, 33590–33597
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
HOME Investment Partnerships Program, 33722–33725
Housing Discrimination Claim Form, 33721–33722

**Indian Affairs Bureau**
NOTICES
Environmental Impact Statements; Availability, etc.:
Yahthumb Solar Project on the Moapa River Indian Reservation, Clark County, NV, 33728–33729

**Institute of Museum and Library Services**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Public Libraries Survey FY 2021–FY 2023, 33782–33783

**Interior Department**
*See* Fish and Wildlife Service
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
DOI Talent Registration, 33730

**International Trade Administration**
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India, 33639–33640
Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea, 33653–33654
Certain Frozen Warmwater Shrimp from India, 33658–33660
Certain Softwood Lumber Products from Canada, 33660–33662
Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey, 33655–33656
Common Alloy Aluminum Sheet from the People's Republic of China, 33640–33644, 33650–33652
Light-Walled Rectangular Pipe and Tube From Mexico, 33646–33648
Pentafluoroethane (R–125) from the People's Republic of China, 33648–33650
Truck and Bus Tires from the People's Republic of China, 33644–33646
Determination of Sales at Less Than Fair Value:
Utility Scale Wind Towers from Spain, 33656–33658

**International Trade Commission**
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Therefor, 33737–33738
Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine, 33738

**Justice Department**
*See* Drug Enforcement Administration

**Labor Department**
*See* Mine Safety and Health Administration
*See* Occupational Safety and Health Administration

**Land Management Bureau**
NOTICES
Meetings:
Northern New Mexico Resource Advisory Council, 33731

**Library of Congress**
*See* Copyright Royalty Board

**Mine Safety and Health Administration**
NOTICES
Petitions for Modification:
Application of Existing Mandatory Safety Standards, 33773–33779

**National Aeronautics and Space Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Construction Wage Rate Requirements—Price Adjustment (Actual Method), 33708

**National Credit Union Administration**
NOTICES
Privacy Act; Systems of Records, 33780–33782

**National Endowment for the Humanities**
PROPOSED RULES
Implementation of the Program Fraud Civil Remedies Act, 33603–33612

**National Foundation on the Arts and the Humanities**
*See* Institute of Museum and Library Services
*See* National Endowment for the Humanities

**National Institutes of Health**
NOTICES
Meetings:
Interagency Autism Coordinating Committee, 33719–33720
National Heart, Lung, and Blood Institute, 33720–33721

**National Oceanic and Atmospheric Administration**
RULES
Fisheries of the Northeastern United States:
Golden Tilefish Fishery; Extension of Emergency Action, 33552–33553
Omnibus Deep-Sea Coral Amendment, 33553–33566
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Customer Surveys, 33683–33684
Environmental Impact Statements; Availability, etc.:
Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition, 33663–33664
Meetings:
Evaluation of National Estuarine Research Reserve, 33662–33663
Management Track Assessment for Atlantic Mackerel, Black Sea Bass, Golden Tilefish, and Scup, 33684–33685
Takes of Marine Mammals Incidental to Specified Activities:
Construction of the Vineyard Wind Offshore Wind Project, 33810–33851
Marine Site Characterization Surveys off of Delaware and New Jersey, 33664–33682
Taking and Importing Marine Mammals:
U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington, 33682–33683

**National Park Service**
NOTICES
Intent to Repatriate Cultural Items:
Gilcrease Museum, Tulsa, OK, 33734
Oregon State University, Corvallis, OR, 33732–33733
Tuzigoot National Monument, Clarkdale, AZ, 33736–33737
Inventory Completion:
Appalachian State University, Boone, NC, 33731–33732
Oregon State University, Corvallis, OR, 33734–33736
Sierra Mono Museum and Cultural Center, North Fork, CA, 33733

**Navy Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33695

**Nuclear Regulatory Commission**
NOTICES
License Renewal Application:
Duke Energy Carolinas, LLC; Duke Energy; Oconee Nuclear Station, Units 1, 2, and 3, 33784
Revisions to Uniform Low-Level Radioactive Waste Manifest Forms, 33783

**Occupational Safety and Health Administration**
NOTICES
Nationally Recognized Testing Laboratories:
TUV Rheinland of North America, Inc.; Application for Expansion of Recognition, 33779–33780

**Patent and Trademark Office**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Patent Prosecution Highway Program, 33686
Public Search Facility User ID and Badging, 33685–33686

**Personnel Management Office**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alternative Annuity Election, 33785
Disabled Dependent Questionnaire, 33786–33787
Questionnaire for Non-Sensitive Positions, 33784–33785
Representative Payee Survey, 33786

**Postal Regulatory Commission**
NOTICES
Service Standard Changes, 33787–33799

**Securities and Exchange Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33799–33801
Self-Regulatory Organizations; Proposed Rule Changes:
Nasdaq BX, Inc., 33804–33805
Nasdaq PHLX LLC, 33802–33804
The Nasdaq Stock Market LLC, 33801–33802

**Small Business Administration**
NOTICES
Major Disaster Declaration:
Kentucky, 33806
Surrender of License Of Small Business Investment Company:
CapitalSouth Partners SBIC Fund III, LP, 33806
Surrender of License of Small Business Investment Company:
Hercules Technology III, LP, 33805

**Surface Transportation Board**
**NOTICES**
Adverse Discontinuance of Trackage Rights:
Metro-North Commuter Railroad Co.; Housatonic Railroad Co., 33806–33807

**Transportation Department**
*See* Federal Aviation Administration

**Veterans Affairs Department**
**RULES**
Homeless Providers Grant and Per Diem Program, 33518–33525
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Change of Permanent Plan—Medical, 33808
VA MATIC Authorization, 33807
Privacy Act; Systems of Records, 33807–33808

**Separate Parts In This Issue**

**Part II**
Commerce Department, National Oceanic and Atmospheric Administration, 33810–33851

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

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

## CFR PARTS AFFECTED IN THIS ISSUE

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


**7 CFR**
205 ..... 33479
457 ..... 33485
1206 ..... 33491

**9 CFR**
**Proposed Rules:**
2 ..... 33567

**12 CFR**
**Proposed Rules:**
365 ..... 33570

**14 CFR**
39 (2 documents) ..... 33494, 33498
97 (2 documents) ..... 33501, 33503
**Proposed Rules:**
39 (3 documents) ..... 33574, 33576, 33579
71 (5 documents) ..... 33581, 33584, 33585, 33586, 33588

**21 CFR**
1308 ..... 33508

**24 CFR**
**Proposed Rules:**
100 ..... 33590

**33 CFR**
165 (7 documents) ..... 33511, 33512, 33514, 33515, 33516
**Proposed Rules:**
100 ..... 33598

**34 CFR**
668 ..... 33518

**37 CFR**
**Proposed Rules:**
385 ..... 33601

**38 CFR**
61 ..... 33518

**40 CFR**
52 (8 documents) ..... 33525, 33527, 33528, 33539, 33541, 33542, 33544
70 ..... 33544, 33547
81 ..... 33547

**45 CFR**
**Proposed Rules:**
1174 ..... 33603

**47 CFR**
54 ..... 33549, 33551
73 (2 documents) ..... 33551
**Proposed Rules:**
73 ..... 33612

**50 CFR**
648 (2 documents) ..... 33552, 33553
**Proposed Rules:**
17 ..... 33613

# Rules and Regulations

Federal Register
Vol. 86, No. 120
Friday, June 25, 2021

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 205

**[Doc. No. AMS–NOP–19–0053; NOP–19–02]**

**RIN 0581–AD92**

## National Organic Program: Amendments to the National List of Allowed and Prohibited Substances per April 2019 NOSB Recommendations (Livestock and Handling)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the National List of Allowed and Prohibited Substances (National List) section of the U.S. Department of Agriculture's (USDA) organic regulations to implement recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule adds the following allowed substances to the National List: Oxalic acid dihydrate as a pesticide for organic apiculture (beekeeping); pullulan for use in organic handling in products labeled, ''Made with organic (specified ingredients or food group(s));'' and collagen gel as a nonorganic nonagricultural substance for use as a casing in organic handling when organic forms of collagen gel are not commercially available.

**DATES:** This rule is effective on July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jared Clark, Standards Division, National Organic Program. Telephone: (202) 720–3252.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On December 21, 2000, the Secretary established the Agricultural Marketing Service's (AMS) National Organic Program and the USDA organic regulations (65 FR 80547). Within the USDA organic regulations (7 CFR part 205) is the National List of Allowed and Prohibited Substances (or National List). The National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic crop and livestock production. It also identifies the nonorganic substances that may be used in or on processed organic products.

AMS is finalizing three amendments to the National List in accordance with the procedures detailed in the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6524). OFPA establishes what may be included on the National List and the procedures that USDA must follow to amend the National List (sec. 6517). OFPA also describes the NOSB's responsibilities in proposing amendments to the National List, including the criteria for evaluating amendments to the National List (sec. 6518).

This final rule adds oxalic acid dihydrate, pullulan, and nonorganic collagen gel to the National List. Once effective, producers and handlers of organic products will be allowed to use these substances in organic production and in organic products. The permitted use of each substance is discussed in detail below.

To remain on the National List, these substances must be: (1) Reviewed every 5 years by the NOSB, a 15-member federal advisory committee; and (2) renewed by the Secretary (sec. 6517(e)). This action of NOSB review and USDA renewal is commonly referred to as the ''sunset review'' or ''sunset process.'' AMS published information about this process in the **Federal Register** on September 16, 2013 (78 FR 56811). The sunset date (*i.e.,* the date by which the Secretary must renew a substance for the listing to remain valid on the National List) for each substance is included in the NOP Program Handbook (document NOP 5611). The first sunset date for the substances in this final rule will be 5 years from the effective date in the **DATES** section of this final rule above.

## II. Overview of Amendments

This rule adds oxalic acid, pullulan, and nonorganic collagen gel to the National List for use in organic livestock production or handling. Additional background on the petitions and the NOSB's review of the substances may be found in the proposed rule (85 FR 35011; June 8, 2020).

During a 60-day comment period that closed on August 7, 2020, AMS received 20 comments on the proposed rule. See below for a discussion of the comments received and AMS' responses to comments. Comments can be viewed through *Regulations.gov.* Use the search area on the homepage at *https://www.regulations.gov* to enter a keyword, title, or docket ID (the docket folder for this rule is AMS–NOP–19–0053).

*Oxalic Acid Dihydrate (§ 205.603)*

Final Action

The final rule amends the National List to add oxalic acid dihydrate to 7 CFR 205.603 as a synthetic substance allowed for use in organic apiculture (beekeeping) only. Oxalic acid dihydrate is a pesticide used for *Varroa* mite control on bees. Oxalic acid is a naturally occurring substance, but this rule allows for the use of the synthetic form (*i.e.,* synthesized via chemical process) of oxalic acid dihydrate.

AMS is finalizing this amendment to the National List, as proposed by NOSB, to provide beekeepers that manage organic bees with an additional option to combat parasitic *Varroa* mites. Since arriving to the United States in 1987, *Varroa* mites have caused the death of massive numbers of honey bee colonies, and beekeepers have identified *Varroa* mites as their single most serious problem causing colony losses.[1] The mites damage honey bees both directly (by attaching to bees) and by serving as a vector for pathogenic viruses.

Oxalic acid dihydrate is one of a dozen substances currently registered by the EPA for the control of *Varroa* mites,[2] and only a subset of these are allowed under USDA organic regulations. For example, the National List includes formic acid (§ 205.603(b)(3)) as a pesticide to treat hives. The addition of oxalic acid dihydrate will be important addition to the National List, as rotating products to combat *Varroa* mites is an important tactic to prevent resistance

[1] USDA Agricultural Research Service *https://www.ars.usda.gov/oc/br/ccd/index/.* Accessed February 1, 2021.

[2] U.S. Environmental Protection Agency, *https://www.epa.gov/pollinator-protection/epa-registered-pesticide-products-approved-use-against-varroa-mites-bee-hives.* Accessed February 1, 2021.

development and to maintain the usefulness of individual pesticides.[3]

AMS concluded that the addition of oxalic acid dihydrate to the National List is consistent with the requirements of OFPA sec. 2118(c) (7 U.S.C. 6517(c)). Namely, the substance is not harmful to human health or the environment when used as labeled; is necessary to production because of the unavailability of wholly natural substitute products; and is consistent with organic farming and handling. The amendment is made following the procedures established in section 2118(d) of the OFPA (7 U.S.C. 6517(d)).

NOSB Review and Recommendation (Oxalic Acid Dihydrate)

NOSB submitted a recommendation to AMS in April 2019 to add oxalic acid dihydrate to the National List.[4] NOSB recommendation followed receipt of a petition to add the substance to the National List in October 2017.[5] In NOSB's evaluation of the petition, they considered information from a third-party technical evaluation report[6] and comments from the public. NOSB discussed the petition to amend the National List in subcommittee calls and at its public meetings in October 2018 and April 2019.[7]

In its recommendation, NOSB concluded that adding oxalic acid dihydrate to the National List was consistent with OFPA evaluation criteria in section 2119(m) (7 U.S.C. 6518(m)). NOSB found that the use of oxalic acid dihydrate as a mite pest control would be compatible with and necessary for organic apiculture, providing additional use benefits over formic acid. NOSB noted that oxalic acid occurs naturally in the environment and noted no concerns about environmental or human health impacts or oxalic acid residues in food products.

Comments Received and AMS' Response (Oxalic Acid Dihydrate)

*Apiculture standards.* Comments recommended that AMS act on NOSB recommendations from September 2001 and October 2010[8] to further develop organic apiculture standards. Some believed that AMS should promulgate detailed standards for managing organic bees prior to adding synthetic substances for organic apiculture to the National List.

AMS notes that the USDA organic regulations include ''nonplant life'' (*e.g.,* bees) in the definition of livestock (§ 205.2). Given that AMS permits USDA-accredited certifiers to certify organic apicultural operations under the regulations for livestock production, AMS will continue to consider recommendations from NOSB regarding substances for organic apiculture operations. Additionally, the National List includes other substances that may be used in organic apiculture, including formic acid (§ 205.603(b)(3)), which is permitted for the treatment of honeybee hives. Oxalic acid dihydrate provides some advantages compared to formic acid, and AMS is adding the substance to the National List to provide certified organic apiculture operations with an additional option to treat for *Varroa.*

*General opposition.* Some comments opposed the addition of oxalic acid dihydrate to the National List because they opposed any use of synthetic substances in organic production. AMS notes that OFPA permits the use of specific synthetic substances (*i.e.,* those on the National List) in organic production. OFPA describes the procedures for amending the National List and provides AMS and the NOSB with criteria and guidelines to consider in evaluating changes to the National List. NOSB and AMS followed these procedures, and this rule adds oxalic acid dihydrate to the National List.

*Health effects.* Finally, AMS received a comment opposing the addition of oxalic acid dihydrate that cites a source that suggests that the consumption of oxalic acid dihydrate inhibits calcium availability in the human body. AMS does not find merit in the comment. AMS notes that EPA's Final Registration Decision for oxalic acid states this compound is only used in beehives when honey supers are not present and that dietary exposures to oxalic acid from in-hive applications is indistinguishable from naturally occurring levels.[9]

*Pullulan (§ 205.605)*

Final Action

This final rule amends the National List to add pullulan to § 205.605(a) as an ingredient allowed only in products labeled, ''Made with organic (specified ingredients or food group(s))'' (or ''made with''). The ''made with'' labeling category is distinct from the ''organic'' and ''100% organic'' labeling categories under USDA organic regulations (7 CFR 205.301). Products labeled ''organic'' or ''100% organic'' cannot contain nonorganic pullulan as an ingredient under this final rule. Additionally, the final rule only permits nonorganic pullulan in tablets and capsules for dietary supplements.

AMS is finalizing this amendment to the National List, as proposed by NOSB, to add pullulan to the National List for use in ''made with'' products to provide manufacturers of organic dietary supplements with an option to label products with additional dietary claims (*e.g.,* vegan, vegetarian). Nonorganic forms of pullulan are necessary because organic forms of pullulan are not readily available. By adding nonorganic pullulan to § 205.605 of the National List with a limitation on use for ''made with'' products, AMS is providing a limited exception for use of nonorganic pullulan.

Pullulan is a natural extracellular polysaccharide excretion resulting from carbohydrate fermentation by the yeast-like fungus *Aureobasidium pullulans* and other non-toxic fungi strains.[10] The fungus *A. pullulans* is ubiquitous in nature and is most common in temperate zones in locations such as forest soil, freshwater, on plant leaves, and on seeds. Pullulan has been self-affirmed as GRAS (Generally Recognized as Safe) for multiple uses, including as a multifunctional food ingredient, a film, and an excipient (GRN No. 99, pp. 26–30).[11]

AMS concluded that the addition of pullulan to the National List is consistent with the requirements of OFPA sec. 6517(c). Namely, the substance is not harmful to human

[3] U.S. Environmental Protection Agency, *https://www.epa.gov/pollinator-protection/epa-registered-pesticide-products-approved-use-against-varroa-mites-bee-hives.* Accessed February 1, 2021.

[4] NOSB final recommendation for oxalic acid dihydrate, April 26, 2019: *https://www.ams.usda.gov/sites/default/files/media/LSOxalicAcidApril2019FinalRec.pdf.*

[5] Oxalic acid petition: *https://www.ams.usda.gov/sites/default/files/media/OxalicAcidPetition10032017.pdf.*

[6] Technical Evaluation Report for oxalic acid dihydrate, November 26, 2018: *https://www.ams.usda.gov/sites/default/files/media/OxalicAcidTR.pdf.*

[7] Written and oral public comments submitted for the October 2018 and April 2019 NOSB meetings are available at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-st-paul-mn* and *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-seattle-wa.*

[8] NOSB Apiculture Task Force Report, September 2001: *https://www.ams.usda.gov/sites/default/files/media/Rec%20Apiculture%20Standards.pdf;* and NOSB's Apiculture Recommendation, October 2010: *https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Apiculture.pdf.*

[9] U.S. Environmental Protection Agency, Registration Decision for the New Active Ingredient Oxalic Acid, March 2015, *https://www.regulations.gov/document?D=EPA-HQ-OPP-2015-0043-0119.* Accessed February 1, 2021.

[10] Pullulan technical evaluation report, September 7, 2018: *https://www.ams.usda.gov/sites/default/files/media/PullulanTechnicalReportFinal09072018.pdf.* Accessed February 1, 2021.

[11] GRAS Notice (GRN) No. 99 and FDA's response to the Notice, are available at: *https://www.fda.gov/food/generally-recognized-safe-gras/gras-notice-inventory.* Accessed February 1, 2021.

health or the environment; is necessary to production because of the unavailability of wholly natural substitute products; and is consistent with organic farming and handling. The amendment is made following the procedures established in OFPA (sec. 6517(d)).

NOSB Review and Recommendation (Pullulan)

NOSB submitted a recommendation to AMS in April 2019 to add pullulan to the National List.[12] NOSB recommendation followed receipt of a petition to add the substance to the National List in January 2018.[13] In NOSB's evaluation of the petition, they considered information from a third-party technical evaluation report [14] and comments from the public. NOSB discussed the petition to amend the National List in subcommittee calls and at its public meetings in October 2018 and April 2019.[15]

In its recommendation, NOSB concluded that adding pullulan to the National List was consistent with OFPA criteria (sec. 6518(m)). In its recommendation, NOSB noted that there are few, if any, other encapsulation options available compliant with organic composition requirements at § 205.301 for consumers seeking a suitable alternative to gelatin for religious and dietary requirements (*e.g.,* vegan, halal, kosher).

Comments Received and AMS' Response (Pullulan)

*Classification.* In the proposed rule, AMS requested comments on whether pullulan should be classified as a nonsynthetic, nonagricultural substance, as proposed, or whether it should be considered as an agricultural substance that may be certifiable as organic.

An opposing comment argued that production of pullulan should be considered a form of agricultural production and compared production of *A. pullulans* to other types of fungi production. The comment suggested that pullulan is better described as an agricultural product than a nonagricultural product.

AMS also received comments that agreed with the classification of pullulan as nonagricultural. Comments that argued that pullulan is a nonsynthetic state that other products of microbial fermentation at § 205.605(a) (*e.g.,* citric acid, enzymes, microorganisms) are classified as nonsynthetic.

AMS received several comments that AMS' classification of pullulan as nonagricultural does not mean that pullulan cannot also be certified organic (*i.e.,* that pullulan could be certified organic if manufactured by alternative processes). Commenters pointed to published AMS guidance and to examples of other substances on the National List at § 205.605 that can be found in certified organic form (*e.g.,* yeast, flavors, citric acid).

AMS agrees with the classification of pullulan as nonsynthetic. The referenced guidance [16] provides examples and clarity on the definitions of ''agricultural,'' ''synthetic,'' and ''nonsynthetic (natural)'' as presented in § 205.2. Nonsynthetic substances are defined as ''A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process . . .''. Given that pullulan is manufactured by the isolation of a byproduct of fungal fermentation of a carbohydrate substrate,[17] it fits the definition of ''nonsynthetic'' and will be classified as such rather than ''agricultural,'' defined as ''[a]ny agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock . . .''.

Comments were received which argued both that pullulan could and could not be certified under the USDA organic regulations. These comments offer differing interpretations of whether any of the manufacturing processes would result in a product which would be certifiable. AMS will maintain the requirement that nonorganic pullulan be used only in ''made with'' products, as we are aware there are certified organic pullulan products on the international market.

This final rule adds pullulan to the National List as a nonagricultural ingredient. AMS notes that similar National List substances produced by microbial fermentation are classified as nonagricultural (*e.g.,* citric acid, xanthan gum, and gellan gum). AMS agrees with NOSB determination that pullulan is a nonagricultural substance, as described in our response to comments regarding classification. The classification of pullulan as nonagricultural does not preclude the production of certified organic pullulan, as long as the process meets the requirements of § 205.105 and § 205.301.

*Genetically modified organisms.* A comment was opposed to the addition of pullulan to the National List because of the potential that genetically modified organisms (GMOs) might be used in the production of pullulan (*e.g.,* substrates as nutrient sources for the fermentation process).

AMS understands concerns regarding the use of genetically modified organisms in the production of National List materials. The USDA organic regulations (§ 205.105) include a prohibition on ingredients produced or handled with the use of excluded methods (including genetic engineering) as defined in § 205.2.

*Digestibility concern.* A comment cited a study comparing human digestion of pullulan to digestion of maltodextrin. AMS understands that NOSB considered the effects of slow digestion (including increased flatulence, as cited in the comment) and did not conclude these effects to be sufficiently detrimental to human health to disqualify the substance from addition to the National List per OFPA (7 U.S.C. 6518(m)).

*General opposition.* Two comments generally opposed changes to the National List and were opposed to the addition of pullulan. AMS notes that OFPA permits the use of specific synthetic substances (*i.e.,* those on the National List) in organic production. OFPA describes the procedures for amending the National List and provides AMS and NOSB with criteria and guidelines to consider in evaluating changes to the National List. These procedures were followed by NOSB and AMS, and this rule adds pullulan to the National List.

*General support.* Comments supporting the addition of pullulan cited its potential to be used as a vegetarian alternative for capsules used for oral supplements. These comments argued that while gelatin is on the National List and is used for capsules, it is an animal byproduct, which vegan and vegetarian consumers choose not to use. Another comment stated that gelatin-based capsules are not appropriate for many vegan and

[12] NOSB final recommendation for pullulan, April 26, 2019: *https://www.ams.usda.gov/sites/default/files/media/HSPullullanApr2019FinalRec.pdf.*

[13] Pullulan petition: *https://www.ams.usda.gov/sites/default/files/media/PullulanPetition18131.pdf.*

[14] Pullulan technical evaluation report, September 7, 2018: *https://www.ams.usda.gov/sites/default/files/media/PullulanTechnicalReportFinal09072018.pdf.*

[15] Written and oral public comments submitted for the October 2018 and April 2019 NOSB meetings are available at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-st-paul-mn* and *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-seattle-wa.*

[16] NOP 5033—Classification of Materials: *https://www.ams.usda.gov/sites/default/files/media/NOP-5033.pdf.*

[17] Pullulan Technical Report, September 7, 2018: *https://www.ams.usda.gov/sites/default/files/media/PullulanTechnicalReportFinal09072018.pdf.*

vegetarian supplement products and may cause issues among kosher and halal consumers.

AMS appreciates public engagement in the rulemaking process and agrees with the general support above which mirrors the recommendation by NOSB. AMS is moving forward with adding this substance to the National List as proposed.

*Collagen Gel Casing (§ 205.605)*

Final Action

This final rule amends the National List to add collagen gel as a casing to 7 CFR 205.605(b) as a nonorganic nonagricultural ingredient allowed in organic handling. The amendment will permit the use of nonorganic forms of collagen gel when organic collagen gel is not commercially available (*i.e.,* not available in an appropriate form, quality, or quantity, as determined by the certifying agent in the course of reviewing the organic plan).[18] The final rule only permits nonorganic collagen gel as a casing. This final rule adds collagen gel casing to § 205.605(b) rather than to § 205.606, as proposed. The change in AMS' classification of collagen gel (and, therefore, its location on the National List) is discussed in the ''Comments Received and AMS' Response'' section below.

AMS is finalizing the addition of collagen gel casing to the National List, as proposed by NOSB, as organic collagen gel is not commercially available as of the issuance of this final rule. This conclusion is based on AMS' review of comments made to NOSB and comments received in response to the proposed rule. Additionally, AMS searched the Organic Integrity Database and found no certified organic operations with certified organic collagen gel.[19]

AMS expects that the allowance for nonorganic forms of collagen gel when organic forms are not available will encourage organic certification of products that have not been previously eligible for organic certification. This will encourage food manufacturers to develop new organic products, which could, in turn, create new demand for organic production (livestock production). There are no alternatives on the National List which are suitable for use in a co-extrusion system as a non-removable edible film.

Collagen gel is described as a multi-ingredient product made from collagen (3.0–4.5%), cellulose (<3.0%), and water (95.5–97.0%) in the commissioned third-party technical evaluation report.[20] Collagen is isolated from animal materials (*e.g.,* skin, bones) through thermal, acid, base, or enzymatic hydrolysis. Once isolated, the extract is decalcified and swollen with acid (generally hydrochloric or sulfuric) prior to use in a co-extrusion process.

When used in sausage production, collagen gel is used to enrobe the extruded product. The collagen gel forms an edible film that holds the form of the product and acts as a protective barrier. The collagen casing is an ingredient in the final product (*i.e.,* it is disclosed on the ingredients list). AMS understands that collagen gel may be formulated with additional substances to improve the appearance (*e.g.,* colors) or flavor of the final product. AMS expects these additional substances, when used, will be evaluated by USDA-accredited certifying agents for compliance with the National List and the USDA organic regulations.

AMS concluded that the addition of collagen gel to the National List is consistent with the requirements of OFPA sec. 6517(c). Namely, the substance is not harmful to human health or the environment; is necessary to production because of the unavailability of wholly natural substitute products; and is consistent with organic farming and handling. The amendment is made following the procedures established in OFPA (sec. 6517(d)).

NOSB Review and Recommendation (Collagen Gel)

NOSB submitted a recommendation to AMS in April 2019 to add collagen gel to the National List.[21] NOSB recommendation followed receipt of a petition to add the substance to the National List in February 2018.[22] In NOSB's evaluation of the petition, they considered information from a third-party technical evaluation report and comments from the public. NOSB discussed the petition to amend the National List in subcommittee calls and at its public meetings in October 2018 and April 2019.[23]

In its recommendation, NOSB concluded that adding collagen gel to the National List was consistent with OFPA criteria (sec. 6518(m)). In its recommendation, NOSB noted that adding collagen gel to the National List would increase opportunity for production of organic products that are not possible with current ingredients on the National List, such as single-species sausage and meat products.

Comments Received and AMS' Response (Collagen Gel Casing)

*Classification.* In the proposed rule, AMS requested additional information on whether the use of acid induces chemical change(s) in the collagen gel which should cause the substance to be classified as a nonagricultural, synthetic substance. In response, AMS received a comment stating that AMS guidance[24] indicates that synthetic acids used in a hydrolysis process would result in a synthetic product. The comment also stated that under this interpretation of program guidance, the use of synthetic acids as described in the technical evaluation report[25] would not be allowed in the production of nonsynthetic collagen gel.

Some comments received were neutral, neither in support of nor in opposition to the addition of collagen gel casing. One comment supported classifying collagen gel casing as an agricultural substance should it be added to the National List. This same comment also acknowledged that collagen gel casing's classification as an agricultural substance could be challenged during future NOSB meetings. However, the comment also stated that since the source material for collagen gel casing source is agricultural, its inclusion on § 205.606 would be appropriate.

Upon further review of the manufacturing process of collagen, as described in the petition and technical evaluation report, AMS agrees with the comment that the acid hydrolysis step typical in the manufacturing process of collagen is a non-biological chemical change that results in its classification

[18] See 7 CFR 205.606 and 7 CFR 205.2 for definition of ''Commercially available.''

[19] Available at *https://organic.ams.usda.gov/Integrity/Default.aspx.* Accessed and searched for ''collagen gel'' on February 1, 2021.

[20] Collagen gel technical evaluation report, January 28, 2019: *https://www.ams.usda.gov/sites/default/files/media/CollagenGelGelatinCasingsTechnicalReport01282019.pdf.*

[21] NOSB final recommendation for collagen gel, April 26, 2019: *https://www.ams.usda.gov/sites/default/files/media/HSCollagenGelApr2019FinalRec.pdf.*

[22] Collagen gel petition: *https://www.ams.usda.gov/sites/default/files/media/CollagenGelPetition.pdf.*

[23] Written and oral public comments submitted for the October 2018 and April 2019 NOSB meetings are available at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-st-paul-mn* and *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-seattle-wa.*

[24] AMS National Organic Program Handbook, Guidance NOP 5033–1 Decision Tree for Classification of Materials as Synthetic or Nonsynthetic, December 2, 2016. *https://www.ams.usda.gov/sites/default/files/media/NOP-Synthetic-NonSynthetic-DecisionTree.pdf.*

[25] Collagen gel technical evaluation report, January 28, 2019: *https://www.ams.usda.gov/sites/default/files/media/CollagenGelGelatinCasingsTechnicalReport01282019.pdf.*

as a nonagricultural, synthetic substance. In order to preserve the intent of NOSB to encourage future availability of certified organic collagen gel, AMS is listing collagen gel casing as a synthetic nonagricultural substance at § 205.605(b) with the annotation ''may be used only when organic collagen gel is not commercially available.''

AMS understands that there are many different manufacturing processes for the production of collagen gel.[26] It is our understanding that while there are many different processes for manufacturing collagen gel, the current predominant manufacturing process renders the final collagen gel as synthetic. While the main manufacturing process results in a synthetic product, there are manufacturing processes described which would result in a nonsynthetic product and are consistent with § 205.270 (*i.e.,* could be a certifiable process). Aware of the fact that the addition of collagen gel to the National List would allow for the production of additional organic products, we classified collagen gel as synthetic due to the predominant manufacturing process to provide access to organic producers. Given that there are processing methods which could be certified, we are maintaining the commercial availability requirement to encourage the development of nonsynthetic, certified organic products.

*General Opposition.* AMS received comments opposed to adding collagen gel casing to the National List. Some of the opposing comments want organic products to be composed only of organic ingredients. AMS notes that OFPA permits the use of specific nonorganic substances (*i.e.,* those on the National List) in organic production and handling. OFPA describes the procedures for amending the National List and provides AMS and NOSB with criteria and guidelines to consider in evaluating changes to the National List. These procedures were followed by NOSB and AMS, and this rule adds collagen gel to the National List.

*Misleading to Consumers.* A comment argued AMS will confuse consumers, especially vegan consumers, should collagen gel casings be allowed for use in organic plant-based sausage products. AMS understands that labeling requirements implemented by other agencies would require disclosure of collagen casings in a product's ingredient list. AMS believes that disclosure of the collagen casing as an ingredient provides sufficient transparency for consumers.

## III. Related Documents

AMS published notices in the **Federal Register** on August 9, 2018, announcing the Fall 2018 NOSB Meeting (83 FR 39376) and on November 26, 2018, announcing the Spring 2019 NOSB meeting (83 FR 60373). These notices invited public comments on NOSB recommendations addressed in this final rule. The AMS proposed rule that preceded this final rule was published on June 8, 2020 (85 FR 35011).

## IV. Statutory and Regulatory Authority

OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by NOSB. Sections 6518(k) and 6518(n) of OFPA authorize NOSB to develop recommendations for submission to the Secretary to amend the National List and establish a process by which persons may petition NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. Section 205.607 of the USDA organic regulations permits any person to petition to add or remove a substance from the National List and directs petitioners to obtain the petition procedures from USDA. The current petition procedures published in the **Federal Register** (81 FR 12680; March 10, 2016) for amending the National List can be accessed through the NOP Program Handbook on the NOP website at *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

### *A. Executive Order 12866 and Regulatory Flexibility Act*

This final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS) to delineate which operations qualify as small businesses.[27] SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than $1,000,000 (13 CFR 121.201). Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector, ''all other professional, scientific, and technical services.'' For this category, the small business threshold is average annual receipts of less than $16.5 million.

*Producers.* AMS has considered the economic impact of this final rulemaking on small agricultural entities. Data collected by USDA's National Agricultural Statistics Service (NASS) and NOP indicate most of the certified organic production operations in the United States would be considered small entities. According to the 2019 Census of Agriculture, 16,585 organic farms in the United States reported sales of organic products and total farmgate sales more than $9.9 billion.[28] Based on that data, organic sales average just under $600,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $1,000,000 sales threshold to qualify as a small business.

*Handlers.* According to the NOP's Organic Integrity Database, there are 19,059 organic handlers that are certified under the USDA organic regulations.[29] The Organic Trade Association's 2020 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Fewer than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the

[26] Collagen Gel Technical Report, January 28, 2019: *https://www.ams.usda.gov/sites/default/files/media/CollagenGelGelatinCasingsTechnicalReport01282019.pdf.*

[27] Table of Small Business Size Standards Matched to North American Industrial Classification System Codes, August 19, 2019: *https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf.*

[28] U.S. Department of Agriculture, National Agricultural Statistics Service. 2019 Census of Agriculture. *https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/ORGANICS.pdf.*

[29] Organic Integrity Database: *https://organic.ams.usda.gov/Integrity/.* Accessed February 1, 2021.

larger manufacturers is significantly smaller than SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

*Certifying agents.* SBA defines ''all other professional, scientific, and technical services,'' which include certifying agents, as those having annual receipts of less than $16,500,000 (13 CFR 121.201). There are currently 77 USDA-accredited certifying agents, based on a query of NOP certified organic operations database, who provide organic certification services to producers and handlers. While many certifying agents are small entities that would be affected by this proposed rule, we do not expect that these certifying agents would incur significant costs as a result of this action as certifying agents already must comply with the current regulations (*e.g.,* maintaining certification records for organic operations).

AMS does not expect the economic impact on entities affected by this rule to be significant. The effect of this final rule will allow the use of three additional substances in organic crop production and organic handling. Adding three substances to the National List will increase regulatory flexibility and provide small entities with more options to use in day-to-day operations.

*B. Executive Order 12988*

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect. Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of OFPA. States are also preempted under sections 6503 through 6507 of OFPA from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of OFPA.

Pursuant to section 6507(b)(2) of OFPA, a State organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the State and for the certification of organic farm and handling operations located within the State. Such additional requirements must (a) further the purposes of OFPA, (b) not be inconsistent with OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to § 6519(c)(6) of OFPA, this final rule does not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

*C. Paperwork Reduction Act*

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

*D. Executive Order 13175*

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

AMS has assessed the impact of this final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with USDA's Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the NOP regulations.

*E. Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

*G. General Notice of Public Rulemaking*

This final rule reflects recommendations submitted by NOSB to the Secretary to add three substances to the National List.

**List of Subjects in 7 CFR Part 205**

Administrative practice and procedure, Agricultural commodities, Agriculture, Animals, Archives and records, Fees, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

## PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for part 205 is revised to read as follows:

**Authority:** 7 U.S.C. 6501–6524.

■ 2. Amend § 205.603 by redesignating paragraphs (b)(8) through (b)(11) as paragraphs (b)(9) through (b)(12) and adding paragraph (b)(8) to read as follows:

**§ 205.603 Synthetic substances allowed for use in organic livestock production.**

* * * * *

(b) * * *

(8) Oxalic acid dihydrate—for use as a pesticide solely for apiculture.

* * * * *

■ 3. Amend § 205.605 by:

■ a. In paragraph (a), adding in alphabetical order the term ''Pullulan;'' and

■ b. In paragraph (b), adding in alphabetical order the term ''Collagen gel.''

The additions read as follows:

**§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s)).''**

* * * * *

(a) * * *

Pullulan—for use only in tablets and capsules for dietary supplements labeled ''made with organic (specified ingredients or food group(s)).''

* * * * *

(b) * * *

Collagen gel—as casing, may be used only when organic collagen gel is not commercially available.

* * * * *

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–13323 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

---

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**[Docket ID FCIC–21–0002]**

**RIN 0563–AC73**

## Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Small Grains Crop Insurance Provisions and Malting Barley Price and Quality Endorsement. For the Small Grains Crop Insurance Provisions, the intended effect of this action is to allow enterprise units by type for wheat, to clarify policy provisions for consistency with other crop provisions that offer coverage on both winter and spring-planted acreage of the crop. For the Malting Barley Price and Quality Endorsement, the intended effect is to remove and reserve this section. The changes will be effective for the 2022 and succeeding crop years.

**DATES:**

*Effective date:* June 25, 2021.

*Comment date:* We will consider comments that we receive by the close of business August 24, 2021. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

**ADDRESSES:** We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–21–0002. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency (RMA), U.S. Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205. In your comment, specify docket ID FCIC–21–0002.

Comments will be available for viewing online at *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Francie Tolle; telephone (816) 926–7829; or email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide).

**SUPPLEMENTARY INFORMATION:**

### Background

The FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

FCIC amends the Common Crop Insurance Regulations by revising 7 CFR 457.101, Small Grains Crop Insurance Provisions, and by removing and reserving 7 CFR 457.118, Malting Barley Price and Quality Endorsement, to be effective for the 2022 and succeeding crop years.

The changes to 7 CFR 457.101, Small Grains Crop Insurance Provisions, are as follows:

1. Throughout the Crop Provisions, FCIC is replacing all references of the ''fall'' type with ''winter'' type. Fall and spring-planted acreage are insured under the ''winter'' commodity type and ''spring'' commodity type, respectively, in the actuarial documents. This change is necessary for consistency between the Crop Provisions and actuarial documents.

2. Throughout the Crop Provisions, FCIC is replacing the phrase ''initially planted'' with the phrase ''initially-planted,'' where appropriate.

3. Throughout the Crop Provisions, FCIC is replacing all references of ''growers'' with ''producers'' to be consistent with the terminology used in the Common Crop Insurance Policy Basic Provisions.

4. Section 1—FCIC is revising the definition of ''Khorasan'' by replacing the phrase ''is considered to be'' with ''is considered.'' The phrase ''to be'' is not necessary.

FCIC is revising the definition of ''latest final planting date'' to replace all references to fall and spring-planted acreage to winter and spring types. This change will eliminate any confusion of whether a winter final planting date exists in the actuarial documents if the Winter Coverage Endorsement is not selected. For example, Asotin County, Washington lists a winter final planting date for barley that is only applicable if the Winter Coverage Endorsement is elected. Otherwise, there is no applicable date in the fall and only spring final planting dates exist for the spring types. The intent of these provisions is to address when a county has both winter and spring types designated in the Special Provisions, regardless if the Winter Coverage Endorsement is elected.

FCIC is revising the definition of ''small grains'' to allow the flexibility to insure additional small grains varieties that are not currently listed in the actuarial documents. This allows for insurance coverage to be offered via actuarial documents for varieties currently not insured when data become available, and it is appropriate to do so.

5. Section 2—FCIC is designating the undesignated paragraph in section 2 as paragraph (b) and adding a new paragraph (a) to allow enterprise units by type for wheat. For example, if insured has winter and spring types, they may elect one enterprise unit for the spring type or one enterprise unit for the winter type, or separate enterprise units for both types.

For the wheat types, allowing separate enterprise units allows producers to be indemnified separately by type. The benefit for producers is that a loss on one type will not be offset by the gain on another type.

If an insured elects enterprise units by type, these enterprise units are not allowed to be further divided by practice and the insured may not elect enterprise or optional units by irrigation practices for the policy.

Additionally, the insured must separately meet the requirements in section 34(a)(4) of the Basic Provision for each enterprise unit they elect to have.

If the insured elects enterprise units by type and does not qualify for separate enterprise units, there are options based upon whether enterprise units are elected for one or multiple types and the timing of the discovery:

• If the insured elects separate enterprise units for multiple types and the AIP discovers the enterprise unit qualifications are not separately met for all types:

(1) On or before the acreage reporting date the insured may elect to insure:

(a) All types in which they elected an enterprise unit for meeting the requirements in section 34(a)(4) of the Basic Provisions as separate enterprise units, and basic or optional units for any acreage that is not reported and insured as an enterprise unit, whichever the insured reports on the acreage report and for which the insured qualifies; or

(b) One enterprise unit for all acreage of the crop in the county provided the insured meets the requirements in section 34(a)(4) of the Basic Provisions; or

(c) Basic or optional units for all acreage of the crop in the county, whichever the insured reports on the acreage report and for which the insured qualifies.

(2) After acreage reporting date, the insured will have one enterprise unit for all acreage of the crop in the county provided they meet the requirements in section 34(a)(4) of the Basic Provisions. If they don't meet the requirements in section 34(a)(4), the AIP will assign a basic unit structure for all acreage of the crop in the county.

• If an insured elects an enterprise unit for only one type and the AIP discovers the enterprise unit qualifications are not met for that type:

(1) On or before the acreage reporting date, the insured's unit division for all acreage of the crop in the county will be based on basic or optional units, whichever the insured reports on the acreage report and for which the insured qualifies; or

(2) After the acreage reporting date, the AIP will assign the basic unit structure for all acreage of the crop in the county.

FCIC is also revising the first sentence in redesignated paragraph (b) to rephrase the language to eliminate the need to list all optional unit choices from the Basic Provisions. This allows the Small Grains Crop Provisions to follow the Basic Provisions optional unit division language when and if those provisions in the Basic Provisions are updated, without a new regulation.

In newly redesignated paragraph (b), FCIC is revising the reference to section 34(b) of the Common Crop Insurance Policy Basic Provisions to 34(c). Section 34(c) is the appropriate reference.

In newly redesignated paragraph (b), FCIC is simplifying the paragraph by removing the list of insurable types that may be insured as separate optional units and replacing with a statement that separate optional units may be established by any insured wheat type as long as each optional unit contains only initially-planted acreage of the type. The insured type can be listed in the actuarial documents or insured by written agreement to qualify. This change is needed in the event the insured elects enterprise units by type but does not qualify for enterprise units.

6. Section 3—FCIC is revising the lead-in to paragraph (b)(2). This paragraph addresses counties that have both winter and spring sales closing dates. In some counties, the winter sales closing date only applies if the Winter Coverage Endorsement is elected. While these specific counties have a winter and a spring sales closing date listed in the actuarial documents, paragraph (b)(2) is not referring to these counties. Paragraph (b)(2) is only intended to apply to those counties where both winter and spring sales closing dates are applicable regardless of the Winter Coverage Endorsement election. Therefore, the lead-in is revised to include, in parenthesis, a statement that excludes dates specific to the Winter Coverage Endorsement.

FCIC is also revising paragraphs (b)(2)(i) and (ii) to replace the phrase ''insured fall planted acreage'' with the phrase ''insurable winter planted acreage.'' This paragraph provides guidance regarding the date by which producers can make changes to their insurance coverage depending on whether they have insured fall-planted acreage. The provisions state that if producers have insured fall-planted acreage, no changes can be made after the fall sales closing date. If producers do not have insured fall-planted acreage, then they can make changes up until the spring sales closing. All acreage of the crop in the county must be insured. Therefore, if the producer plants fall-planted acreage and it meets the insurability requirements in section 6, then it must be insured. FCIC received input from AIPs that the phrase ''insured fall planted acreage'' indicates that if producers planted fall-planted acreage but do not insure it, then they have until the spring sales closing date to make changes to the insurance coverage on the spring-planted acreage. That is not the intent of the provisions. Therefore, FCIC is revising the language to indicate if producers planted insurable fall-planted acreage, then no changes may be made after the fall sales closing date. As explained above, ''fall'' is also being replaced with ''winter,'' as appropriate.

7. Section 5—FCIC is removing the phrase ''Special Provisions'' and replacing it with the phrase ''actuarial documents.'' The cancellation and termination dates identified in this section are also found in the actuarial documents, rather than the Special Provisions. If FCIC determines that the cancellation or termination dates need to differ than what is provided in the Crop Provisions, then the modified date would be identified in the actuarial documents.

8. Section 6—FCIC is removing paragraph (e). This paragraph refers to the Malting Barley Price and Quality Endorsement (MBPQE) published at 7 CFR 457.118. The MBPQE is no longer available to barley producers. Another endorsement, Malting Barley Endorsement was approved by the FCIC Board of Directors under Section 508(h) of the Federal Crop Insurance Act. The Malting Barley Endorsement replaced the MBPQE in 2016 and is not codified. Therefore, there's no need to include a reference to the MBPQE within the Small Grains Crop Provisions.

9. Section 7—FCIC is revising the lead-in sentence to paragraph (a)(1) to remove the reference to oats. FCIC is adding oats to paragraph (a)(2). Paragraph (a)(1) is for the crops for which there is only one planting season (either winter or spring); whereas paragraph (a)(2) is for the crops that have more than one planting season (winter and spring). In all counties where oats are insured, FCIC insures winter-planted oats, spring-planted oats or both. Therefore, oats are more appropriately placed in paragraph (a)(2) and are added within paragraph (a)(2) in every place there is a reference to barley and wheat.

FCIC is also revising paragraphs (a)(2)(ii) and (iii) to change the phrase ''fall final planting date'' and ''fall and spring final planting dates'' to ''winter type'' and ''winter and spring types,'' respectively.

FCIC is revising paragraph (a)(2)(iii)(A) to add the word ''acreage'' at the end of the following phrase: ''Any winter barley, oat or wheat.'' By adding ''acreage'' to this phrase, this lead-in phrase is consistent with the lead-in phrase in paragraph (a)(2)(iii)(B). FCIC is also revising the phrase ''Any winter barley, oat or wheat'' to add a comma after ''oat.''

FCIC is also adding paragraph (a)(2)(iii)(D). This paragraph addresses situations, in counties with both winter and spring types listed in the actuarial

documents, when acreage of the winter type is planted after the end of the late planting period. The Basic Provisions says that any acreage planted after the end of the late planting period may be insured if the producer chooses to insure it. If insured, then the acreage will be insured with a reduced guarantee equal to the production guarantee times the prevented planting coverage level percentage specified in the actuarial documents. In counties with both winter and spring types listed in the actuarial documents, winter types are not eligible for prevented planting so there is no prevented planting coverage level percentage listed in the actuarial documents to assign to it. Without a prevented planting coverage level, section 8(b)(2) of the Basic Provisions applies and the winter types are not insurable (*e.g.,* the appropriate rates are not available to insure the crop). This new provision allows the acreage to be insured in the spring as the spring type, if the producer chooses to insure it and the AIP determines there is an adequate stand. This change treats all producers similarly to producers who plant winter types in counties with only a spring type listed in the actuarial documents.

FCIC is revising paragraph (a)(2)(iv) by revising the phrase ''. . .any acreage of spring barley, oat or wheat. . .'' to read ''. . .any spring barley, oat or wheat acreage. . .'' Similarly, FCIC is revising paragraph (a)(2)(v) by revising the phrase ''. . .any acreage of winter barley, oat or wheat. . .'' to read ''. . .any winter barley, oat or wheat acreage. . .'' These revisions are consistent with revisions made in paragraph (a)(2)(iii).

In paragraphs (a)(2)(iv) and (v), FCIC is replacing the phrase ''spring final planting date'' with ''spring type'' in both places to be consistent with changes elsewhere in the Crop Provisions.

Also in paragraph (a)(2)(v), FCIC is revising the phrase ''is not insured'' to ''will not be insured.'' This is consistent with the language that was added in paragraph (a)(2)(iii)(D).

FCIC is also revising paragraph (a)(2)(v) to remove the phrase ''agree in writing'' as this could be misinterpreted to mean a written agreement, which is not the intent of the language, and could result in providing insurance via written agreement when it was not intended or appropriate. FCIC is replacing that phrase with language to clarify the AIP must inspect and give written confirmation that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. These clarifications will reduce the likelihood of fraud, waste, and abuse.

FCIC is revising paragraph (a)(2)(v)(D) by revising the phrase ''. . . any acreage of such winter barley, oat or wheat. . .'' to read ''. . .any such winter barley, oat, or wheat acreage . . .'' These revisions are consistent with revisions made in paragraphs (a)(2)(iii)–(v).

FCIC is also revising paragraphs (a)(2)(v) introductory text and (a)(2)(v)(A), (B), and (D) to change all references of ''fall planted'' to ''winter'' for consistency with changes elsewhere.

FCIC is revising paragraph (a)(2)(v)(E) to change the reference of ''fall planted acreage'' to ''winter planted acreage'' for consistency with changes elsewhere.

10. Section 9—FCIC is replacing the phrase ''winter coverage endorsement'' with ''Winter Coverage Endorsement'' because it is the title of an endorsement.

FCIC is replacing the phrase ''spring final planting date'' with the phrase ''spring type'' in paragraph (a)(4) to accurately refer to the Special Provisions where insurable types and practices are listed.

FCIC is revising paragraph (b). The phrase ''fall final planting date (including final planting dates in December, January and February)'' is replaced with ''winter type'' to accurately refer to the Special Provisions where insurable types and practices are listed.

FCIC is revising paragraph (e) to replace the phrase ''crop type'' with ''type'' in the five places it appears. This is the only paragraph in the Crop Provisions where ''crop type'' is used. For consistency throughout the Crop Provisions, the word ''crop'' is removed.

11. Section 11—FCIC is adding paragraph (d)(1)(v) to provide flexibility in the Special Provisions to update the moisture levels for each crop if it is determined that a level should be different than what is provided in the Crop Provisions.

FCIC is revising paragraph (d)(4) by replacing the phrase ''contained in'' with the phrase ''calculated in accordance with.'' The current provisions state that the quality adjustment factor is contained in the Special Provisions. However, there is no such factor stated in the Special Provisions. Instead, the quality adjustment factor is calculated using several different steps that are contained in the Special Provisions.

12. Section 13—FCIC is removing the phrase ''spring final planting date'' and replacing it with the phrase ''spring type.'' FCIC is also revising the paragraph to move the first sentence to the end of the paragraph for ease of reading.

**Comments Requested on Whether To Retain Section 9(a)(5)**

Section 9(a)(5) states that damage must occur after the winter final planting date for the producer to be eligible for a replant payment, in counties with both winter and spring final planting dates. Provisions in section 7(a)(2)(iii) provide guidance on whether a crop should be replanted if damage occurs any time before the spring final planting date, which would also encompass any time before the winter final planting date since the winter final planting date comes before the spring final planting date in the crop year. As such, a producer is required to replant if damage occurs prior to the winter final planting date; however, no replanting payment is made in that timeframe. FCIC has received requests to remove this provision, thereby allowing replanting payments to be made in situations where damage occurs prior to the winter final planting date in counties with both winter and spring final planting dates. FCIC has also received opposing feedback requesting the provision remain intact because it is difficult or impossible to make a determination prior to the winter final planting date that acreage needs to be replanted or that it is practical to replant, except in cases of widespread weather events.

In addition to consideration of the future of section 9(a)(5), there are other provisions that may be affected by its removal. Section 9(b) states that no replanting payment is available in any circumstance for damage in counties with only a winter final planting date. Producers in these counties, like producers in counties with both winter and spring final planting dates, are required to replant if damage occurs prior to the winter final planting date, but no replanting payment is available. FCIC has received opposition to remove this provision, which, if removed, would allow replanting payments prior to the winter final planting date. In addition to the same opposing feedback FCIC received regarding removal of section 9(a)(5), FCIC also received feedback that in counties where only a winter type is insurable, there is a short window to replant a damaged crop. Replanting in these counties may contribute to later planting dates when soil temperatures may be too low for germination. Unlike in counties where both winter and spring types are insurable, there is not an opportunity for producers to replant a damaged winter crop in the spring to retain coverage using the winter guarantee.

Further, the Winter Coverage Endorsement (WCE) provides optional coverage for barley and wheat producers from the winter final planting date until the spring final planting date in counties with both winter and spring final planting dates. If damage occurs during the WCE coverage period, the producer has three options: (1) Continue to care for the damaged crop and coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and the WCE; (2) replant the damaged acreage and receive a replanting payment; or (3) destroy all remaining acreage and accept an appraised amount of production determined in accordance with section 11(c)(1) of the Small Grains Crop Insurance Provisions to count against the unit production guarantee. The Common Crop Insurance Policy Basic Provisions says that no replanting payment will be made on acreage on which one replanting payment has already been allowed for the crop year. Assume section 9(a)(5) is removed, damage occurs prior to the winter final planting date, and a replanting payment is made. If the same acreage that received a replanting payment is damaged during the WCE coverage period, then the producer's options under the WCE have been narrowed down to two as he likely will not choose to replant knowing he will not receive a replanting payment. When the producer elected the WCE at sales closing time, he would have expected three options in the event of damage.

Finally, in general, a replanting payment will not be made if acreage is damaged and that acreage was planted before the earliest planting date if an earliest planting date is listed in the actuarial documents. There are counties with both winter and spring final planting dates that currently do not have an earliest planting date listed for the winter type. If section 9(a)(5) is removed, it is unclear if producers will plant earlier than they have historically planted knowing that there is a potential for a replanting payment if the crop fails before the winter final planting date.

Specifically, FCIC requests comments on the following questions; please provide any data and information that supports your comments:

1. Should FCIC provide a replanting payment for the winter type prior to the winter final planting date (*i.e.,* by removing section 9(a)(5))?

2. If section 9(a)(5) is removed, while section 9(b) is left intact, what concerns do you have that producers who plant a winter type in both counties would be treated differently regarding replanting payments: Where producers in counties with both winter and spring final planting dates would receive a replanting payment prior to the winter final planting date and producers in counties with only a winter final planting date would not receive a replanting payment prior to the winter final planting date?

3. If section 9(a)(5) is removed, what concerns do you have that the producer may not be eligible for a replanting payment under the WCE if he has already received a replanting payment on the same acreage?

4. If section 9(a)(5) is removed, will FCIC need to create an earliest planting date for the winter types in counties where no earliest planting date exists to require that producers plant no earlier than a specific date in order to be eligible for a replanting payment?

**Effective Date, Notice and Comment, and Exemptions**

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on the date of publication in the **Federal Register**. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

**Executive Orders 12866 and 13563**

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

**Clarity of the Regulation**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

**Environmental Review**

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

**Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

**The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Federal Assistance Program**

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450—Crop Insurance.

**Paperwork Reduction Act of 1995**

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

**USDA Non-Discrimination Policy**

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or 844–433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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

**List of Subjects in 7 CFR Part 457**

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

**Final Rule**

For the reasons discussed above, FCIC amends 7 CFR part 457 as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.101 as follows:
■ a. Revise the introductory text;
■ b. In section 1:
■ i. In the definition of ''Khorasan'', remove the phrase ''to be'';
■ ii. Revise the definition of ''Latest final planting date''; and
■ iii. In the definition of ''Small grains'', add the phrase ''or as otherwise specified in the actuarial documents'' at the end;
■ c. Revise section 2;
■ d. In section 3:
■ i. In paragraph (a), remove the semicolon at the end and add a period in its place; and
■ ii. Revise paragraph (b)(2);
■ e. In section 5, in the introductory text, remove the phrase ''Special Provisions'' and add in its place the phrase ''actuarial documents'';
■ f. In section 6, remove paragraph (e);
■ g. In section 7:
■ i. In paragraph (a)(1) introductory text, remove the word ''oats,'' and add a comma after ''flax''; and
■ ii. Revise paragraphs (a)(2) introductory text, (a)(2)(ii) thorough (iv), (c)(2)(v) introductory text, and (c)(2)(v)(A), (B), (D), and (E);
■ h. In section 9:
■ i. In paragraph (a)(2), remove the phrase ''winter coverage endorsement'' and add in its place the phrase ''Winter Coverage Endorsement'';
■ ii. In paragraph (a)(4), remove the phrase ''final planting date'' and add in its place the word ''type'';
■ iii. In paragraph (a)(5), remove the word ''fall'' and add the word ''winter'' in all places where it appears;
■ iv. Revise paragraph (b);
■ v. In paragraph (c)(2)(i), add a comma after ''flax''; and
■ vi. In paragraph, (e) remove the phrase ''crop type'' and add the word ''type'' in all places where it appears;
■ i. In section 11:
■ i. Revise paragraphs (d)(1)(iii) and (iv);

■ ii. Add paragraph (d)(1)(v); and
■ iii. In paragraph (d)(4), remove the phrase ''contained in'' and add in its place the phrase ''calculated in accordance with'';
■ j. In section 12, remove the word ''fall'' and add the word ''winter'' in all places where it appears; and
■ k. Revise section 13.

The revisions and additions read as follows:

**§ 457.101 Small grains crop insurance provisions.**

The Small Grains Crop Insurance Provisions for the 2022 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

*Latest final planting date.* (a) The final planting date for the spring type in all counties for which the Special Provisions designate a spring type only;

(b) The final planting date for the winter type in all counties for which the Special Provisions designate a winter type only; or

(c) The final planting date for the spring type in all counties for which the Special Provisions designate both spring and winter types.

* * * * *

2. Unit Division.

(a) In addition to enterprise units provided in section 34(a) of the Basic Provisions, for wheat only, you may elect separate enterprise units by type, as provided in this section, if allowed by the actuarial documents. If you elect enterprise units by type, you may not elect enterprise or optional units by irrigation practices.

(1) You may elect separate enterprise units by type unless otherwise specified in the Special Provisions. For example, if you have winter and spring types, you may elect one enterprise unit for the spring type or one enterprise unit for the winter type, or separate enterprise units for both types. Any acreage which is not reported and insured as an enterprise unit will be insured as basic or optional units, if requirements are met. For example, if you only have winter and spring types, you may have an enterprise unit for the winter type acreage and basic or optional units for the spring type acreage.

(2) You must separately meet the requirements in section 34(a)(4) of the Basic Provisions for each enterprise unit.

(3) If you elected separate enterprise units for multiple types and we discover enterprise unit qualifications are not separately met for all types in which you elected enterprise unit and such discovery is made:

(i) On or before the acreage reporting date, you may elect to insure:

(A) All types in which you elected an enterprise unit for meeting the requirements in section 34(a)(4) as separate enterprise units, and basic or optional units for any acreage that is not reported and insured as an enterprise unit, whichever you report on your acreage report and for which you qualify;

(B) One enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4); or

(C) Basic or optional units for all acreage of the crop in the county, whichever you report on your acreage report and for which you qualify; or

(ii) At any time after the acreage reporting date, your unit structure will be one enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4). Otherwise, we will assign the basic unit structure for all acreage of the crop in the county.

(4) If you elected an enterprise unit for only one type and we discover you do not qualify for an enterprise unit for that type and such discovery is made:

(i) On or before the acreage reporting date, your unit division for all acreage of the crop in the county will be based on basic or optional units, whichever you report on your acreage report and for which you qualify; or

(ii) At any time after the acreage reporting date, we will assign the basic unit structure for all acreage of the crop in the county.

(b) In addition to, or instead of, establishing optional units as provided in section 34(c) of the Basic Provisions, for wheat only, separate optional units may be established for each wheat type (designated in actuarial documents and including any type insured by written agreement) if each optional unit contains only initially-planted acreage of the type.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) * * *

(2) In counties with both winter and spring sales closing dates for the insured crop (excluding counties that have a spring sales closing date and a winter sales closing date only applicable to the Winter Coverage Endorsement):

(i) If you do not have any insurable winter-planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(ii) If you have any insurable winter-planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, after the winter sales closing date. Winter-planted acreage of the insured crop must be reported and insured if it meets the requirements in section 6.

* * * * *

7. Insurance Period.

* * * * *

(a) * * *

(2) For barley, oat, and wheat, the following limitations apply:

* * * * *

(ii) Whenever the Special Provisions designate only a winter type, any acreage of winter barley, oats, or wheat damaged before such final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(iii) Whenever the Special Provisions designate both winter and spring types:

(A) Any winter barley, oat, or wheat acreage that is damaged before the spring final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop to maintain insurance based on the winter type unless we agree that replanting is not practical. If it is not practical to replant to the winter type of barley, oats, or wheat, but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the winter type in force.

(B) Any winter barley, oat, or wheat acreage that is replanted to a spring type of the same crop when it was practical to replant the winter type will be insured as the spring type and the production guarantee, premium, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type.

(C) Notwithstanding sections 7(a)(2)(iii)(A) and (B), if you have elected coverage under a barley or wheat Winter Coverage Endorsement (if available in the county), insurance will be in accordance with the endorsement.

(D) Any winter barley, oat, or wheat acreage planted after the end of the late planting period will not be insured unless you request such coverage on or before the spring sales closing date, and we inspect and determine that the

acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(a)(2)(iii)(D)(*3*).

(*1*) Your request for coverage must include the location and number of acres of winter barley, oats, or wheat.

(*2*) The winter barley, oats, or wheat will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable.

(*3*) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date.

(iv) Whenever the Special Provisions designate a spring type, any spring barley, oat, or wheat acreage damaged before such final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical.

(v) Whenever the Special Provisions designate only a spring type, any winter barley, oat, or wheat acreage will not be insured unless you request such coverage on or before the spring sales closing date, and we inspect and give written confirmation that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(a)(2)(v)(C).

(A) Your request for coverage must include the location and number of acres of winter barley, oats, or wheat.

(B) The winter barley, oats, or wheat will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable.

* * * * *

(D) Any such winter barley, oats, or wheat acreage that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant.

(E) If winter-planted acreage is not to be insured it must be recorded on the acreage report as uninsured winter-planted acreage.

* * * * *

9. Replanting Payments.

* * * * *

(b) No replanting payment will be made for acreage initially planted to a winter type of the insured crop (including rye) in any county for which the Special Provisions contain only a winter type.

* * * * *

11. Settlement of Claim.

* * * * *

(d) * * *

(1) * * *

(iii) 14.0 percent for oats;

(iv) 16.0 percent for rye and buckwheat; or

(v) As otherwise provided in the Special Provisions.

* * * * *

13. Prevented Planting.

Your prevented planting coverage will be a percentage specified in the actuarial documents of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage if such additional coverage is specified in the actuarial documents. In counties for which the Special Provisions designate a spring type, your prevented planting production guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

**§ 457.118 [Removed and Reserved]**

■ 3. Remove and reserve § 457.118.

**Richard Flournoy,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2021–13113 Filed 6–24–21; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1206

**[Document No. AMS–SC–20–0086]**

## Mango Promotion, Research and Information Order; Removal of Frozen Mangos

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule with minor changes, an interim final rule that amends the Mango Promotion, Research and Information Order (Order) by removing the provisions of frozen mangos as a covered commodity. The Order is administered by the National Mango Board (Board) with oversight by the U.S. Department of Agriculture (USDA). In a referendum, first handlers and importers voted to remove frozen mangos as a covered commodity under the Order. This rule will remove frozen mangos as a covered commodity, discontinue the collection of assessments on frozen mangos, remove frozen mango entity representation on the Board, and make necessary conforming changes.

**DATES:** Effective July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Marlene Betts, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–5057; or email: *Marlene.Betts@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule affecting 7 CFR part 1206 (the Order) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

### Executive Orders 12866 and 13563

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, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

### Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this final rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the changes to the regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about these revisions to the regulation.

**Executive Order 12988**

In addition, this rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order issued under the Act may file a written petition with USDA stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law, and request a modification of the order or an exemption from the order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

**Background**

The Mango Promotion, Research, and Information Order (Order) took effect in November 2004 (69 FR 59120), and assessment collection began in January 2005 for fresh mangos. The Order is administered by the National Mango Board (Board) with oversight by the U.S. Department of Agriculture. Originally, the program was funded by assessments on first handlers and importers of fresh mangos, and was focused on maintaining and expanding existing markets and uses for fresh mangos through its research, promotion and information efforts.

Frozen mangos as a covered commodity was added to the Order on February 21, 2019 (84 FR 5335), and a referendum was held in 2019 to determine whether the industry favored the inclusion of frozen mangos as a covered commodity under the Order. In the 2019 referendum, 52.5 percent of first handlers and importers of fresh and frozen mangos were in favor of the amendment to add frozen mangos to the Order. Since the vote passed by a small margin, the frozen mango industry asked the Board to conduct another referendum on whether frozen mangos should continue as a covered commodity under the Order.

The Order prescribes that every five years, the USDA conduct a referendum to determine if first handlers and importers of mangos favor the continuation of the Order. Such a referendum was required to be conducted in 2020. At the Board's September 2019 meeting, it was unanimously recommended to the USDA to add a second question to the continuance referendum ballot concerning frozen mangos as a covered commodity. USDA conducted a referendum from September 21 through October 9, 2020, among eligible first handlers and importers to (1) ascertain whether the continuance of the Order is favored by eligible first handlers and importers covered under the Order, and (2) ascertain whether the continuance of frozen mangos as a covered commodity in the Order is favored by eligible first handlers and importers (including frozen mango importers) covered under the Order. The results were announced on October 20, 2020, stating that 60 percent of mango first handlers and importers voting were in favor of continuing the Order. On the question as to whether to continue frozen mangos as a covered commodity in the Order, 42 percent voted to keep frozen mangos in the Order, 49 percent voted to eliminate frozen mangos and 9 percent did not vote on this question. Of those representing frozen mangos, 83 percent voted to eliminate frozen mangos as a covered commodity.

Section 522 of the 1996 Act (7 U.S.C. 7421) and § 1206.72 of the Order (7 CFR 1206.72) provide that if the Secretary determines that provisions of the Order are not favored by persons voting in a referendum, the Secretary shall terminate those provisions. An interim final rule was published in the **Federal Register** on February 24, 2021, providing a 60-day comment period that ended April 26, 2021. In accordance with the 1996 Act and Order, this rule adopts the interim rule, with a few minor changes to sections 1206.34 and 1206.43. The interim final rule proposed removal of the provisions of frozen mangos as a covered commodity under the Order and the final rule is adopting these changes from the interim final rule without change. They include: Removing definitions for frozen mangos and foreign processor of frozen mangos; reducing the Board's membership from 21 to 18 by eliminating two importers of frozen mangos and one foreign processor of frozen mangos; removing assessment collection provisions for frozen mangos at a rate of $0.01 per pound and thereby eliminating assessments on frozen mango imports; and removing the exemption of assessment for importers who import less than 200,000 pounds of frozen mangos annually. In addition, the interim final rule proposed clarifying and conforming changes to other provisions of the Order.

Sections 1206.34 and 1206.43 are being revised in this rule from the interim final rule for further clarification.

**Order Provisions**

The interim rule set forth the following proposed changes that are being adopted without change. In accordance with § 1206.72, the following changes are necessary to terminate and remove the provisions regarding frozen mangos from the Order. Sections 1206.6 and 1206.9 which define the terms ''first handler'' and ''importer,'' respectively, were revised to add the reference that first handlers and importers, respectively, must receive or import 500,000 or more pounds of mangos; this volume was added for the purpose of clarity.

Section 1206.8, which defines the term ''foreign producers and foreign processor of frozen mangos or foreign processor'', was revised to remove the definitions of ''foreign processor of frozen mangos or foreign processor'' because they are no longer covered under the Order. The definition for ''foreign producer'' will remain.

The definition of ''mangos'' in § 1206.11 was revised to mean all fresh fruit of *Mangifera indica* L. of the family *Anacardiaceae.* The term ''frozen mangos'' was removed as it is no longer a covered commodity.

Section 1206.30, which establishes the Board's membership, was revised to reduce its size from 21 to 18 members due to the removal of three members, *i.e.,* two importers of frozen mangos and one foreign processor. The three members have been removed from the Board. The remaining 18-member Board will be comprised of 8 importers, 1 first handler, 2 domestic producers, and 7 foreign producers. In addition, eligibility requirements for Board members from the frozen mango industry are removed, and only those eligibility requirements for the first handler and fresh mango importers remain. Lastly, the four ''Importer Districts'' that were unintentionally removed from the CFR when this section was amended, were restored to section 1206.30 as paragraphs (b)(1)–(b)(4).

Section 1206.31, which describes the procedures for nominating and appointing Board members to the Board, was revised to remove procedures for nominating foreign processors and importers of frozen mangos. Section 1206.32, which specifies that Board members serve for a 3-year term of office and may serve a maximum of two consecutive 3-year terms, was revised to remove the references to importers of frozen mangos and foreign processors.

Section 1206.42 specifies the assessment rate for fresh mangos and frozen mangos. Paragraph (b) was revised to remove the provisions assessing importers of frozen mangos one cent ($0.01) per pound, and paragraph (d)(2), which includes the Harmonized Tariff Schedule (HTS) of the United States that applies to imported frozen mangos (number 0811.90.5200), was removed from the Order. Assessments on frozen mango importers have been terminated.

Subpart B of part 1206 specifies procedures for conducting a referendum. In § 1206.101, paragraphs (c), (d), and (e) were revised to delete the references to eligibility of frozen mango importers to vote in referenda, as frozen mangos are no longer a covered commodity, and to restore definitions prior to when this section was amended.

Finally, the interim final rule updated the OMB control number specified in § 1206.108 from 0581–0209 to 0581–0093.

Sections 1206.34 and 1206.43 from the interim final rule are being further revised. Section 1206.34 specifies quorum requirements for Board meetings, and with the reduction of the Board from 21 to 18, a decrease in quorum requirements is necessary. Therefore, this section was revised to specify that a quorum at a Board meeting exists when at least 10 of the 18 Board members are present. A comment was received requesting a quorum at Board meetings be when at least one more than half of the voting members are present. The comment was accepted, and the section is revised in this final rule.

In § 1206.43, paragraphs (a) and (b) were revised to remove references to frozen mango exemptions as frozen mangos are no longer a covered commodity. In making these changes, paragraph (a) was inadvertently changed to exempting domestic first handlers when the intent was to simply remove frozen mangos as a covered commodity, and therefore, further revision is needed.

**Regulatory Flexibility Act Analysis and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than $7.5 million.

According to the Board, there are five first handlers of fresh mangos. Based on 2019 Customs data, the majority of first handlers handled less than $7.5 million worth of fresh mangos and would thus be considered small entities.

Based on 2019 Customs data,[1] there are about 100 importers of fresh mangos and 70 importers of frozen mangos. The majority of fresh and frozen mango importers import less than $7.5 million worth of fresh or frozen mangos and would also be considered small entities. This action will remove frozen mango importers from the requirements associated with this research and promotion Order and result in a regulatory relaxation, and is therefore expected to reduce costs for frozen mango importers.

This rule amends AMS's regulations regarding the mango research and promotion program to remove frozen mangos as a covered commodity under the Order. A continuance referendum was conducted September 21 through October 9, 2020, among eligible first handlers and importers to (1) ascertain whether the continuance of the Order is favored by eligible first handlers and importers covered under the Order, and (2) ascertain whether the continuance of frozen mangos as a covered commodity in the Order is favored by eligible first handlers and importers (including frozen mango importers) covered under the Order. The results were announced on October 20, 2020, stating that 60 percent of mango first handlers and importers voting were in favor of continuing the Order. On the question as to whether to continue frozen mangos as a covered commodity in the Order, 42 percent voted to keep frozen mangos in the Order, 49 percent voted to eliminate frozen mangos, and 9 percent did not vote on this question. Of those representing frozen mangos, 83 percent voted to eliminate frozen mangos as a covered commodity.

This rule adopts the following proposed changes in the interim rule without change and removes references to frozen mangos as a covered commodity under the Order including: Removing definitions for frozen mangos and foreign processor of frozen mangos; reducing the Board's membership from 21 to 18 by eliminating two importers of frozen mangos and one foreign processor of frozen mangos; removing assessment collection provisions for frozen mangos at a rate of one cent ($0.01) per pound and thereby eliminating assessments on frozen mango imports; removing the exemption of assessment for importers who import less than 200,000 pounds of frozen mangos annually; removing definitions for frozen mango importers concerning eligibility in a referendum; and clarifying and conforming changes to other provisions of the Order. This rule will also update the OMB number 0581–0209 listed in § 1206.108 to OMB number 0581–0093.

Sections 1206.34 and 1206.43 from the interim final rule are being further revised for clarification in this rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements previously approved by the OMB and titled Frozen Mango Research, Promotion and Information Program, and assigned OMB No. 0581–0314 will be submitted to OMB for withdrawal as these forms and information collection regarding frozen mangos are no longer needed.

The information collection package (0581–0314) that imposes a total burden of 166 hours and 475 responses for 190 respondents will be terminated.

The industry voted in a referendum held September 21, through October 9, 2020, to remove frozen mangos as a covered commodity from the Order. On October 20, 2020, the Department announced through a notice to trade that 42 percent of mango first handlers and importers voted to keep frozen mangos as a covered commodity, 49 percent of mango first handlers and importers voting were not in favor of frozen mangos as a covered commodity and 9 percent did not vote on this question. Of those representing frozen mangos 83 percent voted to eliminate frozen mango as a covered commodity under the Order.

[1] *https://www.cbp.gov/trade/automated.*

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

**Analysis of Comments**

An interim final rule was published in the **Federal Register** on February 24, 2021, providing a 60-day comment period that ended April 26, 2021. This rule will adopt most of the changes in the interim final rule. One comment was received requesting a change to section 1206.34 Procedures, concerning what constitutes a quorum at a Board meeting. Section 1206.34 was changed due to the reduction of the Board from 21 to 18, a decrease in quorum requirements was necessary, and therefore, changed from 11 to at least 10 of the 18 Board members are present. The commenter stated that this is problematic when the Board is not at full capacity and recommends a quorum at Board meetings be when at least one more than half of the voting members are present. USDA believes that this comment has merit and is revising section 1206.34 Procedures to specify that a quorum at a Board meeting exists when at least one more than half of the voting members are present.

In addition, USDA made a correction to section 1206.43 Exemptions to clarify a change that was made inadvertently exempting domestic first handlers when the intent was to simply remove frozen mangos as a covered commodity. Therefore, the section has been corrected to exempt first handlers or importers of less than 500,000 pounds of mangos per calendar year, and domestically exported mangos.

After consideration of all relevant matters presented, including comments, the referendum vote and other available information, it is hereby found that finalizing the interim final rule, with the changes below, as published in the **Federal Register** [86 FR 11094] on February 24, 2021, will tend to effectuate the purposes of the 1996 Act.

**List of Subjects in 7 CFR Part 1206**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango promotion, Reporting and recording requirements.

Accordingly, the interim final rule amending 7 CFR part 1206, which was published in the February 24, 2021, **Federal Register** [86 FR 11094], is adopted as final with the following changes:

## PART 1206—MANGO RESEARCH, PROMOTION, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1206 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 2. In § 1206.34, revise paragraph (a) to read as follows:

**§ 1206.34 Procedure.**

(a) At a Board meeting, it will be considered a quorum when at least one more than half of the voting members are present.

* * * * *

■ 3. In § 1206.43, revise paragraph (a) to read as follows:

**§ 1206.43 Exemptions.**

(a) Any first handler or importer of less than 500,000 pounds of mangos per calendar year may claim an exemption from the assessments required under § 1206.42. Mangos produced domestically and exported from the United States may annually claim an exemption from the assessments required under § 1206.42.

* * * * *

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–13317 Filed 6–24–21; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–0850; Project Identifier AD–2020–00288–E; Amendment 39–21569; AD 2021–11–07]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) GEnx–1B64, 1B64/P1, –1B64/P2, –1B67, –1B67/P1, –1B67/P2, –1B70, –1B70/75/P1, –1B70/75/P2, –1B70/P1, –1B70/P2, –1B70C/P1, –1B70C/P2, –1B74/75/P1, –1B74/75/P2, –1B76/P2, –1B76A/P2, –2B67, –2B67/P, and –2B67B model turbofan engines. This AD was prompted by a finding during an inspection by the manufacturer that two stages 6–10 compressor rotor spools in the high-pressure compressor (HPC) assembly were damaged at similar locations. Additionally, the manufacturer reported that certain stages 6–10 compressor rotor spool webs did not undergo a required fluorescent penetrant inspection (FPI) during production. This AD requires inspection of the stages 6–10 compressor rotor spool and, depending on the results of the inspection, replacement of the stages 6–10 compressor rotor spool. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 30, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 30, 2021.

**ADDRESSES:** For service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* 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 (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0850.

**Examining the AD Docket**

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0850; 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 U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; fax: (781) 238–7199; email: *Mehdi.Lamnyi@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain GE GEnx–1B and GEnx–2B model turbofan engines. The

NPRM published in the **Federal Register** on September 24, 2020 (85 FR 60103). The NPRM was prompted by a report from the manufacturer that an inspection had found two stages 6–10 compressor rotor spools in the HPC assembly damaged at similar locations on the webs. The subsequent investigation determined that tool marks were created during the manufacturing process. In addition, the manufacturer also reported that certain stages 6–10 compressor rotor spool webs did not undergo a required FPI during production.

In the NPRM, the FAA proposed to require inspection of the stages 6–10 compressor rotor spool. Operators of certain affected GEnx–1B or GEnx–2B model turbofan engines have already completed acceptable inspections of the aft web of stage 6, stage 7, and stage 8 of the stages 6–10 compressor rotor spool. The FAA proposed to require operators of those affected engines to complete the inspection of the stages 6–10 compressor rotor spool no later than the next engine shop visit. The FAA proposed to require all other remaining affected GEnx–1B and GEnx–2B model turbofan engines to complete this inspection by the next engine shop visit, before the stages 6–10 compressor rotor spools accumulate 6,500 cycles since new, or before further flight if 6,500 cycles since new has already been accumulated as of the effective date of this AD. Depending on the results of the inspection, the FAA proposed to require replacement of the stages 6–10 compressor rotor spool with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

## Discussion of Final Airworthiness Directive

### Comments

The FAA received comments from seven commenters. The commenters were American Airlines (American), GE Aviation, Japan Airlines, Nippon Cargo Airlines (NCA), the Air Line Pilots Association, International, United Airlines Engineering, and Boeing Commercial Airplanes. Three commenters supported the proposed rule without change. One commenter requested that the FAA add a term to the Definitions paragraph of the proposed rule, and use the latest version of the service information. Three commenters requested certain clarifications or changes to the Required Actions and Previous Credit sections. The following presents the comments received on the NPRM and the FAA's response to each comment.

### Request To Clarify Rejectable Indication

GE Aviation requested that the FAA define the term ''rejectable indication'' to avoid confusion in the event an indication is found during inspection. GE Aviation requested that the FAA define rejectable indication as an indication that does not meet the serviceable or repairable limits defined in the special procedure referenced in GE GEnx–1B Service Bulletin (SB) 72–0472 R02, dated November 5, 2020 (GEnx–1B SB 72–0472) and GE GEnx–2B SB 72–0415 R02, dated November 5, 2020 (GEnx–2B SB 72–0415).

The FAA agrees to define a ''rejectable indication'' as used in paragraph (g)(2) of the Required Actions section of this AD and added the definition in paragraph (h), Definitions, of this AD.

### Request To Clarify Acceptance of Reworked Parts

American requested that the FAA clarify paragraph (g)(2) and paragraph (i), Credit for Previous Actions, regarding installation of parts that initially failed inspection with a rejectable indication but were later reworked and found acceptable. American stated that GE has been accepting parts that were reworked using GE Subtask 72–00–00–210–012 in the GEnx–1B EM 72–00–00, Special Procedure 023, in accordance with approved GE Departure Recommendations.

The FAA disagrees. Paragraph (g)(2) of this AD requires that if during an inspection, a stages 6–10 compressor rotor spool is found to have a rejectable indication, as defined in paragraph (h) of this AD, then the stages 6–10 compressor rotor spool must be removed from service. If the stages 6–10 compressor rotor spool is subsequently repaired or reworked, operators would need to submit an alternative methods of compliance (AMOC) request to the FAA to allow use of the repaired or reworked stages 6–10 compressor rotor spool.

### Request To Revise References to Service Bulletin

GE Aviation requested that the FAA update the specified service information by referencing Revision 2 of GE GEnx–1B SB 72–0472 and GE GEnx–2B SB 72–0415. GE noted that Revision 2 of these SBs had not been issued at the time of publication of the NPRM.

The FAA agrees and has updated this AD to reference GEnx–1B SB 72–0472 R02 and GEnx–2B SB 72–0415 R02, both dated November 5, 2020. This change to this AD imposes no additional burden on operators.

### Request To Revise Previous Credit

Japan Airlines requested that the FAA grant credit for the borescope inspection (BSI) or eddy current inspection (ECI) required by paragraph (g)(1) of this AD if inspections were previously performed in accordance with GE GEnx–1B SB 72–0472 R01, dated July 24, 2020.

The FAA agrees and has updated paragraph (i), Credit for Previous Actions, to allow credit for inspections performed using GE GEnx–1B SB 72–0472 R01, dated July 24, 2020 or GE GEnx–2B SB 72–0415 R01, dated July 24, 2020, as applicable.

### Request for Reference Date Clarification

NCA requested that the FAA clarify the meaning of ''previously undergone'' in paragraph (g)(1)(ii) of this AD. NCA commented that one of its engines underwent an inspection during an engine shop visit using GEnx–2B SB 72–0385 R02, dated July 29, 2019 and GE GEnx–2B SB 72–0398 R00, dated October 30, 2019, before the effective date of this AD but after publication of GEnx–2B SB 72–0415 R01. NCA noted that the reference to ''previously undergone'' means that it has been implemented in accordance with SB in the past without any specific timeframe, so it is not clear if the NCA's engine can apply the no cycles since new (CSN) limit.

The FAA clarified paragraph (g)(1)(i) and (ii) of this AD by removing the phrase ''previously undergone'' and referring instead to engines that have undergone inspections ''before the effective date of this AD.''

### Change to Compliance Time

The FAA updated Table 1 to paragraph (g)(1) of this AD by allowing operators 100 flight cycles to perform the inspections required by paragraph (g)(1) of this AD when an engine has a stages 6–10 compressor rotor spool with 6,400 CSN or greater as of the effective date of this AD. This change allows operators a grace period to complete the required inspections without unnecessary grounding of airplanes and still meets the safety intent of this AD.

### Conclusion

The FAA reviewed the relevant data, considered any 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 and any other changes described previously, this AD is adopted as proposed in the NPRM.

None of the changes will increase the economic burden on any operator.

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

The FAA reviewed GE GEnx–1B Service Bulletin (SB) 72–0472 R02, dated November 5, 2020 (GEnx–1B SB 72–0472) and GE GEnx–2B SB 72–0415 R02, dated November 5, 2020 (GEnx–2B SB 72–0415).

GEnx–1B SB 72–0472 describes procedures for performing a BSI or an ECI of stage 6, stage 7, and stage 8 webs, web transitions, and bore faces of the stages 6–10 compressor rotor spool for GEnx-1B model turbofan engines. GEnx–1B SB 72–0472 also provides the affected part and serial numbers of the stages 6–10 compressor rotor spools installed on GEnx–1B model turbofan engines.

GEnx–2B SB 72–0415 describes procedures for performing a BSI or an ECI of stage 6, stage 7, and stage 8 webs, web transitions, and bore faces of the stages 6–10 compressor rotor spool for GEnx-2B model turbofan engines. GEnx–2B SB 72–0415 also provides the affected part and serial numbers of the stages 6–10 compressor rotor spools installed on GEnx-2B model turbofan engines.

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**.

**Other Related Service Information**

The FAA also reviewed Subtask 72–31–45–160–002 of TASK 72–31–45–200–807 in GE GEnx–1B Engine Manual 05–21–00, Life Limits 001 Mandatory Inspections, Rev. 31 dated, January 31, 2020; and Subtask 72–31–45–160–002 of TASK 72–31–45–200–801 in GE GEnx–2B Engine Manual 05–21–00, Life Limits 001 Mandatory Inspections, Rev. 24 dated, January 31, 2020. The Subtasks provide guidance on performing the ECI on the stages 6–10 compressor rotor spool on GE GEnx–1B and GEnx–2B model turbofan engines.

The FAA also reviewed the following GE SBs: GEnx–1B SB 72–0448 R00, dated July 29, 2019 (GEnx–1B SB 72–0448); GEnx–1B SB 72–0460 R00, dated October 30, 2019 (GEnx–1B SB 72–0460); GEnx–2B SB 72–0385 R02, dated July 29, 2019 (GEnx–2B SB 72–0385); and GEnx–2B SB 72–0398 R00, dated October 30, 2019 (GEnx–2B SB 72–0398).

GEnx–1B SB 72–0448 describes procedures for performing a BSI or an ECI of the stage 8 aft web of the HPC stages 6–10 rotor spool for GEnx–1B model turbofan engines. GEnx–1B SB 72–0460 describes procedures for performing a BSI or an ECI of the stage 6 and stage 7 aft web of the HPC stages 6–10 rotor spool for GEnx–1B model turbofan engines.

GEnx–2B SB 72–0385 describes procedures for performing a BSI or an ECI of the stage 8 aft web of the HPC stages 6–10 spool for GEnx–2B model turbofan engines. GEnx–2B SB 72–0398 describes procedures for performing a BSI or an ECI of the stage 6 and stage 7 aft web of the HPC stages 6–10 rotor spool for GEnx–2B model turbofan engines.

**Costs of Compliance**

The FAA estimates that this AD affects 268 engines installed on airplanes 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 |
|---|---|---|---|---|
| BSI of GEnx–1B stage 6, stage 7, and stage 8 webs, web transitions and bore faces of the stages 6–10 compressor rotor spool. | 6 work-hours × $85 per hour = $510 ..... | $0 | $510 | $89,760 |
| BSI of GEnx–2B stage 6, stage 7, and stage 8 webs, web transitions and bore faces of the stages 6–10 compressor rotor spool. | 6 work-hours × $85 per hour = $510 ..... | 0 | 510 | 46,920 |

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replace the stages 6–10 compressor rotor spool ..... | 64 work-hours × $85 per hour = $5,440 ..... | $1,018,600 | $1,024,040 |

**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:

**2021–11–07 General Electric Company:** Amendment 39–21569; Docket No. FAA–2020–0850; Project Identifier AD–2020–00288–E.

**(a) Effective Date**

This airworthiness directive (AD) is effective July 30, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to:

(1) General Electric Company (GE) GEnx–1B64, GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2 model turbofan engines with stages 6–10 compressor rotor spools in the high-pressure compressor (HPC) assembly with the following part numbers (P/N) installed:

(i) P/N 2357M30G01, P/N 2357M30G02, P/N 2439M35G01, P/N 2439M35G02, or P/N 2445M40G02, all serial numbers (S/Ns);

(ii) P/N 2610M90G01 with the S/Ns listed in paragraph 4., APPENDIX—A, Table 1 of the GE GEnx–1B Service Bulletin (SB) 72–0472 R02, dated November 5, 2020 (GEnx–1B SB 72–0472); and

(iii) P/N 2628M56G01 with the S/Ns listed in paragraph 4., APPENDIX—A, Table 2 or Table 3 of GEnx–1B SB 72–0472.

(2) GEnx–2B67, GEnx–2B67/P, GEnx–2B67B model turbofan engines with the following stages 6–10 compressor rotor spools P/Ns installed:

(i) P/N 2357M30G02, P/N 2439M35G02, or P/N 2445M40G02, all S/Ns;

(ii) P/N 2340M36G01 with S/Ns listed in paragraph 4., APPENDIX—A, Table 1 of GE GEnx–2B SB 72–0415 R02, dated November 5, 2020 (GEnx–2B SB 72–0415); and

(iii) P/N 2628M56G01 with S/Ns listed in paragraph 4., APPENDIX—A, Table 2 or Table 3 of GEnx–2B SB 72–0415.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

**(e) Unsafe Condition**

This AD was prompted by a finding during an inspection that two stages 6–10 compressor rotor spools were damaged at similar locations. In addition, the manufacturer reported that certain stages 6–10 compressor rotor spool webs did not undergo a required fluorescent penetrant inspection (FPI) during production. The FAA is issuing this AD to prevent failure of the compressor rotor spool. The unsafe condition, if not addressed, could result in uncontained release of debris, damage to the engine, and damage to the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) For all affected GEnx–1B and GEnx–2B model turbofan engines, before exceeding the compliance time in Table 1 to paragraph (g)(1) of this AD, perform a borescope inspection (BSI) or eddy current inspection (ECI) of the stage 6, stage 7, and stage 8 webs, web transitions, and bore faces of the stages 6–10 compressor rotor spool in accordance with the Accomplishment Instructions, paragraph 3, of GEnx–1B SB 72–0472 (for GEnx–1B models) or the Accomplishment Instructions, paragraph 3, of GEnx–2B SB 72–0415 (for GEnx–2B models).

TABLE 1 TO PARAGRAPH (g)(1)

| Cycles Since New (CSN) accumulated on the stages 6–10 compressor rotor spool | Compliance time |
|---|---|
| Less than 6,400 CSN | Next engine shop visit or before the stages 6–10 compressor rotor spool accumulates 6,500 CSN, whichever occurs first after the effective date of this AD. |
| 6,400 CSN or greater | Within 100 flight cycles after the effective date of this AD. |

(i) For GEnx–1B model turbofan engines, except those identified in paragraph 4, APPENDIX—A, Table 3 of SB 72–0472, if, before the effective date of this AD, the engines have undergone inspections of the aft web of stage 6, stage 7, and stage 8 of the stages 6–10 compressor rotor spool using both GE GEnx–1B SB 72–0448 R00, dated July 29, 2019, and GE GEnx–1B SB 72–0460 R00, dated October 30, 2019, regardless of the CSN accumulated on the stages 6–10 compressor rotor spool, perform the inspection required by paragraph (g)(1) of this AD no later than the next engine shop visit after the effective date of this AD.

(ii) For GEnx–2B model turbofan engines, except those identified in paragraph 4., APPENDIX—A, Table 3 of SB 72–0415, if, before the effective date of this AD, the engines have undergone inspections of the aft web of stage 6, stage 7, and stage 8 of the stages 6–10 compressor rotor spool using both GE GEnx–2B SB 72–385 R02, dated July 29, 2019, and GE GEnx–2B SB 72–0398 R00, dated October 30, 2019, regardless of the CSN accumulated on the stages 6–10 compressor rotor spool, perform the inspection required by paragraph (g)(1) of this AD no later than the next engine shop visit after the effective date of this AD.

(2) For all affected GEnx–1B and GEnx–2B model turbofan engines, during the inspections required by paragraph (g)(1) of this AD, if a rejectable indication is found, before further flight, remove the stages 6–10 compressor rotor spool from service and replace it with a part eligible for installation.

**(h) Definitions**

(1) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation of the engine without subsequent engine maintenance does not constitute an engine shop visit.

(2) For the purpose of this AD, a rejectable indication is:

(i) A BSI indication that does not meet the BSI serviceable or repairable limits referenced in the Accomplishment Instructions, paragraph 3.A.(1)(a)*2*, of GEnx–1B SB 72–0472, or paragraph 3.A.(1)(a)*2* of GEnx–2B SB 72–0415, and the affected part has not undergone a subsequent ECI; or

(ii) A BSI indication that does not meet the BSI serviceable or repairable limits referenced in the Accomplishment Instructions, paragraph 3.A.(1)(a)*2*, of GEnx–1B SB 72–0472, or paragraph 3.A.(1)(a)*2* of GEnx–2B SB 72–0415, and the affected part has undergone a subsequent ECI in which the indication did not meet the ECI serviceable or repairable limits referenced in the

Accomplishment Instructions, paragraph 3.A.(1)(b) of GEnx–1B SB 72–0472, or paragraph 3.A.(1)(b) of GEnx–2B SB 72–0415; or

(iii) An ECI indication that does not meet the serviceable or repairable limits referenced in the Accomplishment Instructions, paragraph 3.A.(1)(b) of GEnx–1B SB 72–0472, or paragraph 3.A.(1)(b) of GEnx–2B SB 72–0415.

**(i) Credit for Previous Actions**

(1) For affected GEnx–1B model turbofan engines, you may take credit for the BSI or ECI required by paragraph (g)(1) of this AD, if you performed an ECI of the stages 6–10 compressor rotor spool webs, web transitions, and bore faces before the effective date of this AD using Subtask 72–31–45–160–002 of TASK 72–31–45–200–807 in GE GEnx–1B Engine Manual 05–21–00, Life Limits 001 Mandatory Inspections, Rev. 31, dated January 31, 2020, or earlier, and no rejectable indications were found.

(2) For affected GEnx–2B model turbofan engines, you may take credit for the BSI or ECI required by paragraph (g)(1) of this AD, if you performed and ECI of the stages 6–10 compressor rotor spool webs, web transitions, and bore faces before the effective date of this AD using Subtask 72–31–45–160–002 of TASK 72–31–45–200–801 in GE GEnx–2B Engine Manual 05–21–00, Life Limits 001 Mandatory Inspections, Rev. 24, dated January 31, 2020, or earlier, and no rejectable indications were found.

(3) For affected GEnx–1B model turbofan engines, you may take credit for the BSI or ECI required by paragraph (g)(1) of this AD, if you performed that inspection before the effective date of this AD using GE GEnx–1B Service Bulletin (SB) 72–0472 R00, dated April 24, 2020, or GE GEnx–1B SB 72–0472 R01, dated July 24, 2020, and no rejectable indications were found.

(4) For affected GEnx–2B model turbofan engines, you may take credit for the BSI or ECI required by paragraph (g)(1) of this AD, if you performed that inspection before the effective date of this AD using GE GEnx–2B SB 72–0415 R00, dated April 24, 2020, or GE GEnx–2B SB 72–0415 R01, dated July 24, 2020, and no rejectable indications were found.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. You may email your request 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) Related Information**

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; fax: (781) 238–7199; email: *Mehdi.Lamnyi@faa.gov.*

**(l) Material Incorporated by Reference**

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

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

(i) GE GEnx–1B Service Bulletin (SB) 72–0472 R02, dated November 5, 2020.

(ii) GE GEnx–2B SB 72–0415 R02, dated November 5, 2020.

(3) For General Electric Company service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com*; website: *www.ge.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

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

Issued on May 19, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021–13424 Filed 6–24–21; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0512; Project Identifier MCAI–2020–01621–R; Amendment 39–21627; AD 2021–13–21]**

**RIN 2120–AA64**

## Airworthiness Directives; Leonardo S.p.a. Helicopters

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Leonardo S.p.a. Model AB139, AW139, and AW189 helicopters. This AD was prompted by a report of the in-flight failure of one of the three stainless steel external rings bonded to the main rotor swashplate boot. This AD requires repetitive inspections of these stainless steel external rings for corrosion, cracks, and the condition of the adhesive that bonds the rings to the main rotor swashplate boot, and corrective action if necessary, 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 becomes effective July 12, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2021.

The FAA must receive comments on this AD by August 9, 2021.

**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 *https://www.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.

For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu* EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view the EASA 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 the EASA material at the FAA, call (817) 222–5110. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0512.

**Examining the AD Docket**

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0512; 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 AD, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:**

Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0271, dated December 8, 2020 (EASA AD 2020–0271) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for Leonardo S.p.A. (formerly Finmeccanica S.p.A, AgustaWestland S.p.A., Agusta S.p.A.; and AgustaWestland Philadelphia Corporation, formerly Agusta Aerospace Corporation) Model AB139, AW139, and AW189 helicopters, all serial numbers. Although EASA AD 2020–0271 applies to Model AB139, AW139, and AW189 helicopters, all serial numbers, this AD applies to helicopters with an affected part installed instead.

This AD was prompted by a report of the in-flight failure of one of the three stainless steel external rings bonded to the main rotor swashplate boot installed on Model AB139 and AW139 helicopters. The broken ring, under the effects of the centrifugal force, was released from the main rotor swashplate boot and impacted one tail rotor blade, causing extensive damage. Investigation revealed that the failure of the external ring was caused by fatigue initiated by corrosion. A contributing factor to the external ring failure was disbonding at the four points where the affected ring was bonded to the main rotor swashplate boot. Leonardo S.p.a. Model AW189 helicopters have a similar design, therefore, this model may be subject to the same unsafe condition revealed on the Model AB139 and AW139 helicopters. Since EASA AD 2020–0271 was published, there have been two more reports of discrepant main rotor boots.

The FAA is issuing this AD to address corrosion, cracking, and damage to the adhesive (*e.g.,* disbonding) of any stainless steel external ring bonded to the main rotor swashplate boot, which could result in release of a ring from the main rotor swashplate boot, resulting in damage to, and reduced control of, the helicopter. See the EASA AD for additional background information.

## Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0271 specifies procedures for repetitive detailed inspections (DET) of the affected external rings for corrosion (including superficial oxidation), and cracks, and, depending on findings, polishing corrosion, and replacing an affected external ring with a serviceable part. EASA AD 2020–0271 also requires repetitive inspections for damage of the adhesive (*e.g.,* disbonding) between the bonding areas of the affected external rings and the main rotor swashplate boot and re-applying the adhesive if necessary. For certain helicopters, EASA AD 2020–0271 requires a one-time restoring of the adhesive between the bonding areas of the affected external rings and the main rotor swashplate boot. For all helicopters, EASA AD 2020–0271 allows, under certain conditions, (re)installation of an affected part on a helicopter.

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 products have been approved by the aviation authority of another country, and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. 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 products of these same type designs.

## Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2020–0271, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

## Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0271 is incorporated by reference in the FAA final rule. This AD would, therefore, require compliance with EASA AD 2020–0271 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 the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0271 that is required for compliance with EASA AD 2020–0271 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0512.

## FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (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 requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the in-flight failure of a stainless steel external ring bonded to the main rotor swashplate boot could result in damage to, and reduced control of, the helicopter. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Based on the average utilization rate for the affected Model AB139 and AW139 helicopters, it would take approximately one month for an affected helicopter to reach 25 hours time-in-service. Therefore, notice and

opportunity for prior public comment are impracticable and contrary to 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.

**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0512; Project Identifier MCAI–2020–01621–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the AD, 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 AD 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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this AD.

**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 Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@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.

**Regulatory Flexibility Act (RFA)**

The requirements of the 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 notice and comment, RFA analysis is not required.

**Costs of Compliance**

The FAA estimates that this AD affects 142 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Initial inspection of external boot rings and adhesive restoration. | 3 work-hours × $85 per hour = $255 | $0 | $255 | $36,210 |
| Reporting after initial inspection | 1 work-hour × $85 per hour = $85 | 0 | 85 | 12,070 |
| Repetitive inspections of boot rings and adhesive. | 0.5 work-hour × $85 per hour = $42.50 per inspection cycle. | 0 | 42.50 | 6,035 |

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Polish corrosion | 0.5 work-hour × $85 per hour = $42.50 | $0 | $42.50 |
| Replace affected ring | 1 work-hour × $85 per hour = $85 | 300 | 385 |
| Reapply adhesive | 1 work-hour × $85 per hour = $85 | 0 | 85 |

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, TX 76177–1524.

**Authority for This Rulemaking**

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

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

## Regulatory Findings

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

For the reasons discussed above, I certify this regulation:

(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:

**2021–13–21 Leonardo S.p.a.:** Amendment 39–21627; Docket No. FAA–2021–0512; Project Identifier MCAI–2020–01621–R.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective July 12, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Leonardo S.p.a. Model AB139, AW139, and AW189 helicopters, certificated in any category, equipped with a main rotor swashplate boot, having part number (P/N) 3G6230V00251.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 6230 Main Rotor Mast/Swashplate.

**(e) Unsafe Condition**

This AD was prompted by a report of the in-flight failure of one of the three stainless steel external rings bonded to the main rotor swashplate boot. The FAA is issuing this AD to address corrosion, cracking, and damage to the adhesive (*e.g.,* disbonding) of any stainless steel external ring bonded to the main rotor swashplate boot, which could result in release of a ring from the main rotor swashplate boot, resulting in damage to, and reduced 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) AD 2020–0271, dated December 8, 2020 (EASA AD 2020–0271).

**(h) Exceptions to EASA AD 2020–0271**

(1) Where EASA AD 2020–0271 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0271 does not apply to this AD.

(3) Where EASA AD 2020–0271 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Where paragraphs (3) and (6) of EASA AD 2020–0271 refer to ''any discrepancy'' or ''discrepancies,'' for this AD, discrepancies include corrosion (including superficial oxidation) and cracking.

(5) Where paragraph (4) of EASA AD 2020–0271 refers to ''any discrepancy,'' for this AD, discrepancies include corrosion (including superficial oxidation), cracking, and damage to the adhesive (*e.g.,* disbonding).

(6) Paragraph (6) of EASA AD 2020–0271 specifies to report inspection results to Leonardo S.p.a. within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(6)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**(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) Related Information**

For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

**(k) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0271, dated December 8, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0271, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) 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. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0512.

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

Issued on June 18, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021–13668 Filed 6–23–21; 11:15 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31373; Amdt. No. 3959]**

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or

because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective June 25, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 25, 2021.

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

**For Examination**

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**Availability**

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

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

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

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

**Availability and Summary of Material Incorporated by Reference**

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

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

**The Rule**

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

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

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

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

**Lists of Subjects in 14 CFR Part 97**

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

Issued in Washington, DC, on May 28, 2021.

**Wade E.K. Terrell,**

*Aviation Safety, Flight Standards Service, Manager (A), Flight Technologies and Procedures Division.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

*Effective 15 July 2021*

Orlando, FL, KMCO, ILS OR LOC RWY 17L, ILS RWY 17L (SA CAT I), ILS RWY 17L (CAT II), ILS RWY 17L (CAT III), Amdt 4A
Orlando, FL, KMCO, RNAV (GPS) RWY 17L, Amdt 2A

*Effective 12 August 2021*

Koyuk, AK, PAKK, RNAV (GPS) RWY 1, Amdt 1A
Pago Pago, AS, Pago Pago Intl, ILS OR LOC RWY 5, Amdt 15
Pago Pago, AS, Pago Pago Intl, NDB–C, Amdt 6C, CANCELLED
Pago Pago, AS, Pago Pago Intl, VOR–D, Amdt 6B, CANCELLED
Pago Pago, AS, Pago Pago Intl, VOR OR TACAN–A, Amdt 4B, CANCELLED
Pago Pago, AS, Pago Pago Intl, VOR OR TACAN–B, Amdt 6B
Mesa, AZ, KFFZ, RNAV (GPS) RWY 4L, Amdt 1D
Mesa, AZ, KFFZ, RNAV (GPS) RWY 4R, Amdt 1F
Mesa, AZ, KFFZ, RNAV (GPS)-B, Amdt 1
Cloverdale, CA, O60, RNAV (GPS) RWY 32. Amdt 1
Napa, CA, KAPC, RNAV (GPS) RWY 6, Amdt 2
Novato, CA, KDVO, RNAV (GPS) RWY 13, Amdt 1
Windsor Locks, CT, KBDL, ILS OR LOC RWY 24, ILS RWY 24 (SA CAT I), ILS RWY 24 (SA CAT II), Amdt 13A
Windsor Locks, CT, KBDL, ILS OR LOC RWY 33, Amdt 10D
Windsor Locks, CT, KBDL, RNAV (GPS) RWY 15, Amdt 4A
Windsor Locks, CT, KBDL, RNAV (GPS) RWY 33, Amdt 3A
Windsor Locks, CT, KBDL, RNAV (GPS) Y RWY 6, Amdt 3A
Windsor Locks, CT, KBDL, RNAV (GPS) Y RWY 24, Amdt 4B
Windsor Locks, CT, Bradley Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Fort Lauderdale, FL, KFLL, ILS OR LOC RWY 28R, Amdt 12
Fort Lauderdale, FL, KFLL, RNAV (GPS) Y RWY 28R, Amdt 5
Fort Lauderdale, FL, KFLL, RNAV (RNP) Z RWY 28R, Amdt 2
Orlando, FL, KISM, VOR/DME–A, Amdt 1, CANCELLED
Atlanta, GA, KATL, ILS OR LOC RWY 27R, Amdt 7
Atlanta, GA, KATL, ILS PRM RWY 27R (CLOSE PARALLEL), Amdt 3
Mc Rae, GA, KMQW, NDB RWY 21, Amdt 10A, CANCELLED
Thomaston, GA, Thomaston-Upson County, Takeoff Minimums and Obstacle DP, Amdt 2A
Dubuque, IA, KDBQ, LOC/DME BC RWY 13, Amdt 5D, CANCELLED
Pocahontas, IA, KPOH, NDB RWY 12, Amdt 5D, CANCELLED
Winterset, IA, 3Y3, RNAV (GPS) RWY 14, Amdt 1A
Winterset, IA, 3Y3, RNAV (GPS) RWY 32, Amdt 1B
Monmouth, IL, C66, RNAV (GPS)-A, Orig
Monmouth, IL, C66, VOR OR GPS–A, Amdt 4, CANCELLED
Savanna, IL, Tri-Township, Takeoff Minimums and Obstacle DP, Orig-A
Huntingburg, IN, KHNB, RNAV (GPS) RWY 9, Amdt 1
Huntingburg, IN, KHNB, RNAV (GPS) RWY 27, Amdt 1
Huntingburg, IN, Huntingburg, Takeoff Minimums and Obstacle DP, Amdt 2
Logansport, IN, Logansport/Cass County, Takeoff Minimums and Obstacle DP, Amdt 2
Norton, KS, KNRN, RNAV (GPS) RWY 34, Amdt 2
Monroe, LA, Monroe Rgnl, ILS OR LOC RWY 22, Amdt 4C
Monroe, LA, Monroe Rgnl, RNAV (GPS) RWY 22, Amdt 2
Monroe, LA, KMLU, RNAV (GPS) RWY 32, Amdt 1
Monroe, LA, Monroe Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6
Monroe, LA, Monroe Rgnl, VOR RWY 22, Amdt 10
Monroe, LA, KMLU, VOR RWY 32, Amdt 5
Shreveport, LA, KSHV, ILS OR LOC RWY 14, ILS RWY 14 (CAT II), Amdt 26B
Shreveport, LA, KSHV, ILS OR LOC RWY 32, Amdt 6B
Shreveport, LA, KSHV, RNAV (GPS) RWY 14, Amdt 2C
Shreveport, LA, KSHV, RNAV (GPS) RWY 24, Amdt 2C
Shreveport, LA, KSHV, RNAV (GPS) RWY 32, Amdt 2B
Orange, MA, KORE, VOR–A, Amdt 8
Menominee, MI, KMNM, RNAV (GPS) RWY 32, Amdt 1D
Mountain View, MO, KMNF, RNAV (GPS) RWY 28, Orig-D
Rolla/Vichy, MO, KVIH, RNAV (GPS) RWY 4, Orig-B
Washington, MO, KFYG, RNAV (GPS) RWY 33, Amdt 2A
Burlington, NC, KBUY, ILS Z OR LOC Z RWY 6, Amdt 2C
Ogallala, NE, KOGA, VOR RWY 26, Amdt 1E
Ely, NV, KELY, RNAV (GPS) RWY 18, Amdt 1B
Ely, NV, KELY, VOR–C, Amdt 2A
Farmingdale, NY, KFRG, NDB RWY 1, Amdt 14D, CANCELLED
Farmingdale, NY, KFRG, RNAV (GPS) RWY 1, Amdt 3
Farmingdale, NY, KFRG, RNAV (GPS) RWY 19, Amdt 3
Farmingdale, NY, KFRG, RNAV (GPS) RWY 32, Amdt 1
Johnstown, NY, NY0, NDB RWY 10, Amdt 2, CANCELLED
Johnstown, NY, NY0, NDB RWY 28, Amdt 2, CANCELLED
Rome, NY, KRME, ILS OR LOC RWY 33, Amdt 3
Syracuse, NY, KSYR, VOR RWY 15, Amdt 23D
Cleveland, OH, KBKL, RNAV (GPS) RWY 24R, Amdt 1
Wilmington, OH, KILN, RNAV (GPS) RWY 22R, Orig-D
Pauls Valley, OK, Pauls Valley Muni, Takeoff Minimums and Obstacle DP, Orig-A
Florence, SC, Florence Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5A
Knoxville, TN, KTYS, ILS OR LOC RWY 5L, Amdt 10
Knoxville, TN, KTYS, ILS OR LOC RWY 23R, ILS RWY 23R (SA CAT I), ILS RWY 23R (CAT II), Amdt 14
Knoxville, TN, KTYS, RADAR–1, Amdt 23
Knoxville, TN, KTYS, RNAV (GPS) RWY 5L, Amdt 3
Knoxville, TN, KTYS, RNAV (GPS) RWY 23R, Amdt 3
Knoxville, TN, Mc Ghee Tyson, Takeoff Minimums and Obstacle DP, Amdt 9
Knoxville, TN, KTYS, VOR RWY 23R, Amdt 8
Austin, TX, KHYI, ILS OR LOC RWY 13, Amdt 6D
Austin, TX, KHYI, NDB RWY 13, Amdt 5C
Austin, TX, KHYI, RNAV (GPS) RWY 13, Amdt 2C
Houston, TX, KIAH, ILS OR LOC RWY 27, ILS RWY 27 (SA CAT I), ILS RWY 27 (CAT II), ILS RWY 27 (CAT III), Amdt 11D
Midland, TX, KMDD, RNAV (GPS) RWY 34, Orig-B
Palestine, TX, KPSN, NDB RWY 36, Amdt 8A, CANCELLED
Rockwall, TX, F46, NDB–A, Orig-C, CANCELLED
Juneau, WI, Dodge County, Takeoff Minimums and Obstacle DP, Orig-A
Land O'Lakes, WI, KLNL, RNAV (GPS) RWY 32, Orig-D

[FR Doc. 2021–13469 Filed 6–24–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 31374; Amdt. No. 3960]**

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective June 25, 2021. The compliance date for each

SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 25, 2021.

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

**For Examination**

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

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

**Availability**

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

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

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

**Availability and Summary of Material Incorporated by Reference**

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

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

**The Rule**

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

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

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

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

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

**List of Subjects in 14 CFR Part 97**

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

Issued in Washington, DC, on May 28, 2021.

**Wade E.K. Terrell,**

*Aviation Safety, Flight Standards Service Manager (A), Flight Technologies and Procedures Division.*

**Adoption of the Amendment**

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

* * * *Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 15–Jul–21 | LA | Houma | Houma-Terrebonne | 0/5812 | 4/28/21 | RNAV (GPS) RWY 12, Orig. |
| 15–Jul–21 | LA | Houma | Houma-Terrebonne | 0/5813 | 4/28/21 | RNAV (GPS) RWY 18, Orig-A. |
| 15–Jul–21 | LA | Houma | Houma-Terrebonne | 0/5818 | 4/28/21 | RNAV (GPS) RWY 30, Orig. |
| 15–Jul–21 | LA | Houma | Houma-Terrebonne | 0/5819 | 4/28/21 | RNAV (GPS) RWY 36, Orig-A. |
| 15–Jul–21 | LA | Houma | Houma-Terrebonne | 0/5820 | 4/28/21 | VOR/DME RWY 30, Amdt 12A. |
| 15–Jul–21 | LA | Bogalusa | George R Carr Meml Air Fld | 1/0004 | 4/23/21 | RNAV (GPS) RWY 18, Amdt 1C. |
| 15–Jul–21 | LA | Bogalusa | George R Carr Meml Air Fld | 1/0008 | 4/23/21 | LOC RWY 18, Amdt 3B. |
| 15–Jul–21 | LA | Bogalusa | George R Carr Meml Air Fld | 1/0010 | 4/23/21 | RNAV (GPS) RWY 36, Amdt 1B. |
| 15–Jul–21 | TX | Brownwood | Brownwood Rgnl | 1/0013 | 4/7/21 | LOC RWY 17, Amdt 4B. |
| 15–Jul–21 | CO | Meeker | Meeker Coulter Fld | 1/0015 | 4/16/21 | RNAV (GPS)-B, Orig-B. |
| 15–Jul–21 | CO | Meeker | Meeker Coulter Fld | 1/0016 | 4/16/21 | VOR–A, Amdt 1A. |
| 15–Jul–21 | AL | Alabaster | Shelby County | 1/0548 | 4/16/21 | RNAV (GPS) RWY 16, Amdt 1. |
| 15–Jul–21 | AL | Alabaster | Shelby County | 1/0549 | 4/16/21 | RNAV (GPS) RWY 34, Amdt 2. |
| 15–Jul–21 | TX | Brownwood | Brownwood Rgnl | 1/0578 | 4/7/21 | RNAV (GPS) RWY 17, Amdt 1A. |
| 15–Jul–21 | TX | Brownwood | Brownwood Rgnl | 1/0591 | 4/7/21 | VOR RWY 35, Amdt 1C. |
| 15–Jul–21 | TX | Lampasas | Lampasas | 1/0629 | 4/16/21 | RNAV (GPS) RWY 34, Orig-A. |
| 15–Jul–21 | TX | Lampasas | Lampasas | 1/0631 | 4/16/21 | VOR–A, Amdt 4. |
| 15–Jul–21 | LA | Slidell | Slidell | 1/0645 | 4/16/21 | RNAV (GPS) RWY 18, Orig-B. |
| 15–Jul–21 | LA | Slidell | Slidell | 1/0646 | 4/16/21 | VOR/DME RWY 18, Amdt 4B. |
| 15–Jul–21 | GA | Gainesville | Lee Gilmer Memorial | 1/0665 | 4/16/21 | ILS OR LOC RWY 5, Orig-B. |
| 15–Jul–21 | GA | Gainesville | Lee Gilmer Memorial | 1/0666 | 4/16/21 | NDB RWY 5, Amdt 5C. |
| 15–Jul–21 | GA | Gainesville | Lee Gilmer Memorial | 1/0667 | 4/16/21 | RNAV (GPS) RWY 23, Amdt 1A. |
| 15–Jul–21 | GA | Gainesville | Lee Gilmer Memorial | 1/0668 | 4/16/21 | RNAV (GPS) RWY 5, Amdt 1A. |
| 15–Jul–21 | CA | Eureka | Murray Fld | 1/0991 | 4/23/21 | RNAV (GPS)-B, Orig-A. |
| 15–Jul–21 | TX | Palestine | Palestine Muni | 1/1090 | 5/14/21 | RNAV (GPS) RWY 18, Orig-B. |
| 15–Jul–21 | TX | Palestine | Palestine Muni | 1/1091 | 5/14/21 | RNAV (GPS) RWY 36, Amdt 1B. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1553 | 3/8/21 | RNAV (GPS) Z RWY 11L, Amdt 1C. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1554 | 3/8/21 | RNAV (GPS) RWY 3, Amdt 1A. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1555 | 3/8/21 | ILS OR LOC RWY 11L, Amdt 14C. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1558 | 3/8/21 | VOR OR TACAN RWY 29R, Amdt 2F. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1560 | 3/8/21 | VOR OR TACAN RWY 11L, Amdt 1B. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1561 | 3/8/21 | RNAV (GPS) Z RWY 29R, Amdt 2E. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1564 | 3/8/21 | RNAV (GPS) RWY 29L, Amdt 1A. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1567 | 3/8/21 | RNAV (GPS) RWY 21, Orig-C. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1568 | 3/8/21 | RNAV (GPS) RWY 11R, Orig-D. |
| 15–Jul–21 | AZ | Tucson | Tucson Intl | 1/1569 | 3/8/21 | LOC BC RWY 29R, Amdt 8B. |
| 15–Jul–21 | NY | Wurtsboro | Wurtsboro-Sullivan County | 1/1965 | 4/27/21 | VOR/DME OR GPS RWY 5, Orig. |
| 15–Jul–21 | OK | Guymon | Guymon Muni | 1/2268 | 4/29/21 | RNAV (GPS) RWY 18, Amdt 1A. |
| 15–Jul–21 | OK | Guymon | Guymon Muni | 1/2275 | 4/29/21 | RNAV (GPS) RWY 36, Orig-A. |
| 15–Jul–21 | OR | Lexington | Lexington | 1/2299 | 4/7/21 | RNAV (GPS) RWY 8, Orig-A. |
| 15–Jul–21 | OR | Lexington | Lexington | 1/2327 | 4/7/21 | RNAV (GPS)-A, Orig-A. |
| 15–Jul–21 | IL | Chicago/Romeoville | Lewis University | 1/2746 | 5/14/21 | LOC RWY 2, Amdt 1A. |
| 15–Jul–21 | IL | Chicago/Romeoville | Lewis University | 1/2748 | 5/14/21 | LOC/DME RWY 9, Amdt 1A. |
| 15–Jul–21 | IL | Chicago/Romeoville | Lewis University | 1/2751 | 5/14/21 | RNAV (GPS) RWY 2, Amdt 2A. |
| 15–Jul–21 | IL | Chicago/Romeoville | Lewis University | 1/2753 | 5/14/21 | RNAV (GPS) RWY 9, Orig. |
| 15–Jul–21 | IL | Chicago/Romeoville | Lewis University | 1/2755 | 5/14/21 | RNAV (GPS) RWY 20, Amdt 1. |
| 15–Jul–21 | IL | Chicago/Romeoville | Lewis University | 1/2758 | 5/14/21 | RNAV (GPS) RWY 27, Orig-A. |
| 15–Jul–21 | MN | Litchfield | Litchfield Muni | 1/3125 | 4/23/21 | VOR–A, Amdt 2. |
| 15–Jul–21 | MO | Mosby | Midwest Ntl Air Center | 1/3651 | 4/15/21 | ILS OR LOC/DME RWY 18, Orig-A. |
| 15–Jul–21 | MO | Mosby | Midwest Ntl Air Center | 1/3652 | 4/15/21 | RNAV (GPS) RWY 18, Amdt 1. |
| 15–Jul–21 | MO | Mosby | Midwest Ntl Air Center | 1/3653 | 4/15/21 | RNAV (GPS) RWY 36, Amdt 2. |
| 15–Jul–21 | LA | Alexandria | Esler Rgnl | 1/3996 | 4/15/21 | RNAV (GPS) RWY 9, Amdt 2A. |
| 15–Jul–21 | LA | Alexandria | Esler Rgnl | 1/3998 | 4/15/21 | RNAV (GPS) RWY 27, Amdt 2A. |
| 15–Jul–21 | MO | St Louis | Creve Coeur | 1/4065 | 4/23/21 | RNAV (GPS) RWY 34, Amdt 1A. |
| 15–Jul–21 | TX | Arlington | Arlington Muni | 1/4091 | 2/17/21 | VOR/DME RWY 34, Amdt 2. |
| 15–Jul–21 | TX | Arlington | Arlington Muni | 1/4092 | 2/17/21 | RNAV (GPS) RWY 34, Amdt 3C. |
| 15–Jul–21 | TX | Arlington | Arlington Muni | 1/4093 | 2/17/21 | ILS OR LOC/DME RWY 34, Amdt 2C. |
| 15–Jul–21 | MI | Ironwood | Gogebic-Iron County | 1/4134 | 5/14/21 | ILS OR LOC RWY 27, Amdt 3B. |
| 15–Jul–21 | MI | Ironwood | Gogebic-Iron County | 1/4135 | 5/14/21 | RNAV (GPS) RWY 9, Orig. |
| 15–Jul–21 | TX | Houston | West Houston | 1/4138 | 4/16/21 | RNAV (GPS) RWY 33, Amdt 1B. |
| 15–Jul–21 | TX | Houston | West Houston | 1/4139 | 4/16/21 | RNAV (GPS) RWY 15, Amdt 1C. |
| 15–Jul–21 | OR | Mc Minnville | Mc Minnville Muni | 1/4140 | 5/4/21 | VOR/DME–B, Amdt 6. |
| 15–Jul–21 | TX | Houston | Houston-Southwest | 1/4201 | 4/29/21 | RNAV (GPS) RWY 9, Amdt 2A. |
| 15–Jul–21 | CA | Riverside/Rubidoux/ | Flabob | 1/4262 | 4/7/21 | RNAV (GPS)-A, Orig-A. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 15–Jul–21 | FL | Orlando | Orlando Intl | 1/4385 | 5/21/21 | ILS OR LOC RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II AND III), Amdt 5. |
| 15–Jul–21 | FL | Orlando | Orlando Intl | 1/4386 | 5/21/21 | RNAV (GPS) RWY 35R, Amdt 2. |
| 15–Jul–21 | MI | Ironwood | Gogebic-Iron County | 1/4387 | 5/14/21 | VOR RWY 9, Amdt 13A. |
| 15–Jul–21 | FL | Lake City | Lake City Gateway | 1/4394 | 5/12/21 | RNAV (GPS) RWY 10, Orig-E. |
| 15–Jul–21 | MS | Brookhaven | Brookhaven-Lincoln County | 1/4542 | 2/25/21 | RNAV (GPS) RWY 22, Orig-A. |
| 15–Jul–21 | LA | Natchitoches | Natchitoches Rgnl | 1/4696 | 4/26/21 | LOC RWY 35, Amdt 4A. |
| 15–Jul–21 | LA | Natchitoches | Natchitoches Rgnl | 1/4697 | 4/26/21 | NDB RWY 35, Amdt 6A. |
| 15–Jul–21 | LA | Natchitoches | Natchitoches Rgnl | 1/4699 | 4/26/21 | RNAV (GPS) RWY 17, Amdt 1A. |
| 15–Jul–21 | LA | Natchitoches | Natchitoches Rgnl | 1/4700 | 4/26/21 | RNAV (GPS) RWY 35, Amdt 1A. |
| 15–Jul–21 | MN | Litchfield | Litchfield Muni | 1/4703 | 4/23/21 | RNAV (GPS) RWY 13, Orig. |
| 15–Jul–21 | MN | Litchfield | Litchfield Muni | 1/4704 | 4/23/21 | RNAV (GPS) RWY 31, Orig. |
| 15–Jul–21 | DE | Middletown | Summit | 1/4753 | 4/23/21 | NDB–A, Amdt 8B. |
| 15–Jul–21 | NM | Grants | Grants-Milan Muni | 1/4821 | 2/24/21 | RNAV (GPS) RWY 31, Orig-A. |
| 15–Jul–21 | OH | Portsmouth | Greater Portsmouth Rgnl | 1/5239 | 4/15/21 | RNAV (GPS) RWY 36, Orig. |
| 15–Jul–21 | OH | Portsmouth | Greater Portsmouth Rgnl | 1/5241 | 4/15/21 | RNAV (GPS) RWY 18, Orig. |
| 15–Jul–21 | IA | Mason City | Mason City Muni | 1/5286 | 4/27/21 | LOC BC RWY 18, Amdt 7C. |
| 15–Jul–21 | IA | Mason City | Mason City Muni | 1/5287 | 4/27/21 | RNAV (GPS) RWY 18, Amdt 2B. |
| 15–Jul–21 | IA | Mason City | Mason City Muni | 1/5288 | 4/27/21 | RNAV (GPS) RWY 30, Amdt 1C. |
| 15–Jul–21 | IA | Mason City | Mason City Muni | 1/5289 | 4/27/21 | RNAV (GPS) RWY 36, Amdt 1C. |
| 15–Jul–21 | IA | Mason City | Mason City Muni | 1/5290 | 4/27/21 | VOR RWY 36, Amdt 6F. |
| 15–Jul–21 | FL | Marco Island | Marco Island Exec | 1/5291 | 4/27/21 | RNAV (GPS) RWY 17, Orig-A. |
| 15–Jul–21 | FL | Marco Island | Marco Island Exec | 1/5292 | 4/27/21 | RNAV (GPS) RWY 35, Orig-B. |
| 15–Jul–21 | OR | Mc Minnville | Mc Minnville Muni | 1/5308 | 5/4/21 | ILS OR LOC RWY 22, Amdt 4. |
| 15–Jul–21 | IL | Monee | Bult Fld | 1/5319 | 2/22/21 | RNAV (GPS) RWY 27, Orig-A. |
| 15–Jul–21 | IL | Monee | Bult Fld | 1/5326 | 2/22/21 | RNAV (GPS) RWY 9, Orig-A. |
| 15–Jul–21 | OK | Blackwell | Blackwell-Tonkawa Muni | 1/5389 | 5/20/21 | VOR–A, Amdt 4. |
| 15–Jul–21 | OH | Galion | Galion Muni | 1/5499 | 4/23/21 | RNAV (GPS) RWY 23, Orig-B. |
| 15–Jul–21 | OH | Galion | Galion Muni | 1/5506 | 4/23/21 | VOR RWY 23, Amdt 13B. |
| 15–Jul–21 | MI | Ann Arbor | Ann Arbor Muni | 1/5606 | 2/25/21 | VOR RWY 6, Amdt 13E. |
| 15–Jul–21 | MI | Ann Arbor | Ann Arbor Muni | 1/5607 | 2/25/21 | VOR RWY 24, Amdt 13F. |
| 15–Jul–21 | GA | Brunswick | Brunswick Golden Isles | 1/5742 | 4/7/21 | RNAV (GPS) RWY 25, Amdt 1B. |
| 15–Jul–21 | GA | Brunswick | Brunswick Golden Isles | 1/5743 | 4/7/21 | RNAV (GPS) RWY 7, Amdt 1B. |
| 15–Jul–21 | GA | Brunswick | Brunswick Golden Isles | 1/5744 | 4/7/21 | ILS OR LOC RWY 7, Amdt 10A. |
| 15–Jul–21 | GA | Brunswick | Brunswick Golden Isles | 1/5745 | 4/7/21 | VOR/DME–B, Amdt 9. |
| 15–Jul–21 | IA | Denison | Denison Muni | 1/5754 | 4/7/21 | RNAV (GPS) RWY 12, Amdt 1B. |
| 15–Jul–21 | IA | Denison | Denison Muni | 1/5756 | 4/7/21 | RNAV (GPS) RWY 30, Amdt 1B. |
| 15–Jul–21 | KS | Hugoton | Hugoton Muni | 1/5928 | 4/23/21 | NDB RWY 2, Amdt 3. |
| 15–Jul–21 | CA | Fullerton | Fullerton Muni | 1/5962 | 4/27/21 | LOC/DME RWY 24, Orig-B. |
| 15–Jul–21 | CA | Fullerton | Fullerton Muni | 1/5964 | 4/27/21 | VOR–A, Amdt 7B. |
| 15–Jul–21 | NJ | Linden | Linden | 1/6336 | 4/28/21 | GPS–A, Orig-B. |
| 15–Jul–21 | OR | Scappoose | Scappoose Industrial Airpark | 1/6344 | 4/28/21 | VOR/DME–A, Amdt 3A. |
| 15–Jul–21 | OR | Scappoose | Scappoose Industrial Airpark | 1/6345 | 4/28/21 | RNAV (GPS) RWY 15, Orig-A. |
| 15–Jul–21 | OK | Sallisaw | Sallisaw Muni | 1/6389 | 4/15/21 | RNAV (GPS) RWY 35, Orig-A. |
| 15–Jul–21 | NY | Niagara Falls | Niagara Falls Intl | 1/6397 | 4/14/21 | TACAN RWY 28R, Orig-A. |
| 15–Jul–21 | TX | Hondo | South Texas Rgnl At Hondo | 1/6401 | 4/15/21 | RNAV (GPS) RWY 17L, Amdt 1A. |
| 15–Jul–21 | TX | Hondo | South Texas Rgnl At Hondo | 1/6402 | 4/15/21 | RNAV (GPS) RWY 35R, Orig-A. |
| 15–Jul–21 | MN | Caledonia | Houston County | 1/6406 | 4/15/21 | VOR/DME OR GPS–A, Amdt 3A. |
| 15–Jul–21 | AR | Crossett | Z M Jack Stell Field | 1/6415 | 4/16/21 | RNAV (GPS) RWY 23, Orig-B. |
| 15–Jul–21 | MI | Ironwood | Gogebic-Iron County | 1/6486 | 5/14/21 | RNAV (GPS) RWY 27, Orig. |
| 15–Jul–21 | NJ | Readington | Solberg-Hunterdon | 1/6729 | 4/28/21 | VOR RWY 4, Amdt 1C. |
| 15–Jul–21 | NJ | Readington | Solberg-Hunterdon | 1/6730 | 4/28/21 | RNAV (GPS) RWY 22, Orig-C. |
| 15–Jul–21 | NJ | Readington | Solberg-Hunterdon | 1/6731 | 4/28/21 | RNAV (GPS) RWY 4, Orig-C. |
| 15–Jul–21 | TX | Muleshoe | Muleshoe Muni | 1/6761 | 5/21/21 | RNAV (GPS)-B, Orig. |
| 15–Jul–21 | IN | Logansport | Logansport/Cass County | 1/6849 | 3/9/21 | RNAV (GPS) RWY 9, Amdt 1A. |
| 15–Jul–21 | IN | Logansport | Logansport/Cass County | 1/6850 | 3/9/21 | RNAV (GPS) RWY 27, Amdt 1A. |
| 15–Jul–21 | IN | Logansport | Logansport/Cass County | 1/6851 | 3/9/21 | VOR–A, Amdt 7A. |
| 15–Jul–21 | ID | Coeur D'Alene | Coeur D'Alene—Pappy Boyington Fld. | 1/7410 | 2/25/21 | ILS OR LOC/DME RWY 6, Amdt 5E. |
| 15–Jul–21 | ID | Coeur D'Alene | Coeur D'Alene—Pappy Boyington Fld. | 1/7411 | 2/25/21 | RNAV (GPS) RWY 6, Orig-D. |
| 15–Jul–21 | LA | Opelousas | St Landry Parish-Ahart Fld | 1/7454 | 5/14/21 | RNAV (GPS) RWY 18, Amdt 1A. |
| 15–Jul–21 | LA | Opelousas | St Landry Parish-Ahart Fld | 1/7455 | 5/14/21 | RNAV (GPS) RWY 36, Amdt 1A. |
| 15–Jul–21 | LA | Opelousas | St Landry Parish-Ahart Fld | 1/7456 | 5/14/21 | VOR RWY 36, Amdt 1B. |
| 15–Jul–21 | NY | Schenectady | Schenectady County | 1/7464 | 4/29/21 | ILS OR LOC RWY 4, Amdt 5E. |
| 15–Jul–21 | NY | Schenectady | Schenectady County | 1/7465 | 4/29/21 | NDB RWY 22, Amdt 16C. |
| 15–Jul–21 | NY | Schenectady | Schenectady County | 1/7466 | 4/29/21 | RNAV (GPS) RWY 10, Orig-E. |
| 15–Jul–21 | NY | Schenectady | Schenectady County | 1/7467 | 4/29/21 | RNAV (GPS) RWY 22, Orig-C. |
| 15–Jul–21 | NY | Schenectady | Schenectady County | 1/7468 | 4/29/21 | RNAV (GPS) RWY 28, Orig-E. |
| 15–Jul–21 | LA | Alexandria | Esler Rgnl | 1/7528 | 4/15/21 | ILS OR LOC/DME RWY 27, Amdt 16A. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 15–Jul–21 | AR | Almyra | Almyra Muni | 1/7619 | 4/16/21 | RNAV (GPS) RWY 36, Amdt 1A. |
| 15–Jul–21 | OK | Guymon | Guymon Muni | 1/7632 | 4/29/21 | NDB RWY 18, Amdt 5C. |
| 15–Jul–21 | LA | Bogalusa | George R Carr Meml Air Fld | 1/7634 | 4/23/21 | VOR/DME–A, Amdt 4. |
| 15–Jul–21 | PA | Shamokin | Northumberland County | 1/7652 | 4/16/21 | VOR RWY 8, Amdt 3E. |
| 15–Jul–21 | MN | Little Falls | Little Falls/Morrison County-Lindbergh Fld. | 1/7809 | 5/14/21 | RNAV (GPS) RWY 31, Orig-C. |
| 15–Jul–21 | FL | Lake City | Lake City Gateway | 1/7904 | 5/12/21 | NDB RWY 28, Amdt 2A. |
| 15–Jul–21 | FL | Lake City | Lake City Gateway | 1/7907 | 5/12/21 | RNAV (GPS) RWY 28, Amdt 1B. |
| 15–Jul–21 | CA | Jackson | Westover Fld Amador County | 1/8212 | 5/12/21 | VOR/DME RWY 1, Amdt 1C. |
| 15–Jul–21 | NY | Fishers Island | Elizabeth Fld | 1/8290 | 4/16/21 | VOR OR GPS–A, Amdt 6A. |
| 15–Jul–21 | MN | Windom | Windom Muni | 1/8307 | 5/12/21 | RNAV (GPS) RWY 17, Amdt 1A. |
| 15–Jul–21 | MN | Windom | Windom Muni | 1/8308 | 5/12/21 | RNAV (GPS) RWY 35, Amdt 1A. |
| 15–Jul–21 | NE | Columbus | Columbus Muni | 1/8330 | 4/29/21 | VOR RWY 32, Amdt 14D. |
| 15–Jul–21 | NE | Columbus | Columbus Muni | 1/8332 | 4/29/21 | RNAV (GPS) RWY 32, Orig-C. |
| 15–Jul–21 | NE | Columbus | Columbus Muni | 1/8334 | 4/29/21 | LOC/DME RWY 14, Amdt 8D. |
| 15–Jul–21 | NE | Columbus | Columbus Muni | 1/8336 | 4/29/21 | VOR RWY 14, Amdt 14E. |
| 15–Jul–21 | NE | Columbus | Columbus Muni | 1/8338 | 4/29/21 | RNAV (GPS) RWY 14, Orig-D. |
| 15–Jul–21 | CA | California City | California City Muni | 1/8386 | 4/16/21 | RNAV (GPS) RWY 24, Orig-B. |
| 15–Jul–21 | WA | Ellensburg | Bowers Fld | 1/8408 | 4/16/21 | RNAV (GPS)-C, Orig-C. |
| 15–Jul–21 | WA | Ellensburg | Bowers Fld | 1/8409 | 4/16/21 | VOR–A, Amdt 3B. |
| 15–Jul–21 | PA | Clarion | Clarion County | 1/8480 | 4/15/21 | RNAV (GPS) RWY 6, Amdt 1B. |
| 15–Jul–21 | PA | Clarion | Clarion County | 1/8482 | 4/15/21 | RNAV (GPS) RWY 24, Amdt 1C. |
| 15–Jul–21 | CT | Willimantic | Windham | 1/8767 | 4/15/21 | RNAV (GPS) RWY 9, Amdt 1B. |
| 15–Jul–21 | CT | Willimantic | Windham | 1/8768 | 4/15/21 | RNAV (GPS) RWY 27, Amdt 1B. |
| 15–Jul–21 | CT | Willimantic | Windham | 1/8769 | 4/15/21 | VOR–A, Amdt 9A. |
| 15–Jul–21 | SC | Greenville | Donaldson Fld | 1/8776 | 4/14/21 | RNAV (GPS) RWY 23, Orig-A. |
| 15–Jul–21 | SC | Greenville | Donaldson Fld | 1/8778 | 4/14/21 | RNAV (GPS) RWY 5, Orig-A. |
| 15–Jul–21 | SC | Greenville | Donaldson Fld | 1/8781 | 4/14/21 | ILS OR LOC RWY 5, Amdt 5A. |
| 15–Jul–21 | TX | Huntsville | Huntsville Muni | 1/9173 | 4/15/21 | NDB RWY 18, Amdt 1. |
| 15–Jul–21 | TX | Huntsville | Huntsville Muni | 1/9174 | 4/15/21 | VOR/DME–A, Amdt 6. |
| 15–Jul–21 | TX | Huntsville | Huntsville Muni | 1/9175 | 4/15/21 | RNAV (GPS) RWY 18, Orig-A. |
| 15–Jul–21 | OH | Galion | Galion Muni | 1/9406 | 4/23/21 | RNAV (GPS) RWY 5, Orig-B. |
| 15–Jul–21 | MI | Adrian | Lenawee County | 1/9545 | 4/16/21 | RNAV (GPS) RWY 23, Orig-A. |
| 15–Jul–21 | MT | Glasgow | Wokal Fld/Glasgow-Valley County. | 1/9547 | 4/16/21 | VOR RWY 12, Amdt 3B. |
| 15–Jul–21 | MT | Glasgow | Wokal Fld/Glasgow-Valley County. | 1/9548 | 4/16/21 | RNAV (GPS) RWY 30, Orig-B. |
| 15–Jul–21 | MT | Glasgow | Wokal Fld/Glasgow-Valley County. | 1/9549 | 4/16/21 | RNAV (GPS) RWY 12, Orig-B. |
| 15–Jul–21 | MT | Glasgow | Wokal Fld/Glasgow-Valley County. | 1/9550 | 4/16/21 | VOR RWY 30, Amdt 4B. |
| 15–Jul–21 | VA | Warrenton | Warrenton-Fauquier | 1/9559 | 4/16/21 | LOC/DME RWY 15, Orig-A. |
| 15–Jul–21 | VA | Warrenton | Warrenton-Fauquier | 1/9560 | 4/16/21 | RNAV (GPS) RWY 15, Amdt 1A. |
| 15–Jul–21 | VA | Warrenton | Warrenton-Fauquier | 1/9561 | 4/16/21 | VOR RWY 15, Amdt 4C. |
| 15–Jul–21 | WY | Laramie | Laramie Rgnl | 1/9576 | 4/16/21 | VOR/DME RWY 30, Amdt 7A. |
| 15–Jul–21 | WY | Laramie | Laramie Rgnl | 1/9581 | 4/16/21 | VOR/DME RWY 12, Amdt 6A. |
| 15–Jul–21 | WY | Laramie | Laramie Rgnl | 1/9582 | 4/16/21 | RNAV (GPS) RWY 30, Orig. |
| 15–Jul–21 | WY | Laramie | Laramie Rgnl | 1/9589 | 4/16/21 | RNAV (GPS) RWY 21, Orig-A. |
| 15–Jul–21 | WY | Laramie | Laramie Rgnl | 1/9590 | 4/16/21 | RNAV (GPS) RWY 12, Orig. |
| 15–Jul–21 | WY | Laramie | Laramie Rgnl | 1/9591 | 4/16/21 | RNAV (GPS) RWY 3, Orig-A. |
| 15–Jul–21 | VA | Warrenton | Warrenton-Fauquier | 1/9602 | 4/16/21 | RNAV (GPS) RWY 33, Orig-A. |
| 15–Jul–21 | SC | Lancaster | Lancaster County-Mc Whirter Fld. | 1/9606 | 4/16/21 | RNAV (GPS) RWY 24, Amdt 1A. |
| 15–Jul–21 | SC | Lancaster | Lancaster County-Mc Whirter Fld. | 1/9607 | 4/16/21 | RNAV (GPS) RWY 6, Amdt 1. |
| 15–Jul–21 | MN | Marshall | Southwest Minnesota Rgnl Marshall/Ryan Fld. | 1/9866 | 5/12/21 | VOR RWY 12, Amdt 8B. |
| 15–Jul–21 | MN | Marshall | Southwest Minnesota Rgnl Marshall/Ryan Fld. | 1/9868 | 5/12/21 | ILS OR LOC RWY 12, Amdt 2A. |
| 15–Jul–21 | MN | Marshall | Southwest Minnesota Rgnl Marshall/Ryan Fld. | 1/9869 | 5/12/21 | RNAV (GPS) RWY 12, Amdt 1B. |
| 15–Jul–21 | FL | Key West | Key West Intl | 1/9874 | 5/7/21 | RNAV (GPS) RWY 27, Orig-B. |
| 15–Jul–21 | FL | Key West | Key West Intl | 1/9875 | 5/7/21 | RNAV (GPS) RWY 9, Amdt 1. |
| 15–Jul–21 | FL | Key West | Key West Intl | 1/9876 | 5/7/21 | NDB–A, Amdt 15C |

[FR Doc. 2021–13470 Filed 6–24–21; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

**[Docket No. DEA–509]**

# Schedules of Controlled Substances: Placement of para-Methoxymethamphetamine (PMMA) in Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** With the issuance of this final rule, the Drug Enforcement Administration places 1-(4-methoxyphenyl)-*N*-methylpropan-2-amine (*para*-methoxymethamphetamine, PMMA), including 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, in schedule I of the Controlled Substances Act to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle PMMA.

**DATES:** Effective July 26, 2021.

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

**SUPPLEMENTARY INFORMATION:**

## Legal Authority

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 adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),[1] after consultation with the Attorney General, shall determine whether existing legal controls under subchapter I of the Controlled Substances Act (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. 21 U.S.C. 811(d)(3). In the event that the Secretary of HHS did not so 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), the Attorney General may, by rule, schedule or transfer between schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes the findings prescribed by 21 U.S.C. 812(b) to schedule the drug or other substance. The Attorney General has delegated this scheduling authority to the Administrator of the Drug Enforcement Administration (DEA). 28 CFR 0.100.

## Background

*para*-Methoxymethamphetamine (PMMA) is a substituted phenethylamine and shares structural similarity to methamphetamine, a schedule II controlled substance, and *para*-methoxyamphetamine (PMA), a schedule I controlled substance. PMMA shares a similar pharmacological profile with 3,4-methylenedioxymethamphetamine (MDMA or ecstasy), a schedule I controlled substance with high potential for abuse. Data obtained from preclinical studies show that, similar to MDMA, PMMA's effects are mediated by monoaminergic (dopamine, norepinephrine, and serotonin) transmission, mostly via activation of the serotonergic system. In animals, PMMA mimics MDMA in producing discriminative stimulus effect, which is indicative of similar subjective effects. Law enforcement has encountered PMMA on the recreational drug market where it is sold as ''ecstasy,'' either alone or in combination with MDMA or PMA for oral consumption. For many years, PMMA has been involved in non-fatal and fatal overdoses, primarily in Europe. PMMA has no accepted medical use in treatment in the United States. In March 2016, the Commission on Narcotic Drugs (CND) voted to place PMMA in Schedule I of the 1971 Convention (CND Dec/59/3) during its 59th Session due to its dependence and abuse potential.

## DEA and HHS Eight Factor Analyses

On December 18, 2018, in accordance with 21 U.S.C. 811(b), and in response to DEA's April 7, 2017 request, HHS provided to DEA a scientific and medical evaluation and scheduling recommendation for PMMA. DEA reviewed HHS' evaluation and recommendation for schedule I placement, and all other relevant data, pursuant to 21 U.S.C. 811(b) and (c), and conducted its own analysis under the eight factors stipulated in 21 U.S.C. 811(c). DEA found, under 21 U.S.C. 812(b)(1), that this substance warrants control in schedule I. Both DEA and HHS 8-Factor analyses are available in their entirety under the tab ''Supporting Documents'' of the public docket for this action at *http://www.regulations.gov* under Docket Number ''DEA–509.''

## Notice of Proposed Rulemaking to Schedule PMMA

On May 15, 2020 (85 FR 29359), DEA published a notice of proposed rulemaking (NPRM) to permanently control PMMA in schedule I. Specifically, DEA proposed to add PMMA to the hallucinogenic substances list under 21 CFR 1308.11(d), and assign paragraph number 79 under paragraph (d) to PMMA. The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before June 15, 2020. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on or before June 15, 2020. DEA did not receive any comments.

## Scheduling Conclusion

After consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and after its own eight-factor evaluation, DEA finds that these facts and all other relevant data constitute substantial evidence of the potential for abuse of PMMA. DEA is permanently scheduling PMMA as a controlled substance under the CSA.

## Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also specifies the findings required to

[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 of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all other available data, the Acting Administrator of DEA (Acting Administrator), pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

*(1) The Drug or Substance Has a High Potential for Abuse*

PMMA has a mechanism of action similar to that of MDMA, a schedule I controlled substance. Similar to MDMA, PMMA increases levels of monoamines, specifically DA and 5–HT, in the brain reward circuitry. Data from animal studies demonstrate that PMMA fully substitutes for the discriminative stimulus effect of MDMA, which is indicative of similar subjective effects. Although there is currently no data that has directly assessed the psychological or physiological dependence liability of PMMA, its pharmacological similarities to MDMA suggest it likely has low physical dependence liability. Evidence demonstrates that users of PMMA are often seeking MDMA, which may be mixed with PMMA. PMMA shares a pharmacological mechanism of action and psychoactive effects similar to the schedule I controlled substance MDMA and therefore has a high potential for abuse.

*(2) The Drug or Substance Has No Currently Accepted Medical Use in Treatment in the United States*

According to HHS, the Food and Drug Administration (FDA) has not approved any marketing application for a drug product containing PMMA for any indication. In addition, there are no clinical studies or petitioners that have claimed an accepted medical use of PMMA in the United States. Thus, PMMA has no currently accepted medical use in treatment in the United States.[2]

*(3) There is a Lack of Accepted Safety for Use of the Drug or Substance Under Medical Supervision*

The safety of PMMA for use under medical supervision has not been determined because it has no approved medical use in treatment in the United States and has not been investigated as a new drug. Therefore, there is a lack of accepted safety for use of PMMA under medical supervision.

Based on these findings, the Acting Administrator concludes that PMMA as well as its salts, isomers, and salts of isomers whenever the existence of such isomers and salts is possible within the specific chemical designation warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

**Summary of Minor Change in the Final Rule**

As discussed in the above NPRM section, DEA proposed to place PMMA in 21 CFR 1301.11(d) as paragraph number 79. Since the publication of this NPRM, DEA has issued several final rules which updated the numbering of listed hallucinogenic substances in paragraph (d). As a result, this final rule assigns paragraph number 88 to PMMA.

**Requirements for Handling PMMA**

PMMA is subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, import, export, engagement in research, conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances, including the following:

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

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle PMMA must surrender all quantities of currently held PMMA, or transfer all quantities of currently held PMMA to a person registered with DEA. PMMA must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* PMMA is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling PMMA must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of PMMA must comply with 21 U.S.C. 825, and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture PMMA in accordance with a quota assigned, pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant who possesses any quantity of PMMA must take an inventory of PMMA on hand pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with DEA must take an initial inventory of all stocks of controlled substances (including PMMA) 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(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including PMMA) 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.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports for PMMA, or products containing PMMA, pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1301.74(b) and (c) and parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding PMMA to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* Every DEA registrant who distributes PMMA must comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of PMMA must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving PMMA not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

[2] Although there is no evidence suggesting that PMMA has a currently accepted medical uses 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).

**Regulatory Analyses**

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

In accordance with 21 U.S.C. 811(a), this final 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 (OMB) 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 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 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 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 Acting Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this final rule, and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA is placing the substance PMMA (chemical name 1-(4-methoxyphenyl)-*N*-methylpropan-2-amine), including 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, in schedule I of the CSA to enable the United States to meet its obligations under the 1971 Convention. This action imposes 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 PMMA.

Based on the review of HHS' scientific and medical evaluation and all other relevant data, DEA determined that PMMA has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no legitimate commercial market for PMMA in the United States. Therefore, DEA estimates that no United States entity currently handles PMMA and does not expect any United States entity to handle PMMA in the foreseeable future. DEA concludes that no legitimate United States entity would be affected by this rule. As such, this rule will not have a significant effect on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies 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.

*Paperwork Reduction Act of 1995*

This action does not impose a new collection of information 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.

*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 final rule to the Government Accountability Office, the House, and the Senate under the CRA.

**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 amended 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. Amend § 1308.11 by adding paragraph (d)(88) to read as follows:

**§ 1308.11 Schedule I.**

* * * * *

(d) * * *

(88) 1-(4-methoxyphenyl)-*N*-methylpropan-2-amine (other names: *para*-methoxymethamphetamine, PMMA) ..... (1245)

* * * * *

**D. Christopher Evans,**

*Acting Administrator.*

[FR Doc. 2021–13460 Filed 6–24–21; 8:45 am]

BILLING CODE 4410–09–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG–2021–0372]**

**RIN 1625–AA00**

## Safety Zone; Conn Brown Harbor; Aransas Pass, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters within a 600 feet radius of a fireworks display in Aransas Pass, Texas. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display. Entry of vessels or persons into this temporary zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

**DATES:** This rule is effective from 9 p.m. through 10 p.m. on July 3, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0372 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Margaret Brown, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Margaret.A.Brown@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with a fireworks display on July 3, 2021.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with a fireworks display on July 3, 2021 will be a safety concern for anyone in the navigable waters of Conn Brown Harbor within a 600-foot radius of a fireworks display launched from Conn Brown Harbor Point Park in Corpus Aransas Pass, Texas. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone during the fireworks show.

### IV. Discussion of the Rule

This rule establishes a temporary safety zone from 9 p.m. through 10 p.m. on July 3, 2021. The fireworks will be launched in position 27°54′05.37″ N, 097°08′01.24″ W. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Local Notices to Mariners, Safety Marine Information Broadcasts, and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

### V. Regulatory Analyses

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

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

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone covers a 600-foot radius for a fireworks display launched in Aransas Pass, Texas. The temporary safety zone will be enforced for a short period of only 60 minutes on July 3, 2021. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

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

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of Conn Brown Harbor within a 600-foot radius of a fireworks display launched at position 27°54′05.37″ N, 097°08′01.24″ W, in Aransas Pass, Texas. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. It is categorically excluded from further review under paragraph L60 Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1 .

*G. Protest Activities*

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

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

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

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

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

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0372 to read as follows:

**§ 165.T08–0372 Safety Zone; Conn Brown Harbor; Aransas Pass, TX.**

(a) *Location.* The following area is a safety zone: All navigable waters of Conn Brown Harbor within a 600-foot radius of a firework display launched at position 27°54′05.37″ N, 097°08′01.24″ W, in Aransas Pass, Texas

(b) *Effective period.* This rule is effective from 9 p.m. through 10 p.m. on July 3, 2021.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative.

(2) Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF–FM channel 16 (156.8 MHz) or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: June 22, 2021.

**J.B. Gunning,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.*

[FR Doc. 2021–13588 Filed 6–24–21; 8:45 am]

**BILLING CODE 9110–04–P**

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2021–0225]**

**RIN 1625–AA00**

## Safety Zone, PNSY Entrance Structure Heavy Lift Project—Piscataqua River, Portsmouth, NH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters in the Piscataqua River, Portsmouth, NH. This action is necessary to provide for the safety of persons, property, and the marine environment from the potential safety hazards associated with the construction and heavy lift operations at the Portsmouth Naval Shipyard Dry Dock No. 1. When enforced, this rule will prohibit persons and vessels from entering into the safety zone unless authorized by the Captain of the Port Northern New England or a designated representative.

**DATES:** This rule is effective without actual notice from June 25, 2021, through August 31, 2021. For the purposes of enforcement, actual notice will be used from June 16, 2021, until June 25, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://*

*www.regulations.gov,* type USCG–2021–0225 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Shaun Doyle, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207–347–5015, email *Shaun.T.Doyle@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NAD 83 North American Datum of 1983
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
COTP Captain of the Port Sector Northern New England

## II. Background Information and Regulatory History

On April 6, 2021, a construction company contracted by Portsmouth Naval Shipyard (PNSY) notified the Coast Guard that in mid-May they intend to tow the Weeks 2701 barge with the new PNSY Dry Dock No.1 Superflood Basin entrance structure, commonly referred to as the ''structure,'' aboard to PNSY for final lifting and setting. The structure is a 5500 ton pre-fabricated concrete caisson. The construction is critical to the PNSY Superflood Basin project. The lift and placement of the structure will take approximately two tide cycles and requires no wake or swell from passing vessels or weather during critical and sensitive lifting operations. The heavy lift is critical to the success of the PNSY Superflood Basin project and the future of PNSY operations. The heavy lift will be north of the federal navigation channel in the area of PNSY Berth No. 1.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. A delay or cancellation of the currently ongoing PNSY Superflood Basin project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the PNSY Superflood Basin is expected to open for critical naval operations. For these reasons, the Coast Guard finds it impracticable to delay this regulation for purposes of a comment period.

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

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Northern New England (COTP) has determined that potential hazards associated with the heavy lift will be a safety concern for anyone transiting the Piscataqua River in the vicinity of the PNSY Berth 1. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while during the heavy lift.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone from June 16, 2021, through August 31, 2021. The safety zone will cover all navigable waters within 350 yards of position 43°04′50.38″ N, 070°44′39.62″ W (NAD83) of the Piscataqua River, Portsmouth, NH, in the vicinity of PNSY Berth No. 1. The size and duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during heavy lift operations.

We anticipate enforcing the safety zone during the heavy lift operations for installation of the structure during three high tide cycles sometime from July 1, 2021, through July 4, 2021. No vessel may enter, transit through, anchor in, or remain in the zone during periods of enforcment enforcement unless permission is obtained from the COTP or a designated representative. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate. The Coast Guard is publishing this rule to be effective through August 31, 2021 in case the project is delayed due to unforeseen circumstances.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the following reasons: (1) The safety zone only impacts a small designated area of the Piscataqua River, Portsmouth, NH, (2) the zone will only be enforced during actual lift operations, (3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP or a designated representative.

### *B. Impact on Small Entities*

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule

would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 24 to 36 hours that will prohibit entry within 350 yards of position 43°04′50.38″ N, 070°44′39.62″ W (NAD83), Piscataqua River, Portsmouth, NH, during heavy lift operations in Berth No. 1 at PNSY. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

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

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

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

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

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0225 to read as follows:

**§ 165.T01–0225 Safety Zone; Safety Zone, PNSY Entrance Structure Heavy Lift Project—Piscataqua River, Portsmouth, NH.**

(a) *Location.* The following area is a safety zone: All navigable waters within a 350-yards radius of position 43°04′50.38″ N, 070°44′39.62″ W (NAD83) on Piscataqua River, Portsmouth, NH.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM channel 16 or (207) 767–0303 (Sector Northern New England Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period[s].* This section will be enforced June 16, 2021, through August 31, 2021, during active heavy lift operations and other instances which may cause a hazard to navigation, as well as when deemed necessary by the COTP, Sector Northern New England.

Dated: June 11, 2021.

**B.J. LeFebvre,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.*

[FR Doc. 2021–13598 Filed 6–24–21; 8:45 am]

**BILLING CODE 9110–04–P**

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2021–0250]**

## Safety Zone; Lights on the Lake Fourth of July Fireworks; South Lake Tahoe, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for South Lake Tahoe's Light on the Lake Fourth of July

Fireworks in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191, Table 1, Item number 18, will be enforced from 7 a.m. on July 1, 2021 through 10:30 p.m. on July 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call or email Lieutenant Anthony Solares, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *SFWaterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone established in 33 CFR 165.1191, Table 1, Item number 18, for the Lights on the Lake Fourth of July Fireworks; South Lake Tahoe, CA from July 1, 2021 to July 4, 2021. The Coast Guard will enforce a 100-foot safety zone around the three fireworks barges during the loading, standby, transit, and arrival of the fireworks barges from the loading location to the display location and until the start of the fireworks display. On July 1, 2021 through July 4, 2021, the three fireworks barges will be loaded with equipment only beginning at approximately 7 a.m. at Tahoe Keys Marina in South Lake Tahoe, CA. On July 1 2021, the three fireworks barges will be loaded with pyrotechnics at approximately 7 a.m. at Edgewood, Stateline, Nevada, taking approximately 3 to 4 hours to load. The fireworks barges will remain on standby at the loading location until their transit to the display location. On July 4 2021, from 8 a.m. to 11 a.m. the loaded fireworks barges will transit from Edgewood, Stateline, Nevada to the launching area off Stateline Beach, Stateline, Nevada, approximately at position 38°57″ 56.0″ N 119°57″ 21.2″ W (NAD 83), where they will remain until the conclusion of the fireworks display. As set forth in 33 CFR 165.1191, Table 1, Item number 15, upon the commencement of the 25 to 30-minute fireworks display, the safety zone will expand to encompass all navigable waters, from surface to bottom, within a circle formed by connecting all points 1,000 feet out from the fireworks barges near Stateline Beach, Stateline, NV. The approximate position for firework display is 38°57″ 56.0″ N 119°57″ 21.2″ W (NAD 83). The safety zone will be enforced until 10:30 p.m. on July 4 2021, or as announced via Local Notice to Mariners.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from anchoring, blocking, loitering, or impeding the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times. All vessels in the safety zone during the effective dates and times are subject to movement control by the PATCOM or other Official Patrol, defined as a federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the safety zone. During the enforcement period, if you are the operator of a vessel in one of the safety zones you must comply with directions from the Patrol Commander or other Official Patrol.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 21, 2021.

**Jordan M. Baldueza,**

*Captain, U.S. Coast Guard, Alternate Captain of the Port, San Francisco.*

[FR Doc. 2021–13612 Filed 6–24–21; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2021–0377]**

## Safety Zones; Fireworks Displays in the Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Penn's Landing, Delaware River, Philadelphia PA; Safety Zone from 9 p.m. through 10:30 p.m. on July 4, 2021, to provide for the safety of life on navigable waterways during this firework event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Philadelphia, PA. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

**DATES:** The regulations in the table to 33 CFR 165.506, entry (a)(16) will be enforced from 9 p.m. through 10:30 p.m. on July 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, you may call or email Petty Officer Jennifer Padilla, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone 215–271–4814, email *Jennifer.l.Padilla@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone in the Table to 33 CFR 165.506, entry (a)(16) for the Coopers Ferry Fireworks display from 9 p.m. through 10:30 p.m. on July 4, 2021. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after the fireworks displays. Our regulation for safety zones of fireworks displays within the Fifth Coast Guard District, table to § 165.506, entry (a)(16), specifies the location of the regulated area as all waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within 500 yards of a fireworks barge at approximate position latitude 39°56′49″ N, longitude 075°08′11″ W. During the enforcement period, as reflected in § 165.506(d), vessels may not enter, remain in, or transit through the safety zone during the enforcement period unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via broadcast notice to mariners.

Dated: June 18, 2021.

**Jonathan D. Theel,**

*Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.*

[FR Doc. 2021–13573 Filed 6–24–21; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2021–0417]**

## Safety Zone; San Francisco Giants Fireworks Display, San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect personnel, vessels, and the marine environment from the hazards associated with pyrotechnics. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191 will be enforced for the location identified in Item number 1 of table 1 to § 165.1191 from 10 a.m. until 11:15 p.m. on June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Anthony Solares, Waterways Management, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585, email *SFWaterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone established in 33 CFR 165.1191 table 1, item number 1 for the San Francisco Giants Fireworks Display from 10 a.m. on June 25, 2021, until 11:15 p.m. on June 25, 2021. The Coast Guard will enforce a 100-foot safety zone around the fireworks barge, from surface to bottom, during the loading, transit of the fireworks barge from the loading location to the display location, and arrival at the display location, and until the start of the fireworks display. From 10:00 a.m. on June 25, 2021 until 8 p.m. on June 25, 2021, the fireworks barge will be loading pyrotechnics from Pier 50 in San Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 8:30 p.m. to 8:45 p.m. on June 25, 2021, the loaded fireworks barge will transit from Pier 50 to the launch site near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83) where it will remain until the conclusion of the fireworks display. Upon the commencement of the 10-minute fireworks display, scheduled to begin at the conclusion of the baseball game, between approximately 9:30 p.m. and 10 p.m. on June 25, 2021, the safety zone will increase in size and encompass all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 700 feet out from the fireworks barge near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83).

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from anchoring, blocking, loitering, or impeding the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times. All vessels in the safety zone during the effective dates and times are subject to movement control by the PATCOM or other Official Patrol, defined as a federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the safety zone. During the enforcement period, if you are the operator of a vessel in one of the safety zones you must comply directions from the Patrol Commander or other Official Patrol.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 21, 2021.

**Jordan M. Baldueza,**

*Captain, U.S. Coast Guard, Alternate Captain of the Port, San Francisco.*

[FR Doc. 2021–13610 Filed 6–24–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2021–0369]**

## Safety Zone; City of Port Aransas, Port Aransas 4th of July Fireworks

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for Port Aransas 4th of July Fireworks Display on July 4, 2021, to provide for the safety of persons, vessels, and the marine environment on navigable waterways during this event. Our regulation for marine events within the Eighth Coast Guard District identifies the safety zone for this event in Port Aransas, TX. During the enforcement periods, entry into this zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative.

**DATES:** The regulations in 33 CFR 165.801, Table 4, Line 3, will be enforced from 9 p.m. through 11:30 p.m. on July 4, 2021, unless the event is postponed because of adverse weather, in which case this rule will be enforced from 9 p.m. through 11:30 p.m. on July 5, 2021 and July 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Lieutenant Commander Margaret Brown, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Margaret.A.Brown@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone in 33 CFR 165.801, Table 4, Line 3, for the City of Port Aransas Fourth of July Fireworks Display from 9 p.m. through 11:30 p.m. on July 4, 2021, with a rain date set for July 5, 2021 and July 6, 2021. This action is being taken to provide for the safety of persons, vessels, and the marine environment on navigable waterways during this event. Our regulation for marine events within the Eighth Coast Guard District, § 165.801, specifies the location of the safety zone for the Port Aransas Fourth of July Fireworks Display, which encompasses portions of Corpus Christi Ship Channel, Port Aransas, TX. As reflected in §§ 165.23 and 165.801(a), if you are the operator of a vessel in the regulated area you must comply with directions from the Captain of the Port Sector Corpus Christi (COTP) or any designated representative. Persons or vessels desiring to enter the zone must request permission from the COTP or a designated representative. They can be reached on VHF FM channel 16 or by telephone at (361) 939–0450.

If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

In addition to this notice of enforcement in the **Federal Register**, the COTP or a designated representative will inform the public through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), Marine Safety Information Broadcasts (MSIBs), and/or through other means of public notice as appropriate at least 24 hours in advance of each enforcement.

**J.B. Gunning,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.*

[FR Doc. 2021–13587 Filed 6–24–21; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2021–0418]**

## Safety Zones; Northern California and Lake Tahoe Area Annual Fourth of July Fireworks Events

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce numerous safety zones within the Captain of the Port, San Francisco area of responsibility during the dates and times specified below. This action is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the regulated areas, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191 will be enforced for the locations identified in Items 3, 4, 7, 12, 14, and 16 of Table 1 to § 165.1191 during the dates and times identified in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Anthony Solares, Waterways Management, U.S. Coast Guard; telephone (415) 399–3585, email *SFWaterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zones established in 33 CFR 165.1191, Table 1, Item numbers 3, 4, 7, 12, 14, and 16 during the dates, times, and locations indicated in the table below. The dates, times, and locations will also be published in the Local Notice to Mariners at least 20 days prior to the date of each event.

**3. Fourth of July Fireworks, City of Eureka**

| | |
|---|---|
| Sponsor | City of Eureka, CA. |
| Event Description | Fireworks Display. |
| Date | July 4, 2021. |
| Time | From noon on July 3, 2021 to 9:30 p.m. on July 4, 2021, the barge will load, transit, and stage at the display location. From 9:30 p.m. until the conclusion of the fireworks display at approximately 10:55 p.m. on July 4, 2021, the safety zone will increase in size. |
| Location | The barge will load at Schneider Dock and transit to the display location in Humboldt Bay, CA, at approximate position 40°48.49′ N, 124°10.11′ W. |
| Regulated Area | 100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display. |

**4. Fourth of July Fireworks, Crescent City**

| | |
|---|---|
| Sponsor | Crescent City, CA. |
| Event Description | Fireworks Display. |
| Date | July 4, 2021. |
| Time | From 9:30 p.m. until the conclusion of the fireworks display, at approximately 10:20 p.m. on July 4, 2021. |
| Location | The West Jetty of Crescent City Harbor, Crescent City, CA, at approximate position 41°44′04″ N, 124°11′59″ W. |
| Regulated Area | Crescent City Harbor in the navigable waters within a 700-foot radius of the launch platform located on the West Jetty. |

**7. San Francisco Independence Day Fireworks**

| | |
|---|---|
| Sponsor | The City of San Francisco |
| Event Description | Fireworks Display. |
| Date | July 4, 2021. |
| Time | From 10 a.m. on July 2, 2021, to 9:45 p.m. on July 4, 2021 the barges will load, transit, and stage at the display location. From 9:45 p.m. until the conclusion of the fireworks display at approximately 11:10 p.m. on July 4, 2021, the safety zone will increase in size. |
| Location | The barges will load at Pier 50 in San Francisco and transit to the display locations in the San Francisco Bay in approximate position 37°48′39″ N, 122°25′37″ W and 37°48′49″ N, 122°24′46″ W, San Francisco, CA. |
| Regulated Area | 100-foot radius around each fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display. |

**12. Fourth of July Fireworks, City of Antioch**

| | |
|---|---|
| Sponsor | City of Antioch |
| Event Description | Fireworks Display. |
| Date | July 4, 2021. |
| Time | From 9 a.m. to 9:20 p.m. on July 4, 2021, the barge will load, transit, and stage at the display location. From 9:20 p.m. until the conclusion of the fireworks display at approximately 10:05 p.m. on July 4, 2021, the safety zone will increase in size. |
| Location | The barge will load at Fulton Ship Yard in Antioch, CA. and transit to the display location in the San Joaquin River in approximate position 38°01′9.0″.027″ N, 121°48'47.6″ W, Antioch, CA. |
| Regulated Area | 100-foot radius around each fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display. |

**14. Delta Independence Day Celebration Fireworks**

| | |
|---|---|
| Sponsor | Various Sponsors. |

| | |
|---|---|
| Event Description | Fireworks Display. |
| Date | July 4, 2021 |
| Time | From 8 a.m. on July 3, 2021 until 9:30 p.m. on July 4, 2021, the barge will load, transit, and stage at the display location. From 9:30 p.m. until the conclusion of the fireworks display at approximately 10:20 p.m. on July 4, 2021, the safety zone will increase in size. |
| Location | The barge will load at the Dutra Corp Yard in Rio Vista, CA, and transit to the display location in the San Joaquin River, near Mandeville Island, CA, at approximate position 38°03′20.5″ N, 121°32′03″ W. |
| Regulated Area | 100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display. |

**16. Fourth of July Fireworks, Glenbrook NV**

| | |
|---|---|
| Sponsor | Various Sponsors. |
| Event Description | Fireworks Display. |
| Date | July 4, 2021 |
| Time | From 7 a.m. to 9 p.m. on July 4, 2021, the barge will load, transit, and stage at the display location. From 9 p.m. until the conclusion of the fireworks display at approximately 10:25 p.m. on July 4, 2021, the safety zone will increase in size. |
| Location | The barge will load in Glenbrook, NV and transit to the display location off-shore Glenbrook Beach, NV in approximate position 39°05′18.40″ N, 119°56′34.67″ W. |
| Regulated Area | 100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display. |

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from anchoring, blocking, loitering, or impeding the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times. All vessels in the safety zone during the effective dates and times are subject to movement control by the PATCOM or other Official Patrol defined as a Federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the safety zones. During the enforcement period, if you are the operator of a vessel in one of the safety zones you must comply with directions from the Patrol Commander or other Official Patrol.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 21, 2021.

**Jordan M. Baldueza,**

*Captain, U.S. Coast Guard, Alternate Captain of the Port, San Francisco.*

[FR Doc. 2021–13611 Filed 6–24–21; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF EDUCATION

### 34 CFR Part 668

### Office of Post-Secondary Education

*CFR Correction*

■ In Title 34 of the Code of Federal Regulations, Education, Parts 400 to 679, revised as of July 1, 2020, on page 417, in section 668.41, paragraphs (h)(2)(i) through (iii) are reinstated to read as follows:

**§ 668.41 Reporting and disclosure of information.**

* * * * *

(h) * * *

(2) * * *

(i) *Class action* means a lawsuit or an arbitration proceeding in which one or more parties seeks class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23.

(ii) *Class action waiver* means any agreement or part of an agreement, regardless of its form or structure, between a school, or a party acting on behalf of a school, and a student that relates to the making of a Direct Loan or the provision of educational services for which the student received title IV funding and prevents an individual from filing or participating in a class action that pertains to those services.

(iii) *Pre-dispute arbitration agreement* means any agreement or part of an agreement, regardless of its form or structure, between a school, or a party acting on behalf of a school, and a student requiring arbitration of any future dispute between the parties relating to the making of a Direct Loan or provision of educational services for which the student received title IV funding.

* * * * *

[FR Doc. 2021–13694 Filed 6–24–21; 8:45 am]

BILLING CODE 0099–10–D

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 61

**RIN 2900–AP54**

### VA Homeless Providers Grant and Per Diem Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations concerning the VA Homeless Providers Grant and Per Diem (GPD) Program. These amendments provide GPD with increased flexibility to: Respond to the changing needs of homeless veterans; repurpose existing and future funds more efficiently; and allow recipients the ability to add, modify, or eliminate components of funded programs. This rule updates these regulations to better serve our homeless veteran population and the recipients who serve them.

**DATES:** The final rule is effective July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Quarles, Director, Grant/Per Diem Program, (673/GPD), VA National Grant and Per Diem Program Office, 10770 N 46th Street, Suite C–200, Tampa, FL 33617, (813) 979–3570. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Pursuant to 38 U.S.C. 501, 2001, 2011, 2012, 2061, and 2064, VA established the VA Homeless Providers Grant and Per Diem (GPD) Program with implementing regulations at 38 CFR part 61. Through the GPD Program, VA awards five types of grants to entities and organizations that meet specific criteria to support supportive or transitional housing for homeless veterans until the veteran can transition into permanent housing. VA awards capital grants, special need grants, technical assistance grants, case management services grants and per diem only grants to offset operating costs for a program of supportive housing or services.

On July 25, 2017, VA proposed to amend its regulations that govern the VA GPD Program. (82 FR 34457). VA provided a 60-day comment period, which ended on September 25, 2017. We received 15 comments on the rule. Most of the comments were generally positive; however, several commenters raised concerns about the proposed changes, which we address here.

**§ 61.1 Definitions**

VA proposed amending the definition of supportive housing to state that this type of housing is designed to either: Facilitate the movement of homeless veterans to permanent housing as soon as possible but no later than 24 months, subject to § 61.80; or provide bridge housing or specific medical treatment such as detoxification, respite, or hospice treatments that are used as step-up or step-down programs within that specific project's continuum.

A commenter remarked that use of the term ''bridge housing'' is misleading. At 82 FR 34458 we stated that bridge housing is a short-term, transitional housing option in a safe environment for veterans who have accepted a permanent housing placement, but access to the permanent housing is not immediately available for occupancy. Typically, the bridge housing model length of stay is less than 90 days, absent additional services, and devoid of a specific clinical care component.

The commenter noted that in the past, VA published a Notice of Funding Availability (NOFA) for the GPD Program which specified admission criteria. The commenter stated that the admission criteria published in the NOFA included the requirement that supportive housing must facilitate the movement of homeless veterans to permanent housing within a period that is not less than 90 days in length. Previously issued NOFAs stated, as part of the admission criteria, that the veteran ''must have been offered and accepted a permanent housing intervention prior to admission or within the first 14 days of admission.'' The commenter stated that the intent is for housing within 90 days, but not that housing has been identified prior to admission.

We do not agree that the use of the term ''bridge housing'' is misleading. While it is accurate to state that VA published certain admission criteria in past NOFAs, VA subsequently proposed changes to those criteria. While the commenter first focused on the proposed addition of ''bridge housing'' to the definition of supportive housing, it appears that the main concern is the proposed removal of the requirement that supportive housing must facilitate the movement of homeless veterans to permanent housing within a period that is not less than 90 days. The 90-day supportive housing requirement was intended to ensure that veterans have sufficient time to take full advantage of all supportive services, thereby enabling their successful transition to permanent housing. However, VA recognizes that each veteran has an individualized treatment plan and may, for a variety of reasons, choose to exit the program before 90 days. VA believes that one of these reasons may be the desire to move into permanent housing rather than remain in supportive housing for up to 90 days.

In any case, we are eliminating the reference to 90 days in the proposed definition of supportive housing by removing the phrase ''within a period that is not less than 90 days and does not exceed'' and amending paragraph (2)(i) of the definition at 38 CFR 61.1 to state: ''facilitate the movement of homeless veterans to permanent housing as soon as possible but no later than 24 months, subject to § 61.80; or''. This should address the commenter's concerns summarized above.

In addition, to address any potential confusion, we are removing the proposed addition of language about bridge housing. Specifically, we are removing the proposed definition of and reference to bridge housing as it is no longer necessary and not included in the regulation. At the time of the commenter's concern, bridge housing was a new concept for GPD programs. In subsequent years, however, bridge housing has become a standard practice in GPD programs, the meaning of which is common knowledge among grantees and available elsewhere, such as in funding opportunities and in technical assistance materials widely available to the community.

**§ 61.33 Payment of Per Diem**

We proposed several changes to this section, including amending general provisions on per diem payments, rates for such payments, and removal of one paragraph that duplicates content in new proposed § 61.5. We subsequently published, at 82 FR 38646 (August 15, 2017) a correction to proposed paragraph (c). We received public comment on proposed changes to paragraphs (a)(3), (e), and (f).

We renumber proposed § 61.33 for clarity as follows. Proposed paragraph (a)(1)(iii) is renumbered as paragraph (a)(2). Proposed paragraph (a)(1)(iv) is now paragraph (a)(3). Proposed paragraph (a)(2) is now paragraph (b). Proposed paragraphs (b) through (h) are now paragraphs (c) through (h), with proposed paragraph (f) omitted. We have also renumbered the cross references within § 61.33 to reflect the new numbering.

In proposed paragraph (a)(3), now paragraph (b) as stated below, we stated that VA may at any time review the provision of supportive housing and services to individual veterans by the provider to ensure the care provided continues to be needed and appropriate. One commenter stated that the proposed reviewing of individual veteran service plans gives VA too much power. We do not agree. VA has always had the authority to inspect grantees to ensure they are complying with all program requirements, including review of individual service plans. See 38 CFR 61.65. This rulemaking clarifies that authority. Further, VA will not pay per diem where we conclude that services furnished by the recipient are unacceptable. All grantees must have individual service plans (ISPs) for veteran participants. As a condition of accepting the grant award, grantees must sign assurances allowing VA to access and review, on demand, all records associated with the grant award. Since moving individual veterans to permanent housing as quickly as they are ready is an important goal of GPD, VA will ensure that veterans are continuing to move toward this goal by reviewing ISPs. Also, we will provide assistance to veterans and grantees in cases where veterans are not moving to permanent housing as quickly as they are ready.

In proposed paragraph (e), now paragraph (f), we proposed that VA would pay per diem up to a maximum of seventy-two (72) consecutive hours for the scheduled absence of a veteran. This would amend the then-current rule that allowed payment for both scheduled and unscheduled absences,

which we noted had been misapplied or misunderstood by GPD grantees. One commenter stated that this proposed change would negate the purpose of the original rule, which allowed 72 hour passes for unexcused absences and did not take into account the fact that most hospital admissions are unplanned. The commenter stated that smaller providers would be forced to choose between absorbing the cost of an unexcused absence or documenting a negative exit for the veteran. The former would negatively impact the finances of the GPD provider while the latter would adversely impact the veteran. Other commenters expressed similar concerns. One commenter noted that a missing veteran may sometimes be unable to contact the facility right away, such as when hospitalized.

In addition, one commenter stated that the proposed change would disincentivize GPD providers from working with veterans and could result in substantial losses to larger programs. The commenter also stated that, for GPD providers not in compliance with performance metrics, the provider would have to weigh a negative exit (which would result in no loss of funds) against the risk of being placed in a Corrective Action Plan (CAP) (proposed § 61.80(c)(3)(vi)).

While other commenters generally expressed support for the rationale behind the proposed change, VA acknowledges the concerns of those commenters urging a substantive change to paragraph (f) as proposed. VA has taken into consideration that the populations the commenters choose to serve have a higher propensity to exit their homeless programs when exigent circumstances arise. We encourage our community partners to continue serving these populations. Accordingly, based on the public comments, we are amending paragraph (f) to state that VA will pay per diem up to a maximum of seven (7) days in the case of an inpatient hospitalization, or, will pay per diem up to a maximum of seventy-two (72) consecutive hours for the scheduled or unscheduled (non-hospitalization) absence of a veteran. Adding per diem coverage for up to 7 days of inpatient hospitalization is responsive to concerns raised by commenters.

Commenters also expressed concern regarding situations where a recipient would be forced to discharge veterans if it did not receive payment for services rendered. It is believed that a discharge under these circumstances could count against a veteran's three-time allowable admission to GPD programs. Many commenters believe VA will only allow for three admissions to GPD programs. We believe this has been incorrectly interpreted. To clarify, VA will remove the previously proposed paragraph (f) altogether. Because VA allows more than three admissions to GPD programs under certain circumstances and in order to avoid incorrect applications of a perceived limitation for supportive housing bed days of care, this paragraph is removed.

Except as noted above, VA makes no edits to the rule based on these comments.

*Technical edits.* As discussed above, we renumber proposed § 61.33 for clarity as follows. Proposed paragraph (a)(iii) is renumbered as paragraph (a)(2). Proposed paragraph (a)(iv) is now paragraph (a)(3). Proposed paragraph (a)(2) is now paragraph (b). Proposed paragraphs (b) through (e) are now paragraphs (c) through (f). We have also renumbered the cross references within § 61.33 to reflect the new renumbering.

Additionally, we are amending proposed 38 CFR 61.33(a)(1)(ii) to remove the word ''and'' at the end of the paragraph. We are also merging proposed paragraph 38 CFR 61.33(a)(2)(A) with proposed paragraph 38 CFR 61.33(a)(2) and numbering it as 38 CFR 61.33(a)(2). After reviewing the language, VA determined that it would reduce confusion by merging the two paragraphs. The paragraph at 38 CFR 61.33(a)(2) would now read: For providers of both supportive housing and services. When the referral or authorization of the homeless veteran will not result in the project exceeding the total number of bed days of care or total obligated funding as indicated in the grant agreement and funding action document.

Proposed paragraph (h) states that at the time of receipt, a per diem recipient must report to VA all other sources of income for the project for which per diem was awarded. We are amending proposed paragraph (h) to clearly state that the paragraph relates to receipt of a federal award by VA rather than a federal award by a different federal agency such as the Department of Housing and Urban Development.

**§ 61.80 General Operation Requirements for Supportive Housing and Service Centers**

This section is in subpart F which addresses awards, monitoring and enforcement of agreements. Paragraph (c) of this section focuses on establishment of performance goals, periodic assessment of grant recipient performance, remedies available to VA if a grantee fails to meet established performance goals, and actions the grant recipient must take if VA determines that established GPD performance goals have not been met over a certain period of time. VA proposed several non-substantive changes to this paragraph for purposes of clarity. In addition, we proposed that VA will establish performance goals for the initial award and update those goals annually. Performance goals would be established based on data VA collects on veterans in all homeless programs, and VA priorities in addressing the issue of homeless veterans. This would shift the burden of developing performance goals from the grant recipient without VA losing any oversight capabilities. We noted at 82 FR 34460 (July 25, 2017) VA's intent to also reduce the number of performance items recipients are responsible for from the range of 10 to 20 per recipient project to a number that accurately captures acceptable performance. We proposed changing the trigger point at which VA would consider remedies for failure to meet performance goals from 15 percent to five percent below any performance goals. In addition, we proposed requiring a grant recipient to submit a Corrective Action Plan (CAP) to the VA GPD Liaison within sixty (60) calendar days if VA determines that established GPD performance goals have not been met for any two (2) consecutive quarters. The rationale for these proposed changes is to more closely monitor attainment of VA-established performance goals and to identify and address problem areas in a timely manner. As explained in detail below, VA is amending references to a Corrective Action Plan (CAP) to refer instead to a Performance Improvement Plan (PIP). Accordingly, all references to CAPs in the paragraphs below will use PIP instead of CAP. In addition, all of the CAP references below are in fact referring to what is now PIP under section 61.80(c)(3)(v) through (vii).

We received several comments related to VA's collection of data related to services provided to homeless veterans. Commenters expressed reservations as to the integrity and accuracy of VA data and VA's reliance on that data when establishing performance goals. One commenter stated that there should be a mechanism to allow a grant awardee the ability to challenge VA data it believes is inaccurate, where the alleged inaccuracy could impact a performance review. The commenter stated that such mechanism would allow for a comparison of grantee-provided data with that of VA, and ensure continuity of payment while that mechanism was in use. Another commenter stated that it is crucially important that the

proposed rule rely on performance measures based on data from the Department of Housing and Urban Development's Homeless Management Information System (HMIS) and not solely from the VA Homeless Operations Management and Evaluation System (HOMES) program.

We do not believe it is necessary for there to be additional mechanisms for recipients to challenge the accuracy of VA's data in HOMES. Grantees provide outcome data to VA Liaisons detailing the effects of moving veterans to permanent housing or discharging them for rule violations. We continue this practice under VA HOMES. VA uses HOMES to record information on every veteran entering and exiting GPD's nationally funded projects. From this system, VA is able to provide monthly performance data based on the technical specifications of each metric. The GPD program educates grantees on reading and using the data in practical ways and has used this information to understand performance and promote improvement. VA maintains rigorous methodologies which are reviewed and updated as needed. When grantees have questions about such data or its role in their performance, answers continue to be provided through the normal communication channels available among grantees, VA medical centers and the GPD national office.

As VA is standardizing performance outcomes for all of its transitional housing, we are able to produce these reports for each funded project and distinguish between GPD transitional housing models. Additionally, we have the opportunity to take into consideration the various operational definitions that make up each metric. The reports produced from HOMES provide results on national, regional (*i.e.,* Veteran Integrated Service Network), medical center, and GPD funded projects. While we commend the commenter's participation in the HMIS locally, the aforementioned capability is unavailable to VA at this time due to concerns about undue financial burden for grantees and the protection of confidential and clinical information about Veterans. HMIS participation involves grantees paying for several costs (*e.g.* access, training, staffing, usage). The cost is locally determined and is not necessarily able to be supported by grant funds. That said, the GPD program has encouraged, but does not require, participation among grantees in HMIS, and continues to collaborate with HMIS about options for the future.

Moreover, we have eliminated the reporting requirements for several types of grant project goals and objectives that were previously necessary. VA eliminated these reporting requirements in our efforts to grant flexibility for recipients in developing project goals based on the recipient's experience with specific populations, services, and the recipient's geographic location. The changes in 38 CFR 61.80(c) utilize metrics that lead to empirical comparisons, such as outcome measures for homeless program success, which are consistent with VA's national goal of ending homelessness. Historically, the selected data points within in the metrics have been used to report homeless program data within VA and to Congress. The use of common metrics is an effective method to determine success across different GPD program methodologies. Both VA and the recipients are linked as VA must also meet the very same metrics. We believe this will lead to better outcomes and strengthen community partnerships in the battle against homelessness. The amendments in this rulemaking are consistent with current VA policy and practice.

VA amends references to a Corrective Action Plan (CAP) to refer instead to a Performance Improvement Plan (PIP). One commenter remarked on the use of CAPs (now PIPs) listed in proposed 38 CFR 61.80. We proposed in 38 CFR 61.80(c)(3)(v) through (vii) that if after reviewing a recipient's assessment, VA determines that it falls more than five percent below any performance goal, then VA may revise the award by withholding placements or payment, suspending payment, and terminating the grant agreement. While the five percent rather than fifteen percent would be a new standard, the four listed potential remedies remain unchanged from then-current paragraph (c)(6). The commenter stated that the proposed changes suggest that at any time VA could enact any options, regardless of the PIP. That is not VA's intent, and we amend the proposed language to clarify the issue. We are amending proposed 38 CFR 61.80(c)(3)(v) to explain that VA could avail itself to more than one, or a combination of, enforcement actions in 38 CFR 61.80(c)(3)(v)(A)–(D). VA seeks to reserve its discretion to apply any combination or permutation of enforcement actions it deems fit. We amend 38 CFR 61.80(c)(3)(v) to read as follows: If, after reviewing a recipient's assessment, VA determines that it falls more than five percent below any performance goal, then VA may require the recipient to create and follow a performance improvement plan (PIP) as outlined in 38 CFR 61.80(c)(vi). We are moving the second part of proposed 38 CFR 61.80(c)(3)(v) and numbering it as new 38 CFR 61.80(c)(3)(vii). We believe that this move will provide a more sequential process for the PIP. Therefore, new paragraph (c)(3)(vii) will state that if the recipient is not compliant with the PIP, VA may impose any combination of the following enforcement actions by award revision: (A) Withhold placements; (B) Withhold payment; (C) Suspend payment; and (D) Terminate the grant agreement, as outlined in this part or other applicable federal statutes and regulations.

Other commenters expressed concern with the threshold VA selected to trigger a PIP in proposed 38 CFR 61.80(c)(3)(v). One commenter stated that the proposed change in threshold for action to a deviation of more than five percent from a performance goal will have a greater negative impact on smaller programs than larger programs, with service issues related to only one or two veterans resulting in imposition of a PIP. As an example, the commenter stated that if a recipient serves ten veterans, this means that it cannot possess serious deficiencies or service issues for more than one veteran (*i.e.,* five percent of the recipient's veteran population) or it will trigger a PIP. Similarly, other commenters stated that the changes may have unintended effects on recipients that would disproportionately affect small and rural programs. In particular, the commenters express concerns in situations where failure to meet their goals with small populations would give rise to the appearance that the program is substandard or failing.

We agree with the commenters that slight deviations in meeting goals successfully could give the appearance of program mismanagement or failure. Also, we agree that smaller programs with fewer veterans could appear unsuccessful if only one or two veterans do not exit successfully from the program. However, VA believes that the changes to 38 CFR 61.80(c)(3)(v) and (vi) provide an adequate solution to tighten the performance metrics as well as provide relief from the disproportionate impact the changes would have on small and rural programs.

With respect to when VA may initiate a PIP, we believe the more than five percent deviation is the threshold where recipients should adjust their efforts to improve their outcomes in order to comply with the established GPD performance goals. This does not mean that VA will initiate imminent enforcement actions once a deviation greater than five percent is reached. VA will only take enforcement actions in

the event the recipient is not compliant with the established GPD performance goals after attempting a PIP. This is why VA adopted a quarterly assessment period as opposed to a monthly review. VA wants to afford recipients the opportunity to correct issues that could disqualify them from future funding. In the first quarterly review where a grantee is more than five percent away from a performance goal, the grantee and VA Liaison can review the data along with other program aspects to ascertain what causal relationships are present. Part of that assessment is determining whether the total number of veterans served by the program contributed to the award recipient's failure to attain performance goals. The recipient will have the ability to determine if the reason for the more than five percent deviation is an anomaly or requires the need for adjustments. If the greater than five percent deviation occurs for a second consecutive quarter, then this would indicate that an issue requires action, and the recipient would need to submit a PIP sixty days after VA's determination.

Accordingly, we are also amending the language in proposed 38 CFR 61.80(c)(3)(vi). In the proposed rule, VA stated that recipients would need to submit a PIP to VA's GPD Liaison within sixty (60) calendar days. VA believes that this is unclear, and we are amending it to state if VA determines that the recipient has a more than five percent deviation from established GPD performance goals for any two (2) consecutive quarters as defined in 38 CFR 61.80(c)(3)(i) through (iv), the recipient will submit a PIP to the VA GPD Liaison sixty (60) calendar days after VA makes its determination.

The recipient and VA Liaison can use the third quarter as a period to examine if the recipient's actions improved performance. While changing the name of the corrective action measure, VA declines to change the requirement that it is triggered after two consecutive quarters of reduced performance. Since two quarters are one-half of a typical one-year performance period for a grant, VA is reticent to accept the commenter's proposal to increase the threshold to three quarters. We would find this unacceptable because it would cover approximately three-fourths (75%) of the one-year performance period.

Based on a review of public comments VA also believes that there is confusion regarding the purpose of the changes to 38 CFR 61.80(c)(3)(v) and (vi). Several commenters appear to view the changes as punitive in nature. We note that the remedial action for a grantee's non-compliance with 2 CFR 200.338 is a corrective action plan, and VA believes it is appropriate to distinguish action plans related to failure to meet performance goals from those related to failure to comply with federal statutes or regulations under Title 2 CFR part 200. While some of the remedies reflected in 2 CFR 200.338 are the same as those in 38 CFR 61.80(c)(3)(v), the impetus for imposing those remedies is not. VA views the remedies reflected in 38 CFR 61.80(c)(3)(v) and (vi) as a mechanism to initiate proactive reviews with recipients along with giving them the ability to make program adjustments in order to meet the goals set out in the GPD program application and improve the services to the veterans they serve. Accordingly, as discussed above, VA has amended references to a Corrective Action Plan (CAP) to refer instead to a Performance Improvement Plan (PIP) to avoid confusing recipients with the enforcement actions of 2 CFR 200.338 for non-compliance.

Finally, one commenter referenced the absence of an appeal process for termination of grants. While it is true that Part 61 does not contain express appeal provisions, VA follows 2 CFR 200.340 through 200.342. VA provides advance notice of any enforcement actions and an opportunity to be heard and object or provide documentation challenging the enforcement decision. These procedures afford due process protections and, specific to the commenter's concerns, provide grant recipients an opportunity to raise issues regarding the accuracy of VA data. VA follows 2 CFR 200.343 regarding payments after a termination. VA makes no changes based on this comment.

Based on the rationale set forth in the proposed rule and in this document, VA is adopting the provisions of the proposed rule as a final rule with changes as noted above.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. According to the implementing regulations for the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 that require approval by OMB. Accordingly, pursuant to 44 U.S.C. 3507(d), VA is submitting a copy of this rulemaking action to OMB for review.

In the proposed rule we had stated that we would require a renewal of the collection of information under §§ 61.33 and 61.80. We had stated that § 61.33 requires recipients to report to VA all sources of income it has received for the project for which VA has awarded a grant. The proposed rule indicated that there would be no changes to this collection. We had also stated that under § 61.80 recipients are required to submit quarterly reports to VA Liaisons, who are VA staff members, about how the recipients are meeting the performance measures that are outlined in their grant applications. However, VA provides to the grantee (quarterly) the grantee's performance status regarding the VA performance metrics. The grantee does not provide a compliance report because it would be duplicative of information already available to the VA Liaison in existing VA systems through the grantee's monthly billing invoice information and admission and discharge notifications as reflected in the billing. Accordingly, we are no longer collecting information under these two sections. Compliance information from recipients is captured through other processes and therefore is not repeated in order to avoid duplication in collection.

The proposed rule also included the aggregate collection of information for capital grants, per diem grants and special need grants located at 38 CFR part 61. These collections were previously approved by OMB under OMB control number 2900–0554, which expired on September 30, 2020. As noted above, VA is submitting a new PRA request to OMB and awaits approval for the collections of information described herein. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

*Title:* VA Homeless Providers Grant and Per Diem Program.

*Summary of collection of information:* This collection of information is for capital grants, per diem grants, special need grants and case management grants located at §§ 61.11, 61.15, 61.17, 61.31, 61.41, and, 61.92. Information must be collected to determine which applicants are eligible for the grant and per diem program, and to prioritize applications for determining who will be awarded funds.

*Description of the need for information and proposed use of information:* This information is needed to determine eligibility for capital grants, per diem grants, special need grants and case management grants.

*Description of likely respondents:* Non-Profit Agencies and State and Local Governments.

*Estimated number of respondents per year:*

*Capital grants and per diem: 100* per year.

*Per diem for non-capital grant recipients:* 500 per year.

*Special need grants:* 50 per year.

*Case management grants:* 300 per year.

*Estimated frequency of responses per year:*

*Capital grants and per diem:* 1 time per year.

*Per diem for non-capital grant recipients:* 1 time per year.

*Special need grants:* 1 time per year.

*Case management grants:* 1 time per year.

*Estimated average burden per response:*

*Capital grants and per diem:* 35 hours.

*Per diem for non-capital grant recipients:* 20 hours.

*Special need grants:* 20 hours.

*Case management grants: 20 hours.*

*Estimated total annual reporting and recordkeeping burden:* 20,500 hours.

*Capital grants and per diem:* 3,500 hours.

*Per diem for non-capital grant recipients:* 10,000 hours.

*Special need grants:* 1,000 hours.

*Case management grants:* 6,000 hours.

*Estimated cost to respondents per year:* We estimate the annual cost to respondents will be $305,655, based on a rate of $14.91 per hour. Out of that annual cost, it is estimated that one fourth of the grant proposals will be written on a pro bono basis and the remaining three fourths of the grant proposals will be written by professional grant writers.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The provisions associated with this rulemaking do not involve costs to small entities because the VA Homeless Providers Grant and Per Diem (GPD) Program provides federal awards (*e.g.,* grants) to small entities. VA awards five types of grants to small entities meeting specific criteria for supportive or transitional housing for homeless veterans until the veteran can transition into permanent housing. Specifically, VA awards capital grants, special need grants, technical assistance grants, and case management services grants, and per diem only grants to offset operating costs for a program of supportive housing or services. Small entities will choose whether to apply for federal awards, and there are no out-of-pocket expenses (*e.g.,* no filing fees) to apply for funding. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on state, local, and tribal governments, or on the private sector.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.024, VA Homeless Providers Grant and Per Diem Program.

**List of Subjects in 38 CFR Part 61**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on April 9, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Consuela Benjamin,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 61 as follows:

## PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 1. The authority citation for part 61 continues to read as follows:

**Authority:** 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2061, and 2064.

### § 61.1 [Amended]

■ 2. In § 61.1 amend paragraph (2)(i) of the definition of ''Supportive housing'' by removing the phrase ''within a period that is not less than 90 days and does not exceed'' and adding in its place ''as soon as possible but no later than''.

■ 3. Add § 61.5 to subpart A to read as follows:

### § 61.5 Implementation of VA Limits on Payments due to Funding Restrictions.

(a) *Continuing payments.* Once a grant agreement is awarded by VA, payments will continue for the time frame specified in the federal award, subject to the availability of funds, as long as the recipient continues to provide the supportive services and housing

described in its grant application, meets VA's Homeless Providers Grant and Per Diem (GPD) Program performance goals, and meets the applicable requirements of this part.

(b) *Factors.* (1) In cases of limited availability of funding during the time frame specified in the federal award, VA may terminate the payment of per diem payments to recipients after weighing the following factors:

(i) Non-duplication of ongoing services and equitable distribution of grant agreements across geographic regions, including rural communities and tribal lands;

(ii) Receipt by recipient of any capital investment from VA or any other source; and

(iii) Recipient's demonstrated compliance with GPD performance goals.

(2) Notwithstanding paragraph (b)(1) of this section, when an awarded grant agreement is terminated during the time frame specified in the federal award due to no fault by the recipient, VA shall refrain from applying the recapture provisions of 38 CFR 61.67.

■ 4. Revise § 61.33 to read as follows:

**§ 61.33 Payment of per diem.**

(a) *General.* VA will pay per diem to recipients that provide a bed day of care:

(1) For a homeless veteran:

(i) Who VA referred to the recipient; or

(ii) For whom VA authorized the provision of supportive housing or supportive service;

(2) For providers of both supportive housing and services. When the referral or authorization of the homeless veteran will not result in the project exceeding the total number of bed days of care or total obligated funding as indicated in the grant agreement and funding action document; or

(3) For service centers. When the total hours of service or total obligated funding as indicated in the grant agreement and funding action document.

(b) *VA Review.* VA may at any time review the provision of supportive housing and services to individual veterans by the provider to ensure the care provided continues to be needed and appropriate.

(c) *Rate of payments for individual veterans.* The rate of per diem for each veteran in supportive housing will be the lesser of:

(1) The daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of local and State governments, from private entities or organizations, and from program participants); or

(2) The current VA state home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1).

(d) *Rate of payments for service centers.* The per diem amount for service centers shall be 1–8 of the lesser of the amount in paragraph (c)(1) or (c)(2) of this section, per hour, not to exceed eight (8) hours in any day.

(e) *Reimbursements.* Per diem may be paid retroactively for services provided not more than three (3) days before VA approval is given or where, through no fault of the recipient, per diem payments should have been made but were not made.

(f) *Payments for absent veterans.* VA will pay per diem up to a maximum of seventy-two (72) consecutive hours for the scheduled or unscheduled absence of a veteran, or, in the case of an in-patient hospitalization, will pay per diem up to a maximum of seven (7) days.

(g) *Veterans receiving supportive housing and services.* For circumstances where a veteran is receiving supportive housing and supportive services from the same per diem recipient, VA will not pay a per diem for the supportive services.

(h) *Reporting other sources of income.* At the time of receipt of a federal award from VA, a per diem recipient must report to VA all other sources of income for the project for which per diem was awarded. The report provides a basis for adjustments to the per diem payment under paragraph (c)(1) of this section.

■ 5. Amend § 61.61 by revising paragraph (a) to read as follows:

**§ 61.61 Agreement and funding actions.**

(a) *Agreement.* When VA selects an applicant for grant or per diem award under this part, VA will incorporate the requirements of this part into an agreement to be executed by VA and the applicant. VA makes the final decision on applicant selection. VA may negotiate with an applicant regarding the details of the agreement and funding, as necessary. VA will enforce the agreement through such action as may be appropriate, including temporarily withholding cash payments pending correction of a deficiency. Appropriate actions include actions in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

* * * * *

■ 6. Amend § 61.80 by revising paragraph (c) to read as follows:

**§ 61.80 General operation requirements for supportive housing and service centers.**

* * * * *

(c) VA will provide performance goals to recipients in its initial federal award and update annually thereafter:

(1) Each recipient must conduct an ongoing assessment of the supportive housing and services needed by their residents and the availability of housing and services to meet this need. Recipients are expected to make adjustments to meet resident needs.

(2) The recipient will provide to the VA GPD Liaison evidence of its ongoing assessment of the plan described in the grant application. The assessment must show how it is using the plan to meet the GPD performance goals.

(3) The VA GPD Liaison will provide the GPD performance information to recipients. VA will incorporate this assessment information into the annual inspection report.

(i) The VA GPD Liaison will review the quarterly assessment with the recipient no later than (30) days after the end of each of the following quarters:

(A) Quarter 1 (October–December) assessment completed not later than January 30;

(B) Quarter 2 (January–March) assessment completed not later than April 30;

(C) Quarter 3 (April–June) assessment completed not later than July 30; and,

(D) Quarter 4 (July–September) assessment completed not later than October 30.

(ii) A valid assessment must include the following:

(A) A comparison of actual accomplishments to established GPD performance goals for the reporting period addressing quantifiable as well as non-quantifiable goals. Examples include, but are not limited to, a description of grant agreement-related activities, such as: Hiring and training personnel, community orientation/awareness activities, programmatic activities, or job development; and

(B) Identification of administrative and programmatic problems, which may affect performance and proposed solutions.

(iii) Recipients and VA GPD Liaisons must include a summary of the quarterly assessment in their administrative records. These quarterly assessments will be used to provide a

cumulative assessment for the entire calendar year.

(iv) The recipient must immediately inform the VA GPD Liaison of any significant developments affecting its ability to accomplish the work. VA GPD Liaisons will provide necessary technical assistance.

(v) If, after reviewing a recipient's assessment, VA determines that it falls more than five percent below any performance goal, then VA may require the recipient to create and follow a performance improvement plan (PIP) as outlined in 38 CFR 61.80(c)(vi).

(vi) Performance Improvement Plan (PIP): If VA determines that a recipient deviates more than five percent from established GPD performance goals for any two (2) consecutive quarters as defined in 38 CFR 61.80(c)(3)(A)(i) through (iv), the recipient will submit a PIP to the VA GPD Liaison sixty (60) calendar days after VA makes its determination.

(A) The PIP must identify the activity which falls below the measure. The PIP must describe the reason(s) why the recipient did not meet the performance measure(s) and provide specific proposed corrective action(s) and a timetable for accomplishment of the corrective action. The plan may include the recipient's intent to propose modifying the grant agreement. The recipient will submit the PIP to the VA GPD Liaison.

(B) The VA GPD Liaison will forward the PIP to the VA National GPD Program Office. The VA National GPD Program Office will review the PIP and notify the recipient in writing whether the PIP is approved or disapproved. If disapproved, the VA GPD Liaison will make suggestions for improving the proposed PIP, and the recipient may resubmit the PIP to the VA National GPD Program Office.

(vii) If the recipient is not compliant after the PIP, then VA may impose any combination of the following enforcement actions by award revision:

(A) Withhold placements;

(B) Withhold payment;

(C) Suspend payment; and

(D) Terminate the grant agreement, as outlined in this part or other applicable federal statutes and regulations.

* * * * *

[FR Doc. 2021–13272 Filed 6–24–21; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R05–OAR–2020–0386; FRL–10024–84–Region 5]

## Air Plan Approval; Indiana; Monitoring Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), a revision to Indiana's State Implementation Plan (SIP) to address changes to its air emissions monitoring rules for Portland cement plants. Indiana revised its rules for Portland cement plants to update the monitoring of particulate matter (PM) emissions to allow an additional monitoring option. This additional monitoring option is consistent with EPA's recent revisions to Federal requirements for Portland cement plants. EPA proposed to approve this action on March 25, 2021 and received no comments.

**DATES:** This final rule is effective on July 26, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2020–0386. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

### I. Background Information

On March 25, 2021, EPA proposed to approve a revision to the Indiana SIP to address changes to the monitoring requirements at 326 IAC 3–5–1 for Portland cement plants (86 FR 15838). An explanation of the CAA requirements, a detailed analysis of the revision, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on April 26, 2021. EPA received no comments on the proposal. Therefore, we are finalizing our action as proposed.

### II. Final Action

EPA is approving revisions to 326 IAC 3–5–1, continuous monitoring requirements, into the Indiana SIP.

### III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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

[1] 62 FR 27968 (May 22, 1997).

Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: June 14, 2021.

**Cheryl Newton,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.770, the table in paragraph (c) is amended by revising the entry for ''3–5–1'' under the heading ''Rule 5. Continuous Monitoring of Emissions'' to read as follows:

**§ 52.770 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

| Indiana citation | Subject | Indiana effective date | EPA approval date | Notes |
|---|---|---|---|---|
| * | * | * | * | * |
| **Rule 5. Continuous Monitoring of Emissions** | | | | |
| 3–5–1 | Applicability; continuous monitoring requirements for applicable pollutants. | 4/24/2020 | 6/25/2021, [INSERT **FEDERAL REGISTER** CITATION]. | |
| * | * | * | * | * |

* * * * *

[FR Doc. 2021–13471 Filed 6–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R05–OAR–2020–0115; FRL–10024–92–Region 5]**

## Air Plan Approval; Illinois; Multi-Pollutant Standards Rule, Control of Emissions From Large Combustion Sources

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the Illinois State Implementation Plan (SIP) to amend requirements applicable to certain coal-fired electric generating units (EGUs) in the Illinois Administrative Code, also known as the Multi-Pollutant Standards (MPS) Rule. On January 23, 2020, the Illinois Environmental Protection Agency (IEPA) submitted a request to amend the provisions of the MPS Rule in the Illinois regional haze SIP. EPA is approving the revision because it will result in a significant decrease in emissions of Oxides of Nitrogen and Sulfur Dioxide, meets the applicable requirements of the Clean Air Act (CAA), and does not interfere with any applicable requirement concerning attainment and reasonable further progress.

**DATES:** The final is effective July 26, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2020–0115. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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

This rule approves IEPA's January 23, 2020, submission to amend requirements applicable to certain coal-fired EGUs in the Illinois Administrative Code, also known as the MPS Rule. The background for this action is discussed in detail, and EPA's reasons for proposing approval were provided, in EPA's notice of proposed rulemaking (NPRM), dated March 8, 2021 (86 FR 13260), and will not be restated here.

### II. What comments did we receive on the proposed rule?

In the NPRM, EPA provided a 30-day review and comment period for the proposed rule. The comment period ended on April 7, 2021. We received one comment supportive of the proposed rule and no adverse comments were received.

### III. What action is EPA taking?

EPA is approving IEPA's January 23, 2020 request to revise the Illinois SIP to amend all the provisions of MPS Rule, section 225.233, except for subsections 225.233(c), (d), and (i).

### IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

[1] 62 FR 27968 (May 22, 1997).

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 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Sulfur oxides.

Dated: June 14, 2021.

**Cheryl Newton,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.720, the table in paragraph (c) is amended under ''Part 225: Control of Emissions From Large Combustion Sources'', ''Subpart B: Control of Mercury Emissions From Coal-Fired Electric Generating Units'' by revising the entry for '225.233' to read as follows:

**§ 52.720 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

| Illinois citation | Title/subject | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| **Part 225: Control of Emissions From Large Combustion Sources** | | | | |
| * | * | * | * | * |
| **Subpart B: Control of Mercury Emissions From Coal-Fired Electric Generating Units** | | | | |
| 225.233 | Multi-Pollutant Standard (MPS) | 8/23/2019 | 6/25/2021, [INSERT **FEDERAL REGISTER** CITATION]. | Except (c), (d), and (i). |
| * | * | * | * | * |

* * * * *

[FR Doc. 2021–13431 Filed 6–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2019–0709; FRL–10025–14–Region 9]**

## Approval of Air Quality Implementation Plans; California; Eastern Kern; 8-Hour Ozone Nonattainment Area Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve, or conditionally approve, all or portions of three state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or ''the Act'') requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the Eastern Kern, California (''Eastern Kern'') ozone nonattainment area. In this action, the EPA refers to these submittals collectively as the ''2017 Eastern Kern Ozone SIP.'' The 2017 Eastern Kern Ozone SIP addresses certain nonattainment area requirements for the 2008 ozone NAAQS, including the requirements for an emissions inventory, attainment demonstration, reasonable further progress, reasonably available control measures, contingency measures, among others; and establishes motor vehicle emissions budgets. The EPA is taking final action to approve the 2017 Eastern Kern Ozone SIP as meeting all the applicable ozone nonattainment area requirements except for the contingency measure requirement, for which the EPA is taking final action to conditionally approve, and the reasonably available control measures and attainment demonstration requirements, for which the EPA is deferring action at this time.

**DATES:** This rule will be effective on July 26, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0709. All

documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3963 or *ungvarsky.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

I. Summary of the Proposed Action
II. Public Comments and EPA Responses
III. Final Action
IV. Statutory and Executive Order Reviews

## I. Summary of the Proposed Action

On October 28, 2020, the EPA proposed to approve, under Clean Air Act (CAA) section 110(k)(3), and to conditionally approve, under CAA section 110(k)(4), all or portions of three submittals from the California Air Resources Board (CARB) and the Eastern Kern Air Pollution Control District (EKAPCD or ''District'') as revisions to the California SIP for the Eastern Kern ozone nonattainment area.[1] The three SIP revisions include the ''2017 Ozone Attainment Plan For 2008 Federal 75 ppb 8-Hour Ozone Standard'' (''Eastern Kern 2017 Ozone Plan''),[2] the Eastern Kern portion of the ''2018 Updates to the California State Implementation Plan'' (''2018 SIP Update''),[3] and the ''Transportation Conformity Budget State Implementation Plan Update for the Eastern Kern 2017 Ozone Attainment Plan'' (''2020 Conformity Budget Update'').[4] Collectively, we refer to the relevant portions of the three SIP revisions as the ''2017 Eastern Kern Ozone SIP,'' and we refer to our October 28, 2020 proposed rule as the ''proposed rule.''

In our proposed rule, we provided background information on the ozone standards,[5] area designations, related SIP revision requirements under the CAA, and the EPA's implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SIP Requirements Rule (''2008 Ozone SRR''). To summarize, at the time of our proposed rule, the Eastern Kern ozone nonattainment area was classified as ''Serious'' for the 2008 ozone NAAQS, and the 2017 Eastern Kern Ozone SIP was developed to address the statutory and regulatory requirements for revisions to the SIP for the Eastern Kern Serious ozone nonattainment area.[6]

In our proposed rule, we also discussed a decision issued by the D.C. Circuit Court of Appeals in *South Coast Air Quality Management Dist.* v. *EPA* (''*South Coast II*'')[7] that vacated certain portions of the EPA's 2008 Ozone SRR. The only aspect of the *South Coast II* decision that affects this action is the vacatur of the provision in the 2008 Ozone SRR that allowed states to use an alternative baseline year for demonstrating reasonable further progress (RFP). To address this, in the 2018 SIP Update, CARB submitted an updated RFP demonstration that relied on a 2011 baseline year as required.[8]

For our proposed rule, we reviewed the various SIP elements contained in the 2017 Eastern Kern Ozone SIP (other than the reasonably available control measures (RACM) demonstration or the attainment demonstration), evaluated them for compliance with statutory and regulatory requirements, and concluded that they meet all applicable requirements, except for the contingency measure requirement, for which the EPA proposed conditional approval. More specifically, in our proposal rule, we based our proposed actions on the following determinations:

- CARB and the District met all applicable procedural requirements for public notice and hearing prior to the adoption and submittal of the Eastern Kern 2017 Ozone Plan, 2018 SIP Update, and 2020 Conformity Budget Update (see 85 FR 68271 from the proposed rule);
- The 2012 base year emissions inventory from the Eastern Kern 2017 Ozone Plan is comprehensive, accurate, and current and thereby meets the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS. Additionally, the future year baseline projections reflect appropriate calculation methods and the latest planning assumptions and are properly supported by the SIP-approved stationary and mobile source measures (see 85 FR 68271–68273, 68274–68276 from the proposed rule);
- The emissions statement element of the Eastern Kern 2017 Ozone Plan, including District Rule 108.2 (''Emission Statement Requirements'') meets the requirements for emissions statements under CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS (see 85 FR 68273–68274 from the proposed rule);
- The 15 percent rate-of-progress (ROP) demonstration element in the Eastern Kern 2017 Ozone Plan meets the requirements of CAA section 182(b)(1) for the Eastern Kern ozone nonattainment area for the 2008 ozone NAAQS based on the previously-approved ROP demonstration for the

[1] 85 FR 68268. Eastern Kern is located on the western edge of the Mojave Desert, separated from populated valleys and coastal areas to the west and south by several mountain ranges. For a precise description of the geographic boundaries of the Eastern Kern ozone nonattainment area, see 40 CFR 81.305.

[2] Submitted by letter dated October 25, 2017, from Richard W. Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

[3] Submitted electronically on December 11, 2018 as an attachment to a letter dated December 5, 2018 from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

[4] Submitted electronically on August 31, 2020, as an attachment to a letter dated August 25, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX.

[5] Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen ($NO_X$) in the presence of sunlight. The 1-hour ozone NAAQS is 0.12 parts per million (ppm) (one-hour average), the 1997 ozone NAAQS is 0.08 ppm (eight-hour average), and the 2008 ozone NAAQS is 0.075 ppm (eight-hour average). CARB refers to reactive organic gases (ROG) in some of its ozone-related submittals. The CAA and the EPA's regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases. In this final rule, we use the term (VOC) to refer to this set of gases.

[6] On May 15, 2021, CARB requested that the EPA voluntarily reclassify Eastern Kern to ''Severe'' for the 2008 ozone NAAQS, and we approved the reclassification to Severe on June 7, 2021 (86 FR 30204), with a new attainment date of July 20, 2027.

[7] *South Coast Air Quality Management Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). The term ''*South Coast II*'' is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as ''*South Coast.*'' The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standard. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[8] In a letter dated December 18, 2019, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region 9, CARB requested withdrawal of the RFP demonstration included in the Eastern Kern 2017 Ozone Plan submitted in October 2017. The RFP demonstration in the 2018 SIP Update replaced the demonstration in the Eastern Kern 2017 Ozone Plan.

Eastern Kern [9] 1-hour ozone nonattainment area (see 85 FR 68274–68276 from the proposed rule);

• The RFP demonstration in the 2018 SIP Update, as corrected in the 2020 Conformity Budget Update, provides for emissions reductions of VOC or $NO_X$ of at least 3 percent per year on average for each three-year period from a 2011 baseline year through the attainment year and thereby meets the requirements of CAA sections 172(c)(2) and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii) for the 2008 ozone NAAQS (see 85 FR 68274–68276 from the proposed rule);

• The motor vehicle emissions budgets in the 2020 Conformity Budget Update for the RFP milestone/attainment year of 2020 are consistent with the RFP demonstration, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements in 40 CFR 93.118(e), including the adequacy criteria in 40 CFR 93.118(e)(4) and (5) (see 85 FR 68279–68280 from the proposed rule); and

• Through previous EPA approvals of the 1993 Photochemical Assessment Monitoring Station SIP revision and the ''Annual Network Plan Covering Monitoring Operations in 25 California Air Districts, July 2019'' with respect to the Eastern Kern element,[10] we find that the enhanced monitoring requirements under CAA section 182(c)(1) and 40 CFR 51.1102 for Eastern Kern have been met with respect to the 2008 ozone NAAQS (see 85 FR 68280–68282 from the proposed rule).[11]

In our proposed rule, in light of the *Bahr* decision,[12] we determined that the contingency measures element of the 2017 Eastern Kern Ozone SIP could not be fully approved without supplementation by the District and CARB. However, we also determined that the element could be conditionally approved as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for the 2008 ozone NAAQS, based upon commitments by the District [13] and CARB [14] to supplement the element through submission, as a SIP revision (within one year of our final conditional approval action), of a revised District rule or rules that would add new limits or other requirements if an RFP milestone is not met or if Eastern Kern fails to attain the 2008 ozone NAAQS by the applicable attainment date. See 85 FR 68276–68279 from the proposed rule.

Please see our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for approval or conditional approval of the above-listed elements of the 2017 Eastern Kern Ozone SIP.

## II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on October 28, 2020, the date of its publication in the **Federal Register**, and closed on November 27, 2020. During this period, the EPA received one comment letter submitted by Air Law for All on behalf of the Center for Biological Diversity (referred to herein as ''CBD'' or ''commenter''). We address CBD's comments in the following paragraphs of this final rule.

*Comment #1:* Citing certain statutory provisions and selected excerpts from the EPA's implementation rules for the 1997 and 2008 ozone NAAQS, CBD asserts that, for Serious areas, the RFP demonstration must meet both the general RFP requirements in section 172(c)(2) that are tied to attainment of the ozone standards and the specific RFP requirements in section 182(c)(2)(B) for reductions in emissions of VOCs from baseline emissions. In short, CBD contends that the RFP ''targets'' cannot be severed from the attainment demonstration and control strategy and independently approved, and because the EPA has not proposed to approve an attainment demonstration and control strategy for the Eastern Kern nonattainment area, there is no basis to conclude that the RFP demonstration in the 2017 Eastern Kern Ozone SIP meets the general RFP requirements in section 172(c)(2).

*Response to Comment #1:* As CBD notes, Serious ozone nonattainment areas are subject to both the general requirements for nonattainment plans in subpart 1, and the specific requirements for ozone areas in subpart 2, including the requirements related to RFP and attainment. This is consistent with the structure of the CAA as modified under the 1990 amendments, which introduced additional subparts to part D of title I of the CAA to address requirements for specific NAAQS pollutants, including ozone (subpart 2), carbon monoxide (CO) (subpart 3), particulate matter (subpart 4), and sulfur oxides, nitrogen dioxide, and lead (subpart 5).

These subparts apply tailored requirements for these pollutants, including those based on an area's designation and classification, in addition to and often in place of the generally applicable provisions retained in subpart 1. While CAA section 172(c)(2) of subpart 1 states only that nonattainment plans ''shall require reasonable further progress,'' CAA sections 182(b)(1) and 182(c)(2)(B) of subpart 2 provide specific percent reduction targets for ozone nonattainment areas to meet the RFP requirement. Put another way, subpart 2 further defines RFP for ozone nonattainment areas by specifying the incremental amount of emissions reduction required by set dates for those areas.[15] For Moderate ozone nonattainment areas, CAA section 182(b)(1) defines RFP by setting a specific 15% VOC reduction requirement over the first six years of the plan. For Serious and above ozone nonattainment areas, CAA section 182(c)(2)(B) defines RFP by setting specific annual percent reductions for the period following the first six-year period and allows averaging over a 3-year period. With respect to the 1-hour ozone NAAQS, the EPA stated that, by meeting the specific percent reduction requirements in CAA sections 182(b)(1) and 182(c)(2)(B), the State will also

[9] See Eastern Kern 2017 Ozone Plan, 33, and 62 FR 1150, 1172 (January 8, 1997); clarified at 84 FR 45422 (August 29, 2019).

[10] Letter dated November 26, 2019, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Ravi Ramalingam, Chief, Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division, CARB.

[11] In the proposed rule, we found that the clean fuels fleet program requirement in CAA sections 182(c)(4) and 246 and 40 CFR 51.1102 had been met in Eastern Kern through previous EPA approval of the 1994 ''Opt-Out Program'' SIP revision. Upon reconsideration, we now recognize that the clean fuels fleet program requirement does not apply to Eastern Kern as a reclassified Serious nonattainment area for the 2008 ozone NAAQS because the 1980 population of Eastern Kern was below 250,000, and as such, the area does not meet the population-based applicability threshold for the requirement under CAA section 246(a)(3).

[12] *Bahr* v. *EPA,* 836 F.3d 1218 (9th Cir. 2016) (''*Bahr*'') (rejecting early-implementation of contingency measures and concluding that a contingency measure under CAA section 172(c)(9) must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before).

[13] Letter dated September 1, 2020, from Glen E. Stephens, Air Pollution Control Officer, EKAPCD, to Richard Corey, Executive Officer, CARB.

[14] Letter dated September 18, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX.

[15] CAA section 171(1) defines reasonable further progress as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' The words ''this part'' in the statutory definition of RFP refer to part D of title I of the CAA, which contains both the general requirements in subpart 1 and the pollutant-specific requirements in subparts 2–5 (including the ozone-specific RFP requirements in CAA sections 182(b)(1) and 182(c)(2)(B) for Serious areas).

satisfy the general RFP requirements of section 172(c)(2) for the time period discussed.[16]

We agree with CBD that the EPA has adapted the RFP requirements under the CAA to implement the three 8-hour-average ozone NAAQS that have been promulgated since the 1990 CAA Amendments. In the ''Phase 2'' SIP Requirements Rule[17] for the 1997 Ozone NAAQS (''Phase 2 rule''), the Agency adapted the RFP requirements of CAA sections 172(c)(2) and 182(a)(1) so as to require plans to provide for the minimum required percent reductions and, for certain Moderate areas, to provide for the reductions as necessary for attainment. See, *e.g.,* 40 CFR 51.910(a)(1)(ii)(A) and (b)(2)(ii)(C).

In 2015, the EPA replaced the regulations promulgated through the Phase 2 rule with the regulations promulgated through the 2008 Ozone SIP Requirements Rule (SRR).[18] In the 2008 Ozone SRR, the EPA established RFP requirements for the 2008 ozone NAAQS that are similar, in most respects, to those in the Phase 2 rule for the 1997 ozone NAAQS but that do not carry forward the aspect of the RFP requirement for the 1997 ozone NAAQS that defined RFP for certain years for certain Moderate areas in terms of the reductions needed for attainment.[19] More explicitly, in the 2008 Ozone SRR, the EPA defined RFP as meaning both the ''emissions reductions required under CAA section 172(c)(2) *which the EPA interprets to be an average 3 percent per year emissions reductions of either VOC or $NO_X$* and CAA sections 182(c)(2)(B) and (c)(2)(C) and the 15 percent reductions over the first six years of the plan and the following three percent per year average under 40 CFR 51.1110.''[20] (emphasis added). Thus, under the 2008 Ozone SRR, the RFP emissions reductions required for Serious and above ozone nonattainment areas under CAA section 172(c)(2) are based on a set annual percentage found in the CAA, not on the specific attainment needs for the area. In this regard, we have been even more explicit in our SRR for the 2015 ozone NAAQS:[21] ''Reasonable further progress (RFP) means the emissions reductions required under CAA sections 172(c)(2), 182(c)(2)(B), 182(c)(2)(C), and § 51.1310. The EPA interprets RFP under CAA section 172(c)(2) to be an average 3 percent per year emissions reduction of either VOC or $NO_X$.''[22]

In the 2008 Ozone SRR, which is the set of regulations that governs the EPA's action here, RFP is defined in terms of percent reduction requirements, not in terms of the reductions necessary for attainment. In other words, for the 2008 ozone NAAQS, the RFP ''targets'' represent the minimum progress that is required under the CAA and our regulations, not necessarily all of the reductions necessary to achieve attainment of the ozone NAAQS, which could vary largely from one nonattainment area to another.

Eastern Kern is a Serious nonattainment area for the 2008 ozone NAAQS, and the RFP demonstration in the 2017 Eastern Kern Ozone SIP was developed to meet the applicable requirements of the CAA and our 2008 Ozone SRR, not the Phase 2 rule for the 1997 ozone NAAQS. Specifically, we reviewed the RFP demonstration in the 2017 Eastern Kern Ozone SIP for compliance with the requirements under 40 CFR 51.1110(a)(2)(i), which adapts the requirements under CAA sections 172(c)(2) and 182(b)(1) for Moderate areas, and 40 CFR 51.1110(a)(2)(ii), which adapts the requirements of CAA section 182(c)(2)(B) for Serious areas.[23] The requirements under 40 CFR 51.1110(a)(2)(i) and 40 CFR 51.1110(a)(2)(ii) are cumulative and, together, they require a 15 percent emission reduction from the baseline year within 6 years after the baseline year and an average emissions reduction of 3 percent per year for all remaining 3-year periods after the first 6-year period until the year of the area's attainment date. As explained further in our proposed rule, based on our evaluation, we found that the 2017 Eastern Kern Ozone SIP provided for the percent reductions required under the 2008 Ozone SRR.[24]

Importantly, under the 2008 Ozone SRR, the RFP demonstration for the 2008 ozone NAAQS does not need to provide for the reductions needed for attainment. Thus, contrary to CBD's assertion, the RFP demonstration for Eastern Kern can be severed from the attainment demonstration and control strategy and can be independently approved, and we do so in this final rule by taking final action to approve the RFP demonstration in the 2017 Eastern Kern Ozone SIP while deferring action on the attainment demonstration.

*Comment #2:* CBD comments that the submittal fails to show that the substitute $NO_X$ emissions reductions will ''result in a reduction in ozone concentrations at least equivalent'' to the required three percent per annum VOC emissions reductions, and as a result, the EPA's proposed approval of the RFP demonstration is arbitrary and capricious.

The commenter describes the relative roles of VOC and $NO_X$ in ozone formation, including the existence of an ''optimum'' VOC to $NO_X$ ratio for a given level of VOC (*i.e.,* a $NO_X$ concentration at which the maximum amount of ozone is produced). As explained by the commenter, in a ''$NO_X$ saturated'' situation where $NO_X$ levels exceed this optimum ratio, a reduction in $NO_X$ emissions can lead to increases in ozone levels, whereas in a ''$NO_X$ limited'' situation with $NO_X$ levels below the optimum ratio, a reduction in $NO_X$ emissions decreases ozone levels. The commenter quotes the EPA's report to Congress as including, ''ozone response to precursor control can vary greatly with each area'' and ''the relative effectiveness of controls of volatile organic compounds (VOCs) and oxides of nitrogen ($NO_X$) in ozone abatement varies widely.''[25] The commenter argues that language in the CAA, including CAA sections 185B, 182(f), and 182(c)(2)(C), indicates that Congress was aware of the issue of the relative roles of $NO_X$ and VOC in ozone formation, including that in some scenarios $NO_X$ reductions may actually increase ozone concentrations or at least not help to reduce ozone concentrations.

The commenter then points to the EPA's consideration of the relative effectiveness of $NO_X$ and VOC controls for interpollutant offset trading under the new source review (NSR) permitting program and in applying requirements for major stationary sources of VOC to $NO_X$ sources under CAA section 182(f), noting that in these situations EPA guidance indicates that photochemical grid modeling of multiple scenarios should be conducted to support demonstrations related to the relative

[16] 57 FR 13498, at 13510 (Moderate areas) and at 13518 (Serious areas) (April 16, 1992).

[17] 70 FR 71612 (November 29, 2005).

[18] 80 FR 12264 (March 6, 2015). Under 40 CFR 51.919 and 51.1119, the regulations promulgated through the 2008 Ozone SRR replaced the regulations promulgated through the Phase 2 rule, with certain exceptions not relevant here.

[19] Compare the RFP requirements for the 1997 ozone NAAQS at 40 CFR 51.910(a)(1)(ii)(A) and (b)(2)(ii)(C) with the analogous provisions for the 2008 ozone NAAQS at 40 CFR 51.1110(a)(2)(i)(B).

[20] 40 CFR 51.1100(t).

[21] 83 FR 62998 (December 6, 2018).

[22] 40 CFR 51.1300(l).

[23] 40 CFR 51.1110(a)(2) applies to Eastern Kern because Eastern Kern is an area with an approved 1-hour ozone NAAQS 15 percent VOC Rate of Progress (ROP) plan.

[24] 85 FR 68268, at 68274–68276.

[25] Excerpt from CBD comments (see page 10) citing ''The Role of Ozone Precursors in Tropospheric Ozone Formation and Control: A Report to Congress,'' EPA–454/R–93–024, at 2–2 (July 1993), EPA Office of Air Quality Planning and Standards (report to Congress mandated by section 185B, 42 U.S.C. 7511f).

effectiveness of controls. Through comparison of the contexts of these guidance documents, which recommended photochemical modeling, and that of section 182(c)(2)(C), the commenter suggests that the 2017 Eastern Kern Ozone SIP should have included similar photochemical grid modeling to determine whether the substitute $NO_X$ emission reductions result in equivalent ozone reductions.

*Response to Comment #2:* In general, we agree with the commenter's descriptions of the relative roles of VOC and $NO_X$ in ozone formation and geographic differences in the ozone response to precursor control, depending on whether an area is ''$NO_X$-saturated'' or ''$NO_X$-limited.'' We also agree with the commenter that Congress was aware of these issues and provided for the EPA to address them under provisions of the CAA.

However, we disagree with the commenter's characterization of the 2017 Eastern Kern Ozone SIP and the EPA's proposed approval. While the preamble of the EPA's proposed approval did not provide an analysis showing that $NO_X$ substitution would ''result in a reduction in ozone concentrations at least equivalent'' to the required VOC emissions reductions needed for RFP, the supporting documentation in the docket for the proposed approval, as further clarified in our response to comments herein, provides such analysis. As described below, we find that the analysis included with the modeling and control strategy in the 2017 Eastern Kern Ozone SIP adequately demonstrates that annual and cumulative $NO_X$ reductions in Eastern Kern will result in a reduction in ozone concentrations that is at least equivalent to the ozone reductions that would be achieved by VOC emission reductions alone. We therefore agree with the use of $NO_X$ substitution in the RFP demonstration for Eastern Kern.

Under CAA section 182(c)(2)(B), the RFP demonstration for a Serious ozone nonattainment area will demonstrate RFP based solely on the prescribed annual rate of VOC emission reductions. Alternatively, under CAA section 182(c)(2)(C), the demonstration may satisfy the RFP requirement based on a combination of VOC and $NO_X$ reductions if it demonstrates that reductions of VOC and $NO_X$ would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions otherwise required. For Eastern Kern, the RFP demonstration for milestone years 2017 and 2020 both rely on a combination of VOC reductions and $NO_X$ reductions from the RFP baseline year of 2011.

The revised RFP demonstration in the 2018 SIP Update, as corrected in the 2020 Conformity Budget Update, shows the extent to which the area is relying on $NO_X$ emissions reductions to substitute for otherwise-required VOC reductions in milestone years 2017 and 2020. For milestone year 2017, the RFP demonstration relies on a combination of 1.4 tons per day (tpd) VOC reductions and 0.4 tpd $NO_X$ reductions from the 2011 RFP baseline year rather than the otherwise-required VOC reductions of 1.6 tpd. That is, 0.4 tpd of $NO_X$ reductions substitutes for 0.2 tpd of VOC reductions otherwise required, which represents a 2:1 ratio for substitution of $NO_X$ for VOC in RFP milestone year 2017. This substitution of $NO_X$ reductions for VOC reductions is acceptable under CAA section 182(c)(2)(C) so long as the ozone concentration reductions from 2011 to 2017 in Eastern Kern under the combined VOC/$NO_X$ emissions reduction scenario are at least equivalent to that which would result under the VOC-only reduction scenario.

The same applies to milestone year 2020. For that year, the RFP demonstration relies on a combination of 1.5 tpd VOC reductions and 3.1 tpd $NO_X$ reductions from the 2011 RFP baseline year rather than the otherwise-required VOC reductions of 2.3 tpd. That is, 3.1 tpd of $NO_X$ reductions substitutes for 0.8 tpd of VOC reductions otherwise required, which means that $NO_X$ is substituted for VOC in RFP milestone year 2020 at roughly a 4:1 ratio. Again, this substitution of $NO_X$ reductions for VOC reductions is acceptable under CAA section 182(c)(2)(C) so long as the ozone concentration reductions from 2011 to 2020 in Eastern Kern under the combined VOC/$NO_X$ emissions reduction scenario are at least equivalent to that which would result under the VOC-only reduction scenario.

The 2017 Eastern Kern Ozone SIP contains a demonstration supporting the use of $NO_X$ substitution in the Eastern Kern nonattainment area. This is based on evidence that the Eastern Kern nonattainment area is $NO_X$-limited, and also on evidence that $NO_X$ reductions are more effective at reducing ozone than VOC reductions alone. In this notice, we use ''$NO_X$-limited'' as meaning a situation where reducing $NO_X$ emissions decreases ozone, not that it is more effective than reducing VOC. Elsewhere, including in the 2017 Eastern Kern Ozone SIP, the term ''$NO_X$-limited'' is sometimes used to mean the condition where $NO_X$ reductions are more effective than VOC reductions at decreasing ozone.

Evidence that the Eastern Kern nonattainment area is $NO_X$-limited is presented in Figure 14 in Appendix F of the Eastern Kern 2017 Ozone Plan. Figure 14 and the explanatory text document weekday and weekend monitored ozone data at the Mojave monitoring site from 2000–2015.[26] The results show that in nearly all years, weekdays with their higher $NO_X$ emissions have increased ozone, while weekends with their lower $NO_X$, have decreased ozone. Figure 14 includes a 1:1 line on which weekday and weekend ozone are the same.[27] Of the sixteen years examined, thirteen are above the 1:1 line, indicating higher weekday ozone and $NO_X$-limited ozone formation. All years after 2007 are above the 1:1 line. The three years (*i.e.,* 2001, 2003, and 2007) below the 1:1 line indicate slightly higher ozone from reducing $NO_X$. However, all three of those years are in the ''transitional'' regime close to the 1:1 line; this indicates the three years have only a weak ozone response to $NO_X$ reductions, as opposed to a disbenefit. This data analysis is strong evidence that ozone formation is $NO_X$-limited in the Eastern Kern nonattainment area.

The Eastern Kern 2017 Ozone Plan also included photochemical modeling results reflecting base year (2012) emissions and meteorology. The weekday-weekend analysis discussed above was repeated for modeled concentrations, which were found to be ''$NO_X$-limited.''[28] The degree of $NO_X$-limitation, that is the response of ozone to $NO_X$ emissions reductions, was found to be comparable to and somewhat greater than that in the ambient data. Given the Eastern Kern 2017 Ozone Plan's usage of the term ''$NO_X$-limited,'' the photochemical modeling also indicates that $NO_X$ reductions are more effective than VOC at reducing ozone.[29]

[26] Eastern Kern 2017 Ozone Plan, Appendix F, F–42—F–43; and Appendix H, H–22—H–23.

[27] Id.

[28] Eastern Kern 2017 Ozone Plan, Appendix F, Figure 14, F–42.

[29] The use of ''$NO_X$-limited'' in the 2017 Eastern Kern Ozone SIP is mainly consistent with $NO_X$ reductions being more effective than VOC reductions, *i.e.,* ''$NO_X$-limited'' in a relative sense rather than the strict sense of ozone decreasing with $NO_X$ reductions. See Appendix F of the Eastern Kern 2017 Ozone Plan: ''($NO_X$-limited region in Figure 13), ozone formation shows a benefit to reductions in $NO_X$ emissions, while changes in ROG emissions result in only minor decreases in ozone,'' F–40; in Figure 13, the ''$NO_X$-limited'' region is one with isopleth lines nearly parallel to the VOC axis, indicating little change in ozone as VOC changes, and relatively large changes in ozone as $NO_X$ changes, F–41; ''This region [Eastern Kern] is in close proximity to biogenic ROG emissions

For a percentage-based $NO_X$ substitution to result in an equivalent ozone reduction, ozone formation must not only be $NO_X$-limited, but also $NO_X$ reductions must be at least as effective at reducing ozone as VOC reductions. In the 2017 Eastern Kern Ozone SIP, CARB and the District concluded that ozone formation is ''$NO_X$-limited,'' but again, they use that term to mean that $NO_X$ reductions are more effective than VOC reductions. That conclusion was based not only on the weekday-weekend evidence of $NO_X$ limitation but also on additional information, as described in the following paragraphs.

The 2017 Eastern Kern Ozone SIP also provides ample documentation that high ozone concentrations in Eastern Kern are mainly due to transport from the San Joaquin Valley (SJV) to the northwest and sometimes from the South Coast Air Basin (SCAB) to the southwest.[30] Further, $NO_X$ and VOC emissions in the western Kern County portion of the SJV are respectively 2.5 and 8 times those within Eastern Kern; $NO_X$ and VOC emissions in the Los Angeles County portion of SCAB are respectively 10 and 37 times those within Eastern Kern.[31] Eastern Kern is downwind of large urban areas, and CARB noted in the 2017 Eastern Kern Ozone SIP the recognized phenomenon that locations downwind of major urban areas have high VOC:$NO_X$ ratios and consequently are more sensitive to $NO_X$ reduction than to VOC. The VOC:$NO_X$ ratio of an urban air mass tends to increase as it moves downwind, since there is less input of $NO_X$ emissions from combustion sources but continued VOC emissions input from biogenic sources, and also $NO_X$ gets preferentially removed by other chemical and physical processes.[32] In Eastern Kern, biogenic VOC emissions are 10 times as high as anthropogenic VOC in 2005 and upwards of 20 times as high during peak biogenic years,[33] which also tends to increase the VOC:$NO_X$ ratio in Eastern Kern. EKAPCD estimated biogenic VOC emissions to be 169 tpd during the period of 2012 through 2020,[34] which is over five times the total baseline $NO_X$ inventories used in the RFP demonstration in Table 3.[35] CARB states in the 2017 Eastern Kern Ozone SIP that ''This region is in close proximity to biogenic ROG emissions sources and farther away from the large anthropogenic $NO_X$ sources in the SJVAB and SCAB, such that low $NO_X$ and high ROG conditions are prevalent, which is consistent with a $NO_X$-limited regime.'' [36] While some of this evidence could be termed qualitative, the EPA finds that it makes a compelling case that $NO_X$ emissions reductions are more effective than VOC reduction at decreasing ozone in Eastern Kern, and therefore that percentage-based $NO_X$ substitution results in ozone reductions at least equivalent to those that would result from the VOC reductions required for RFP.

The 2017 Eastern Kern Ozone SIP clearly documents that the Eastern Kern nonattainment area is strongly affected by transport of ozone from the SJV and SCAB.[37] Although the EPA's proposed action did not discuss in detail the impact of transport on RFP, we are providing additional technical information to further clarify the relationship between transport from the SJV and SCAB and ozone formation in the Eastern Kern nonattainment area.

Photochemical modeling results in the ''2016 Ozone Plan for 2008 8-Hour Ozone Standard for the San Joaquin Valley'' (''SJV 2016 Ozone Plan'') [38] and analyses of the San Joaquin Valley portion of the ''2018 Updates to the California State Implementation Plan'' (''2018 SIP Update'') [39] also support the conclusion that $NO_X$ reductions are more effective than VOC at reducing ozone in the Eastern Kern nonattainment area. The EPA approved a modeled attainment demonstration for the SJV 2016 Ozone Plan that used the same meteorological and photochemical models, model domains, and setup parameters, and covered the same 2012 ozone season as the Eastern Kern modeling.[40] The SJV 2016 Ozone Plan contained an ozone isopleth diagram for the Clovis monitor,[41] the SJV site with the highest ozone design value in 2031. In support of the 2018 SIP Update, CARB provided supplemental documentation that used the isopleth diagram to show that the SJV attainment demonstration remained valid.[42] As part of the EPA's approval of the SJV portion of the 2018 SIP Update,[43] the EPA used the ozone isopleth diagram to estimate the sensitivity of ozone to VOC and $NO_X$ emissions reductions.[44] We determined that ozone changes by 0.313 ppb per percent change in $NO_X$ emissions, and by 0.0234 ppb per percent change in VOC emissions.[45] On a percentage basis, $NO_X$ is 13.4 times as effective as VOC at reducing ozone at the Clovis monitor. The ozone response to emission changes is expected to be similar in western Kern County because both areas have similar meteorological conditions and a similar mix of emissions sources.

Eastern Kern is directly downwind of western Kern County. The mountain ranges to the northwest separate sparsely populated Eastern Kern from the more densely populated areas in the southern SJV, including western Kern County. However, the Tehachapi pass connects the SJV to Eastern Kern, facilitating the transport of emissions and pollutants into the region.[46] For the reasons discussed earlier in this section, ozone formation in Eastern Kern is more $NO_X$-limited than the larger urban areas of the southern SJV and western Kern County. Putting these together, ozone in Eastern Kern is expected to be 13 times or more as sensitive to $NO_X$ emissions

sources and farther away from the anthropogenic $NO_X$ sources, such that low $NO_X$ and high ROG reactivity conditions are prevalent, which is consistent with the region being in a $NO_X$-limited regime,'' F–42. The CARB Staff Report on the Eastern Kern 2017 Ozone Plan (see A–9 of the Staff Report) refers to $NO_X$-limited conditions as discussed in Finlayson-Pitts and Pitts, 1993, p.1093, whose use of ''$NO_X$-limited'' is consistent with both the relative and strict senses of the term, but given its context of ''control of VOCs versus $NO_X$,'' is more relevant to the relative sense.

[30] Eastern Kern 2017 Ozone Plan, Appendix H, H–8—H–15; CARB Staff Report on the Eastern Kern 2017 Ozone Plan, A–5.

[31] Eastern Kern 2017 Ozone Plan, Appendix H, H–20.

[32] The VOC:$NO_X$ ratio increases due to chemical conversion to $HNO_3$ and due to the process of deposition to surfaces, which removes $NO_X$ (in the form of $HNO_3$) from the air more quickly than VOC. Barbara J. Finlayson-Pitts and James N. Pitts Jr., 1993, ''Atmospheric Chemistry of Tropospheric Ozone Formation: Scientific and Regulatory Implications,'' Journal of the Air and Waste Management Association, 43:8, 1091–1100, *https://doi.org/10.1080/1073161X.1993.10467187*; cited in CARB Staff Report, p. A–9.

[33] Eastern Kern 2017 Ozone Plan, Appendix H, H–21.

[34] Eastern Kern 2017 Ozone Plan, Table 14, 37.

[35] 85 FR 68268, 68275–68276.

[36] Eastern Kern 2017 Ozone Plan, Appendix H, H–22. As already noted, the 2017 Eastern Kern Ozone SIP primarily uses ''$NO_X$-limited'' to mean $NO_X$ reduction are more effective than VOC reductions. ''SJVAB'' is an acronym for the San Joaquin Valley Air Basin.

[37] CARB Staff Report on the Eastern Kern 2017 Ozone Plan, A–9, A–13—A–18.

[38] SJV 2016 Ozone Plan, San Joaquin Valley Unified Air Pollution Control District, June 16, 2016.

[39] 2018 SIP Update, CARB, October 25, 2018.

[40] 84 FR 3302 (February 12, 2019).

[41] SJV 2016 Ozone Plan, Appendix H, Figure 15, H–54. Clovis is located in Fresno County, approximately 7 miles northeast of downtown Fresno.

[42] Email dated October 19, 2018, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, with attachments.

[43] 83 FR 61346 (November 29, 2018); See also the related final rule at 84 FR 11198 (March 25, 2019).

[44] ''Technical Support Document, Proposed Phase 2 Approval of Portions of the SJV 2016 Ozone Plan and 2018 SIP Updates,'' Docket: EPA–R09–OAR–2018–0535, EPA Region 9, November 14, 2018, including two attachments: ''Scale attainment demonstration with updated emissions'' and ''Effect of Updated Emissions Estimates on San Joaquin Valley Attainment Demonstration.''

[45] Id.

[46] Eastern Kern 2017 Ozone Plan, H–16.

reductions as to VOC reductions on a percentage basis.

In addition, the 2007 Ozone Plan for San Joaquin Valley included isopleth diagrams for every monitoring site, including those in Kern County, just upwind of Eastern Kern.[47] The State used photochemical modeling to assess the effect of $NO_X$ and VOC emissions reductions for projected years 2020 and 2023 at every site. For every location for both years, $NO_X$ emissions reductions were more effective than VOC at reducing ozone. For example, the projected 2020 8-hour ozone design value at the Bakersfield-California Avenue site was modeled to decrease from 87 to 86 ppb when VOC is reduced by 20 percent, and from 87 to 83 ppb when $NO_X$ is reduced by 20 percent. The corresponding values for 2023 are a decrease from 88 to 87 ppb for VOC, and a decrease from 88 to 84 ppb for $NO_X$.[48] This is additional evidence that $NO_X$ reductions are more effective than VOC reductions in Eastern Kern.

Air quality in the Eastern Kern nonattainment area is also strongly affected by ozone transport from the SCAB through the Soledad Canyon located between Santa Clarita in the SCAB and Palmdale, south of Eastern Kern.[49] Santa Clarita is approximately 65 miles from the Mojave monitor and approximately 50 miles from the southern boundary of the nonattainment area. In the South Coast Air Quality Management District's (SCAQMD's) ''Final 2016 Air Quality Management Plan'' (''South Coast 2016 AQMP''), SCAQMD included an isopleth for the Santa Clarita monitoring site.[50] The isopleths for the Santa Clarita site clearly show that $NO_X$ reductions in the area upwind of Eastern Kern are more effective than VOC reductions at reducing ozone.

The documentation associated with the Clovis and Santa Clarita monitors, representative locations in the SJV and SCAB upwind of the mountain passes through which ozone is transported to downwind Eastern Kern, demonstrates that $NO_X$ reductions are more effective than VOC reductions in the Eastern Kern nonattainment area. This further supports the conclusion that $NO_X$ substitution results in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions otherwise required for RFP. Even though the State's submittal lacks an isopleth diagram specifically for the Mojave site in Eastern Kern, the supporting documentation (*i.e.,* Figure 14; the comparison of Eastern Kern emissions with emissions from western Kern County and Los Angeles County; VOC emissions from biogenic sources; and isopleths from upwind sites in the SJV and SCAB) demonstrates that the resulting $NO_X$ reductions here will be at least equivalent to that which would result from VOC reductions alone, as required in section 182(c)(2)(C).

Based on the above, we disagree with the commenter's assertion that CAA section 182(c)(2)(C) requires the District to provide additional photochemical grid modeling to demonstrate that the substituted $NO_X$ reductions are at least as effective as the VOC reductions that would otherwise be required under section 182(c)(2)(B).

Further, we believe that the commenter's comparison to the EPA's recommendations with respect to interpollutant trading for nonattainment NSR permitting purposes and eligibility for an exemption from $NO_X$ requirements under CAA 182(f) are not relevant for $NO_X$ substitution under CAA section 182(c)(2)(C). The guidance documents cited by the commenter for these examples are non-binding and do not constrain the EPA's discretion to adopt a different approach where appropriate.[51] The documents recommend photochemical grid modeling in some scenarios but do not require this approach or any other specific demonstration. This reflects the EPA's acknowledgement that the level of analysis required for any particular demonstration related to $NO_X$ and VOC reductions will differ based on context and local conditions, such as those noted by the commenter regarding the relative effectiveness of controlling each. In the context of CAA 182(c)(2)(C) and based on the EPA's responses herein, no additional modeling or demonstration is required.

*Comment #3:* The commenter also contends that an equivalence demonstration under CAA section 182(c)(2)(C) must show equivalence throughout the nonattainment area, must be quantitative, and must be as technically rigorous as an attainment demonstration.

First, the commenter states that because CAA section 182(c)(2)(C) uses the plural ''ozone concentrations,'' the equivalency demonstration must show equivalence throughout the nonattainment area, and not just at a single monitoring site. Otherwise, there could be ozone increases in $NO_X$-saturated areas within the nonattainment area that might interfere with attainment of the more stringent 2015 ozone NAAQS, and that might result in adverse public health effects even for locations meeting the ozone NAAQS because there is no safe level of ozone.

Second, the commenter criticizes the technical information in the Eastern Kern 2017 Ozone Plan as insufficient to show that $NO_X$ substitution will result in equivalent reductions in ozone concentrations throughout the nonattainment area. The commenter states that the Eastern Kern 2017 Ozone Plan submittal documents the ozone decrease from weekend $NO_X$ reductions at a single Mojave monitor during 2000–2015 to conclude the area is $NO_X$-limited, and that it makes general observations about the magnitude and distance of emissions. The commenter states that the technical information in the Eastern Kern 2017 Ozone Plan is merely qualitative, whereas the word ''equivalent'' in CAA section 182(c)(2)(C) means that the demonstration should be quantitative. The commenter also states that the 2017 Eastern Kern Ozone SIP should consider post-2015 data, because of post-2015 emissions changes like the replacement of $NO_X$ combustion sources with wind and solar electricity generation, and because of the changing geographic distribution of emissions.

Lastly, the commenter states that an equivalence demonstration should be as rigorous as an attainment demonstration, which is based on photochemical modeling or another equally rigorous technique. The commenter suggests that the state could compare modeled relative response factors (RRFs) for each RFP milestone year for the 3 percent per year VOC reductions to corresponding factors from the control strategy. Alternatively, for the demonstration, the commenter suggests that the state could use ozone

[47] San Joaquin Valley Unified Air Pollution Control District, ''2007 Ozone Plan,'' April 30, 2007. The EPA approved the 2007 Ozone Plan at 77 FR 12652 (March 1, 2012).

[48] Id. in Appendix F. Photochemical Modeling Support Documents, F–15—F–58.

[49] Eastern Kern 2017 Ozone Plan, Appendix F, F–15.

[50] South Coast 2016 AQMP, Appendix V, Attachment 4 (2031 8-Hour Ozone Isopleths), 21; and Attachment 5 (2023 8-Hour Ozone Isopleths), 21.

[51] See EPA, ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)'' (December 16, 1993), 1; Memorandum dated January 14, 2005, from Stephen D. Page, Director, Office of Air Quality Planning and Standards, U.S. EPA, to EPA Regional Air Directors, Regions I–X, Subject: ''Guidance on Limiting Nitrogen Oxides ($NO_X$) Requirements Related to 8-Hour Ozone Implementation,'' 3; EPA–454/R–18–004, ''Technical Guidance for Demonstration of Inter-Precursor Trading (IPT) for Ozone in the Nonattainment New Source Review Program,'' Office of Air Quality Planning and Standards (May 2018) (''IPT Guidance''), 2. The IPT Guidance specifically excludes applicability to RFP demonstrations. IPT Guidance at 2, n.1.

isopleth diagrams together with conservative assumptions about the amount of allowable $NO_X$ substitution.

*Response to Comment #3:* First, we disagree that the plural ''concentrations'' in CAA section 182(c)(2)(C) necessarily means that equivalence must be demonstrated throughout the nonattainment area. However, in this instance, it does not matter because all locations within the Eastern Kern nonattainment area are downwind of, and more $NO_X$-limited than, the SJV and the SCAB, for which $NO_X$ reductions are more effective than VOC. Therefore, $NO_X$ reductions are more effective than VOC for all locations in the Eastern Kern nonattainment area.

Second, we disagree that equivalence demonstrations necessarily must be quantitative estimates. Analytical information that establishes equivalence may be quantitative or qualitative, or both, depending on the facts and circumstances of any given area. In this instance, as discussed above, some of the evidence relied upon could be termed qualitative, such as the known tendency for ozone formation to become more $NO_X$-limited with distance downwind of an urban area, and the relative sizes of emissions inventories for Eastern Kern and the upwind areas. This relatively qualitative evidence was coupled with more quantitative assessments of the degree of $NO_X$-limitation (weekday-weekend differences). Qualitative evidence can be just as useful as quantitative evidence. For $NO_X$ substitution to yield an equivalent ozone decrease as required in section 182(c)(2)(C), we only need to know that reductions of $NO_X$ are at least as effective as reductions of VOC for reducing ozone concentrations. Further, the estimate that $NO_X$ emissions reductions are 13 times as effective as VOC reductions is quantitative, not qualitative.

With respect to post-2015 emissions changes, we note that $NO_X$ and VOC emissions in Eastern Kern are projected to decrease slightly after 2015 through year 2021, largely due to reductions in mobile source emissions offsetting increases from stationary and area sources.[52] In the upwind areas of SJV and SCAB, the same is true but $NO_X$ emissions are projected to decrease at a faster rate than VOC emissions,[53] which would have the effect of increasing the VOC:$NO_X$ ratio, making Eastern Kern even more $NO_X$-limited. The emissions projections in the 2017 Eastern Kern Ozone SIP take into account long-term trends for the various source categories, including electricity generation. The commenter has not cited any particular natural-gas power plant closure that would affect the Eastern Kern area, and we are not aware of any such closure. The possible replacement of $NO_X$-producing electricity generation by wind and solar power cited by the commenter would also tend to make the area more $NO_X$-limited. The geographic distribution of the emissions changes is also not of concern. Emissions from the upwind areas are channeled through a small set of mountain passes regardless of their precise upwind location. Emissions within Eastern Kern itself are so much lower than those of the upwind areas that their particular location within the nonattainment area does not affect the $NO_X$-limited conditions there. Because the VOC:$NO_X$ ratio of emissions input to the model increases between 2012 and 2020, if additional modeling were carried out using 2020 emissions, it is expected that ozone formation would be even more $NO_X$-limited.[54] Thus neither the magnitude nor the geographic distribution for the post-2015 emissions would change the EPA's conclusion that the $NO_X$ substitution used for the RFP demonstration in the 2017 Eastern Kern Ozone SIP meets the requirements of CAA section 182(c)(2)(C).

Lastly, we note that CAA section 182(c)(2)(C), in contrast to CAA section 182(c)(2)(A), does not explicitly prescribe the use of photochemical grid modeling or equivalent analytical method to demonstrate the equivalence of NOx emission reductions (relative to VOC emissions reductions) on ozone concentrations. The $NO_X$ equivalence demonstration for RFP purposes need not be based on the same analytical methods used in the attainment demonstration. Therefore, we are approving the RFP demonstration and its reliance on $NO_X$ substitution for a portion of the VOC emissions reductions otherwise required based on both qualitative and quantitative technical analyses.

*Comment #4:* CBD asserts that the EPA fails to give notice of how the submittal addresses the demonstration required under CAA section 182(c)(2)(C) and thus the EPA's proposal is not in accordance with procedure required by law. In particular, the commenter states that EPA has failed to give adequate notice of its proposed interpretation of section 182(c)(2)(C). The commenter observes that Table 3 of the proposed rule treats a percentage of $NO_X$ reductions as equivalent to an equal percentage of VOC reductions, but asserts that the proposed rule does not explain why a percentage reduction in $NO_X$ emissions results in equivalent ozone reductions to an equal reduction in VOC emissions, as required by section 182(c)(2)(C). The commenter suggests that the proposed rule may have used the procedure recommended in a December 1993 guidance document from the EPA's Office of Air Quality Planning and Standards entitled ''$NO_X$ Substitution Guidance.'' The commenter argues that because the $NO_X$ Substitution Guidance is non-binding, the notice must indicate whether the EPA intends to adopt the Guidance's interpretation of the CAA, and that if the EPA instead believes that the Eastern Kern calculation is a legitimate demonstration for other reasons, it must re-propose the action.

*Response to Comment #4:* The EPA disagrees with the commenter that the proposed rulemaking fails to give adequate notice regarding our proposed approval of the District's use of $NO_X$ substitution, or that we would be required to re-propose with additional justification prior to taking final action on this portion of the proposal. As described in responses to comments #2 and #3 above, the modeling and analysis submitted to support the District's control strategy and attainment demonstration highlight the need for significant $NO_X$ reductions in the upwind San Joaquin Valley and South Coast Air Basin for the Eastern Kern to attain the 2008 ozone NAAQS, and demonstrate that these $NO_X$ reductions will be more effective on a percentage basis than VOC reductions at reducing ozone concentrations in the nonattainment area. As described below, our proposal includes a summary and analysis of relevant portions of the SIP submittals, including $NO_X$ substitution in the RFP demonstration.

Section III.C of the proposed rulemaking describes our proposed approval of the District's RFP

[52] Eastern Kern 2017 Ozone Plan, Appendix A.

[53] CARB Staff Report on Eastern Kern 2017 Ozone Plan, A–8.

[54] This is an approximation based on SJV $NO_X$ and VOC emissions in tons per day as shown in the bar chart in CARB Staff Report on the Eastern Kern 2017 Ozone Plan (see A–8); SJV is the area most often upwind of Eastern Kern, and its photochemical modeling includes both areas. The VOC:$NO_X$ ratios increase because $NO_X$ declines more than VOC. Specifically the VOC:$NO_X$ ratios for 2010, 2015, and 2020, respectively are 380/400 = 0.95, 315/267 = 1.18, and 300/205 = 1.46, an increasing sequence that spans the 2012–2020 period. Another estimate can be made using the SJV emissions from the 2016 SJV Ozone Plan. The summer tons per day VOC:$NO_X$ emissions ratio increases from 337.3/339.6 = 0.99 in 2012 to 300.2/212.7 = 1.41 in 2020.

demonstration.[55] This section describes the statutory and regulatory requirements for an RFP demonstration, including the option under CAA section 182(c)(2)(C) to substitute $NO_X$ emissions reductions for VOC reductions, and the reasons for the EPA's approval of this demonstration. The discussion includes citations to CAA section 182(c)(2)(C) and the implementing regulations for the 2008 ozone NAAQS, as well as relevant portions of the preamble to the 2008 Ozone SRR that address the applicable requirements.[56] The explanation that the District's RFP demonstration substitutes $NO_X$ reductions for VOC reductions in the RFP demonstration, including the District's substitution of $NO_X$ reductions for VOC reductions on a percentage basis, is summarized in Table 3 of the proposal.[57]

As the commenter notes, the proposed rulemaking does not include a specific justification in support of the District's use of $NO_X$ substitution on a percentage basis. The discussion and tables in section III.C of our proposal document the need for additional $NO_X$ reductions exceeding the necessary additional VOC reductions. As discussed in Response to Comment #2, the EPA finds that the 2017 Eastern Kern Ozone SIP and additional technical documentation provide sufficient evidence that $NO_X$ emissions reductions are more effective than VOC reductions on a percentage basis. This conclusion was based on an analysis of ambient data, pollution transport patterns, the magnitude of upwind area emissions, and basic scientific knowledge about the VOC:$NO_X$ ratios downwind of large urban areas. As addressed above, given this need for $NO_X$ reductions and the modeled anticipated impact on Eastern Kern, substituting $NO_X$ for VOC on a percentage-reduction basis represents a conservative approach that will result in equivalent or greater reductions in ozone concentrations than would result through the VOC-only reductions required under CAA section 182(c)(2)(B).

As the commenter notes, this approach is consistent with the procedures outlined in the EPA's 1993 $NO_X$ Substitution Guidance. However, as the commenter also notes, the $NO_X$ Substitution Guidance is non-binding, and the EPA must ensure that any use of $NO_X$ substitution is reasonable in light of local conditions and needs.[58] In this case, our approval is supported by the $NO_X$ reductions being more effective than VOC in the area, and the need for $NO_X$ reductions as set out in the control strategies for the upwind SJV and SCAB. For this reason, we find that the proposed rulemaking and associated supporting documents included in the docket for that action provide sufficient documentation that the $NO_X$ substitution used in the District's RFP demonstration is consistent with CAA section 182(c)(2)(C), and we disagree that the EPA would be required to re-propose with additional analysis or justification.

*Comment #5:* CBD provides numerous comments directed at the EPA's $NO_X$ Substitution Guidance, contending that if the EPA intended to adopt the positions set forth in the $NO_X$ Substitution Guidance, the proposal would be arbitrary and capricious and contrary to law because of problems with the $NO_X$ Substitution Guidance. These comments assert generally that the $NO_X$ Substitution Guidance contradicts CAA section 182(c)(2)(C) by recommending a procedure that fails to demonstrate any equivalence between VOC and $NO_X$ reductions, relies on incorrect policy assumptions, and gives legal justifications that are without merit.

*Response to Comment #5:* Comments relating solely to the $NO_X$ Substitution Guidance are outside the scope of this rulemaking action. As noted in our Response to Comment #4 above, our approval of the District's use of $NO_X$ substitution is supported by local conditions and needs as documented in the modeling and analysis included in the 2017 Eastern Kern Ozone SIP, and is consistent with the requirements in CAA section 182(c)(2)(C).

*Comment #6:* CBD asserts that, because the EPA must disapprove the submitted RFP demonstration, the EPA cannot determine that the motor vehicle emission budgets (MVEBs) are allowable as a portion of the total allowable emissions to meet RFP, and with no measure of total allowable emissions for RFP, there is no basis for approval of the MVEBs.

*Response to Comment #6:* As discussed in responses to comments #1 through #4, the EPA concludes that the RFP demonstration can be approved independently of the attainment demonstration and that the substitution of $NO_X$ emissions reductions for VOC emissions reductions in the RFP demonstration is adequately supported. In this final rule, on the basis of the rationale presented in the proposed rule and in our responses to comments, we are taking final action to approve the RFP demonstration and related MVEBs.

*Comment #7:* CBD contends that the MVEBs must be consistent with attainment requirements as well as RFP requirements, and in the absence of an approved attainment demonstration and control strategy, the RFP MVEBs must be disapproved. In support of this contention, CBD cites selected portions of CAA section 176(c) and the EPA's transportation conformity rule. First, under section 176(c)(1)(B)(iii), CBD notes that a Federal action cannot ''delay timely attainment of any standard,'' and without an approved attainment demonstration and control strategy, which could require VOC and $NO_X$ emissions reductions beyond those required by section 182(c)(2)(C), there is no way to tell if a transportation plan, improvement program, or project will ''delay timely attainment'' of the 2008 ozone standards, even if it stays within the proposed MVEBs.

Second, CBD notes that, under the EPA's rules for transportation conformity, the term ''control strategy implementation plan revision'' is defined as the ''implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress *and* attainment.''[59] For attainment plans (as opposed to maintenance plans), MVEBs are in part defined as ''that portion of the total allowable emissions defined in the submitted or approved *control strategy implementation plan revision.*''[60] Thus, CBD argues that the MVEBs depend on the control strategy implementation plan revision, which must demonstrate both RFP and attainment.

In addition, CBD notes that the particular MVEBs proposed for approval are derived from the projected on-road mobile source emissions estimates in the attainment year (2020) emissions inventory upon which the attainment demonstration is based, and thus must be consistent with attainment requirements as well as RFP requirements. Because the EPA has not approved the attainment demonstration, including the projected attainment year emissions inventory, CBD argues that the EPA cannot approve the MVEBs that derive from that inventory.

*Response to Comment #7:* First, we acknowledge that the MVEBs are derived from the projected attainment

[55] 85 FR 68268, 68274–68276.

[56] Id. at 68274–68276 (see footnotes 55 and 65).

[57] Id. at 68275–68276.

[58] See $NO_X$ Substitution Guidance at 3 (noting that the EPA approves substitution proposals on a case-by-case basis, including any reasonable substitution proposal).

[59] 40 CFR 93.101 (emphasis added).

[60] Id. (emphasis added).

year (2020) emissions inventory. However, year 2020 is both an RFP milestone year and the attainment year for the Eastern Kern Serious ozone nonattainment area. Therefore, the projected 2020 emissions inventory is the basis for both the RFP demonstration for that milestone year and for the attainment demonstration. As explained in Response to Comment #1, the RFP demonstration and attainment demonstration requirements are independent requirements under the SRR and, thus, can be approved separately. In this final action, we are approving the MVEBs only for RFP purposes and not for attainment purposes.

Second, we note that CAA section 176(c)(4)(B) obligates the EPA to promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects, and we have done so at 40 CFR part 93, subpart A (''Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws'') (herein, ''transportation conformity rule'').

Our transportation conformity rule defines ''motor vehicle emissions budget'' 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. . . .''[61] Further, among the criteria we must use when evaluating a MVEB for adequacy or approval is the criterion at 40 CFR 93.118(e)(4)(iv) which requires MVEBs, when considered together with all other emissions sources, to be consistent with applicable requirements for reasonable further progress, attainment, *or* maintenance (*whichever is relevant to the given implementation plan submission*).[62]

Thus, under our transportation conformity rule, the EPA can approve MVEBs if we find them consistent, when considered together with all other emissions sources, with the applicable requirements for RFP *or* attainment; it is not required that the MVEBs be consistent with RFP *and* attainment but only that they are consistent with the requirement that is relevant for purposes of the SIP. In this instance, while the MVEBs for year 2020 are numerically the same for both RFP and attainment, the relevant requirements are those for RFP, not attainment, and we are approving the MVEBs as consistent with those requirements, not the attainment requirements, consistent with the transportation conformity rule.[63] This interpretation has been upheld by the Ninth Circuit in *Natural Resources Defense Council* v. *EPA,* 638 F.3d 1183 (9th Cir. 2011). In *Natural Resources Defense Council,* the petitioners similarly argued that the Clean Air Act and the EPA's implementing regulations require the EPA to consider attainment data when determining the adequacy of budgets for milestone years,[64] but the Ninth Circuit agreed with the EPA that the EPA's transportation conformity rule provides otherwise. More specifically, the court agreed with the EPA that, for a milestone year, a budget need only demonstrate reasonable further progress toward the ultimate goal of attainment.[65]

In light of our responses to the comments and for the reasons given in the proposed rule, we are taking final action to approve the RFP demonstration and the related MVEBs and are taking final action to find the MVEBs adequate for transportation conformity purposes.

## III. Final Action

For the reasons discussed in detail in the proposed rule and summarized herein, under CAA section 110(k)(3), the EPA is taking final action to approve as a revision to the California SIP the following portions of the Eastern Kern 2017 Ozone Plan submitted by CARB on October 25, 2017, the 2018 SIP Update submitted on December 5, 2018, and the 2020 Conformity Budget Update submitted on August 31, 2020, that together comprise the 2017 Eastern Kern Ozone SIP:[66]

- Base year emissions inventory element in the Eastern Kern 2017 Ozone Plan as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS;
- Emissions statement element in the Eastern Kern 2017 Ozone Plan as meeting the requirements of CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- ROP demonstration element in the Eastern Kern 2017 Ozone Plan as meeting the requirements of CAA 182(b)(1) and 40 CFR 51.1110(a)(2) for the 2008 ozone NAAQS;
- RFP demonstration element in the 2018 SIP Update as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii) for the 2008 ozone NAAQS;
- Motor vehicle emissions budgets in the 2020 Conformity Budget Update for the 2020 RFP milestone year, as shown below, because they are consistent with the RFP demonstration for the 2008 ozone NAAQS finalized for approval herein and meet the other criteria in 40 CFR 93.118(e);

TRANSPORTATION CONFORMITY BUDGETS FOR THE 2008 OZONE NAAQS IN EASTERN KERN

[Summer planning inventory, tpd]

| Budget year | VOC | $NO_X$ |
|---|---|---|
| 2020 ..... | 1.3 | 3.6 |

We are also taking final action to find that:

- The enhanced monitoring requirements of CAA section 182(c)(1) and 40 CFR 51.1102 are being met in Eastern Kern for the 2008 ozone NAAQS;[67] and
- The submitted 2020 budgets included in the 2020 Conformity Budget Update are adequate for transportation conformity purposes.[68]

Lastly, we are approving conditionally, under CAA section 110(k)(4), the contingency measure

[61] 40 CFR 93.101 (emphasis added).

[62] 40 CFR 93.118(e)(4)(iv) (emphases added).

[63] The commenter claims that the EPA's adequacy determination is irrelevant for purposes of whether the EPA can approve the MVEBs, because the EPA has stated that its adequacy review ''should not be used to prejudge EPA's ultimate approval or disapproval of the SIP.'' The EPA agrees that the adequacy determination is based on a cursory review of the SIP submittal when it is made prior to action on the SIP submittal itself. However, today's adequacy determination is based on the EPA's complete review, and approval, of the RFP demonstration in the 2017 Eastern Kern Ozone SIP.

[64] *Natural Resources Defense Council* v. *EPA,* 638 F.3d 1183, 1191 (9th Cir. 2011).

[65] Id.

[66] As noted previously, we are deferring action on the attainment demonstration and reasonably available control measures demonstration elements of the 2017 Eastern Kern Ozone SIP at this time.

[67] Regarding the Serious nonattainment area requirements for new source review (NSR) and for implementation of reasonably available control technology (RACT) for the 2008 ozone NAAQS in Eastern Kern, we will be taking action as necessary on district rules addressing the NSR and RACT requirements in separate rulemakings and will evaluate compliance with the applicable Serious area nonattainment requirements at that time.

[68] Pursuant to 40 CFR 93.118(f)(2)(iii), the EPA's adequacy determination is effective upon publication of this final rule in the **Federal Register**. Upon the effective date of the adequacy determination, the 2020 budgets from the in the 2020 Conformity Budget Update will replace the budgets that were previously found adequate for use in transportation conformity determinations (*i.e.,* the 2008 budgets from the ''Eastern Kern County 2008 8-hour Ozone Early Progress Plan.''

element of the 2017 Eastern Kern Ozone SIP as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for RFP and attainment contingency measures. Our approval is based on commitments by the District and CARB to supplement the element through submission, as a SIP revision (within one year of our final conditional approval action), of a revised District rule or rules that would add new limits or other requirements if an RFP milestone is not met or if Eastern Kern fails to attain the 2008 ozone NAAQS by the applicable attainment date.[69]

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves or conditionally approves state plans as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

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

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 16, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

For the reasons stated in the preamble, the EPA amends Part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

■ 2. Section 52.220 is amended by reserving paragraphs (c)(556), (557), (558), and (559), and adding paragraphs (c)(514)(ii)(A)(*8*), (c)(560) and (c)(561) to read as follows:

### § 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(514) * * *

(ii) * * *

(A) * * *

(*8*) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, chapter IV (''SIP Elements for Eastern Kern County''); and pages A–11 through A–14 of appendix A (''Nonattainment Area Inventories''), only.

* * * * *

(560) The following plan was submitted on October 25, 2017 by the Governor's designee.

(i) [Reserved]

(ii) *Additional materials.*

(A) Eastern Kern Air Pollution Control District.

(*1*) 2017 Ozone Attainment Plan For 2008 Federal 75 ppb 8-Hour Ozone Standard, adopted on July 27, 2017, excluding chapter XI (''Reasonably Available Control Measures Demonstration'') and chapter XIII (''Attainment Demonstration'').

(*2*) [Reserved]

(B) [Reserved]

(561) The following plan was submitted on August 31, 2020 by the Governor's designee as an attachment to a letter dated August 25, 2020.

(i) [Reserved]

(ii) *Additional materials.*

(A) California Air Resources Board.

(*1*) Transportation Conformity Budget State Implementation Plan Update for

[69] Letter dated September 1, 2020, from Glen E. Stephens, Air Pollution Control Officer, EKAPCD, to Richard Corey, Executive Officer, CARB; and letter dated September 18, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX.

the Eastern Kern 2017 Ozone Attainment Plan, release date: June 19, 2020.

(*2*) [Reserved]

(B) [Reserved]

* * * * *

■ 3. Section 52.248 is amended by adding paragraph (m) to read as follows:

**§ 52.248 Identification of plan—conditional approval.**

* * * * *

(m) The EPA is conditionally approving the California State Implementation Plan (SIP) for Eastern Kern for the 2008 ozone NAAQS with respect to the contingency measures requirements of CAA sections 172(c)(9) and 182(c)(9). The conditional approval is based on a commitment from the Eastern Kern Air Pollution Control District (District) in a letter dated September 1, 2020, to adopt a specific rule revision or revisions, and a commitment from the California Air Resources Board (CARB) dated September 18, 2020, to submit the amended District rule or rules to the EPA within 12 months of the final conditional approval. If the District or CARB fail to meet their commitments within one year of the final conditional approval, the conditional approval is treated as a disapproval.

[FR Doc. 2021–13608 Filed 6–24–21; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2020–0519; FRL–10024–19–Region 9]**

## Air Quality Implementation Plan; California; Mendocino County Air Quality Management District; Stationary Source Permits

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Mendocino County Air Quality Managment District (MCAQMD or ''District'') portion of the California State Implementation Plan (SIP). These revisions concern the District's prevention of significant deterioration (PSD) permitting program for new and modified stationary sources of air pollution. We are approving these local rules pursuant to requirements under part C of title I of the Clean Air Act as amended in 1990 (CAA or the ''Act'').

**DATES:** This rule will be effective on July 26, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2020–0519. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947–4174, or by email to *batchelder.amber@epa.gov.*

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

### Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

### I. Proposed Action

On February 22, 2021, the EPA proposed to approve the following rules into the MCAQMD portion of the California SIP.[1]

TABLE 1—SUBMITTED RULES

| Rule No. | Rule title | Amended | Submitted |
|---|---|---|---|
| 1–220 | New Source Review Standards (Including PSD Evaluations) | 4/7/2020 | 8/10/2020 |
| 1–230 | Action on Applications | 4/7/2020 | 8/10/2020 |

The EPA previously finalized a limited approval and limited disapproval of Rule 1–220 on July 3, 2017.[2] We listed the following two deficiencies in our final limited approval and limited disapproval of Rule 1–220:

- Rule 1–220 does not contain any provisions specifying that required air quality modeling shall be based on the applicable models, databases, and other requirements specified in part 51 Appendix W; therefore, the requirements of 40 CFR 51.160(f) and 51.166(l) have not been met.
- The requirements of 40 CFR 51.166(r)(2)[3] have not been met because the rule does not include the necessary information about a source's obligations.

The District resolved the first deficiency by adding the required air quality modeling provisions to Rule 1–220 and addressed the second deficiency by revising Rule 1–230 to include information about a source's obligations under the CAA. We have determined that the amended sections of these rules satisfy the statutory and regulatory requirements for a PSD program as set forth in the applicable provisions of part C of title I of the Act and in 40 CFR 51.160–51.164 and 51.166.

Our proposed action contains more information on the rules and our evaluation.

### II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment, which is included in the docket for this action. We do not consider this comment to be germane or relevant to

[1] 86 FR 10524.

[2] 82 FR 30770.

[3] The 2017 final rule stated incorrectly that the criteria in 40 CFR 51.166(r)(1) had not been met. Our proposal notice (81 FR 95074, December 27, 2016) and Technical Support Document (TSD) correctly noted that only the criteria in 40 CFR 41.166(r)(2) had not been met. See *e.g.,* Section 4.2, number 15 on Page 18 of the TSD for the 2017 final action.

this action, thus this comment is not adverse to this action. Moreover, the comment lacks the required specificity to the proposed SIP revisions and the relevant CAA requirements, and does not address the specific regulations or provisions in question, or recommend an action on the SIP submission different from what the EPA proposed. Therefore, we are finalizing our action as proposed.

### III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. We continue to find that MCAQMD Rules 1–220 and 1–230 correct the previously identified deficiencies and fulfill all relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the MCAQMD portion of the California SIP. The April 7, 2020 versions of Rules 1–220 and 1–230 will replace the previously approved versions of the rules in the SIP.

### IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MCAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX 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

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 10, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(489)(i)(A)(*5*) through (*6*) and (c)(555) to read as follows:

### § 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(489) * * *

(i) * * *

(A) * * *

(*5*) Previously approved on July 3, 2017, in paragraph (c)(489)(i)(A)(*3*) of this section and now deleted with replacement in (c)(555)(i)(A)(*1*), Rule 1–220, ''New Source Review Standards (Including PSD Evaluations),'' amended on April 7, 2020.

(*6*) Previously approved on July 3, 2017, in paragraph (c)(489)(i)(A)(*4*) of this section and now deleted with replacement in (c)(555)(i)(A)(*2*), Rule

1–230, ''Action on Applications,'' amended April 7, 2020.

* * * * *

(555) The following amended regulations were submitted on August 10, 2020 by the Governor's designee.

(i) *Incorporation by reference.*

(A) Mendocino County Air Quality Management District.

(*1*) Regulation 1, Rule 1–220, ''New Source Review Standards (Including PSD Evaluations),'' last amended on April 7, 2020.

(*2*) Regulation 1, Rule 1–230, ''Action on Applications,'' last amended April 7, 2020.

(B) [Reserved]

(ii) [Reserved]

■ 3. Section 52.270 is amended by revising paragraph (b)(3) introductory text to read as follows:

**§ 52.270 Significant deterioration of air quality.**

* * * * *

(b) * * *

(3) The PSD program for Mendocino County Air Quality Management District, as incorporated by reference in § 52.220(c)(489) and (c)(555) is approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except for paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the Mendocino County Air Quality Management District for:

* * * * *

[FR Doc. 2021–13452 Filed 6–24–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2021–0244; FRL–10025–00–Region 7]**

## Air Plan Approval; Nebraska; Revisions to Title 129 of the Nebraska Administrative Code; Chapter 39 Visible Emissions From Diesel-Powered Motor Vehicles

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Nebraska. This final action will amend the SIP to revise title 129 of the Nebraska Administrative Code by removing a portion of the SIP that addresses visible emissions from diesel-powered motor vehicles. Visible emissions from diesel-powered motor vehicles are addressed in the state statute. The revisions remove duplicative language that is redundant to the state statute. The revisions do not substantively change any existing statutory or regulatory requirement or impact the stringency of the SIP or air quality nor do they impact the State's ability to attain or maintain the National Ambient Air Quality Standards.

**DATES:** This final rule is effective on July 26, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0244. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7986; email address: *donohue.allie@epa.gov.*

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

### Table of Contents

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is the EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

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

The EPA is amending Nebraska's SIP to include revisions to title 129 of the Nebraska Administrative Code. The EPA is approving revisions to the Nebraska SIP received on July 16, 2020. Specifically, the EPA is amending the Nebraska SIP by removing a portion of the SIP as follows: Title 129. Chapter 39. Visible Emissions from Diesel-powered Motor Vehicles. EPA is approving these revisions as they do not substantively change any existing statutory or regulatory requirement. These revisions do not impact the stringency of the SIP or air quality. The EPA solicited comments on the proposed revision to Nebraska's SIP, and received no comments.

### II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of the SIP revision from September 28, 2019, to November 6, 2019, and held a public hearing on November 7, 2019. In a letter to the state dated November 7, 2019, the EPA stated that the agency ''has no comment on the proposed repeal of this regulation.'' EPA further recommended that NDEE include a justification that the rule is redundant to state statute. The SIP revision meets the substantive requirements of the CAA, including section 110 and implementing regulations.

### III. What action is the EPA taking?

The EPA is taking final action to amend the Nebraska SIP by approving the State's request to remove Title 129 section 39. Visible Emissions from Diesel-powered Vehicles. The removal of this portion of the SIP will ensure consistency between state and federally-approved rules. The EPA has determined that these changes will not adversely impact air quality because the regulation duplicates the State's statute, which applies in the same jurisdiction.

### IV. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Nebraska Regulations from the Nebraska State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond

those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 14, 2021.

**Edward H. Chu,**

*Acting Regional Administrator, Region 7.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart CC—Nebraska

**§ 52.1420 [Amended]**

■ 2. In § 52.1420, the table in paragraph (c) is amended by removing the entry ''129–39'' under ''Title 129-Nebraska Air Quality Regulations''.

[FR Doc. 2021–13450 Filed 6–24–21; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR—2021–0014; FRL–10024–56–Region 9]**

## Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''the District'') portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen ($NO_X$) and particulate matter (PM) from indirect sources associated with new development projects as well as $NO_X$ and PM emissions from certain transportation and transit development projects. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule will be effective on July 26, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0014. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Kenya Evans, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3245 or by email at *evans.lakenya@epa.gov.*

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

**Table of Contents**

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

### I. Proposed Action

On February 25, 2021 (86 FR 11482), the EPA proposed to approve the following rule into the California SIP.

| Local Agency | Rule No. | Rule title | Amended | Submitted |
|---|---|---|---|---|
| SJVUAPCD ..... | 9510 | Indirect Source Review (ISR) ..... | 12/21/17 (effective March 21, 2018) ..... | 05/23/18 |

We proposed to approve this amended rule based on our finding that it is consistent with the relevant requirements, policy, and guidance regarding SIP relaxations because the rule revisions only clarify and extend the applicability of the rule to certain additional development projects. This revision strengthens the current SIP-approved rule. Once approved into the SIP, Rule 9510 will become federally enforceable under the CAA by its terms only for certain development projects within the geographic jurisdiction covered by the SJVUAPCD. However, as explained in our February 25, 2021 proposed rule, we continue to conclude that the rule is not fully consistent with the relevant requirements, policy, and guidance on enforceability such that the State may rely on the rule for specific emissions credit in an attainment plan. While Rule 9510 does not meet all the evaluation criteria for full enforceability such that emissions credit can be taken, we proposed to fully approve the submitted rule because it would strengthen the SIP compared to the current SIP-approved rule. Our proposed action contains more information on the rule and our evaluation.

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received four comments on the proposal. One comment expresses general support for the proposed action. The three other comments are essentially the same comment, with minor variations in wording, for which we provide a summary and response below.

*Comment:* Three comments stated that the rules ''should be strengthened to a tolerable criteria for further enforceability'' before being approved.

*Response:* As this version of Rule 9510 would be enforceable on its terms once approved into the SIP, we are assuming that the comments are referring to amended Rule 9510 being ''fully enforceable,'' such that the State may rely on it for emissions credit. Regarding whether amended Rule 9510 is ''fully enforceable,'' we disagree that the State needs to resolve enforceability issues identified in our proposal before we can approve it into the SIP. As described in our proposal, we previously approved an earlier version of this rule on May 9, 2011 (76 FR 26609) where ''we identified a number of concerns about the enforceability of the rule's provisions, *e.g.,* provisions that allow project developers to pay a fee instead of implementing on-site pollution mitigation plans, and noted that the State would need to resolve these enforceability issues before relying on this rule for credit in an attainment plan.'' [1] We noted that ''[t]he District has not addressed these concerns in the submitted rule, and we therefore continue to conclude that the rule does not qualify for emission reduction credit for the purpose of any attainment or progress demonstration in any area.'' [2] In the amended version of Rule 9510 that we are approving herein, ''the District revised the rule applicability to include large development projects that are not currently subject to the rule and made editorial and clarifying changes. The revisions are generally clear and strengthen the rule.'' [3] While this revision of Rule 9510 would continue to not meet all the evaluation criteria for full enforceability such that the rule would qualify for emission reduction credit, it would strengthen the SIP compared to the current SIP-approved rule and therefore warrants approval into the SIP.

## III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. The December 21, 2017 version of Rule 9510 will replace the previously-approved version of this rule in the SIP.

## IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SJVUAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX 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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

[1] 86 FR 11482, 11484 (February 25, 2021).

[2] Id.

[3] Id.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

For the reasons stated in the preamble, the EPA amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(348)(i)(A)(*4*) and (c)(518)(i)(E) to read as follows:

**§ 52.220 Identification of plan-in part.**

* * * * *

(c) * * *

(348) * * *

(i) * * *

(A) * * *

(*4*) Previously approved on May 9, 2011 in paragraph (c)(348)(i)(A)(3) of this section and now deleted with replacement in (c)(518)(i)(E)(1), Rule 9510, ''Indirect Source Review (ISR),'' adopted on December 15, 2005.

* * * * *

(518) * * *

(i) * * *

(E) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 9510, ''Indirect Source Review (ISR),'' amended on December 21, 2017, but not in effect until March 21, 2018.

(*2*) [Reserved]

* * * * *

[FR Doc. 2021–13448 Filed 6–24–21; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 70

**[EPA–R07–OAR–2021–0266; FRL–10024–99–Region 7]**

## Air Plan Approval; Iowa; State Implementation Plan and State Plans for Designated Facilities and Pollutants

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Iowa State Implementation Plan (SIP) and is also approving revisions to the Iowa Operating Permit Program. The revisions include updating definitions, regulatory references, requiring facilities to submit electronic emissions inventory information under the state's Title V permitting program, and updating references for the most recent federally approved minimum specifications and quality assurance procedures for performance evaluations of continuous monitoring systems. EPA is also approving previous revisions to the Operating Permit Program that allow for electronic document submission that meet EPA's requirements. These revisions will not impact air quality and will ensure consistency between the state and Federally approved rules.

**DATES:** This final rule is effective on July 26, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0266. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Stephen Krabbe, Environmental Protection Agency, Region 7 Office, Air Quality and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7991 or by email at *krabbe.stephen@epa.gov.*

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

### Table of Contents

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is the EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

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

EPA is approving a submission from the State of Iowa to revise its SIP and the Operating Permits Program. On August 12, 2020, the Iowa Department of Natural Resources (IDNR) submitted a request to revise the SIP to incorporate recent changes to Iowa Administrative Code, including provisions relating to electronic submittal of information to IDNR that were revised in previous state rulemakings. The following chapters are impacted:

- Chapter 20, ''Scope of Title—Definitions;''

• Chapter 22, ''Controlling Pollution;''

• Chapter 23, ''Emission Standards for Contaminants;''

• Chapter 25, ''Measurement of Emissions;'' and

• Chapter 33, ''Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality.''

The revision includes a request for EPA to approve references in Chapter 22 to allow for electronic submittal of air quality permit applications, streamlined alternatives to traditional applications, such as registrations, notifications, and template applications, construction permit applications, acid rain permit applications, notifications, emissions inventory, certifications, determination requests, fees, forms, and payments.

The revision includes the new definitions of ''electronic format'', ''electronic submittal'', and ''electronic submittal format''. The revisions also update the construction permit application provisions to specify the types of submittals that may be included in an electronic submittal option, updates methods and procedures for stack sampling and associated analytical methods, updates the definition of ''volatile organic compounds'' for prevention of significant deterioration (PSD) and updates the applicability of the PSD rule to construction of any new ''major stationary source''. The specific changes and EPA analysis are discussed in more detail the proposed rule included in the docket for this action.

The EPA solicited comments on the proposed revision to Iowa's SIP, and did not receive any comments.

## II. Have the requirements for approval of a SIP revision been met?

The August 12, 2020 submission met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The State held a public comment period from March 11 to April 13, 2020, with a public hearing on April 13, 2020. No public comments were received.

The items related to electronic submittal of permit applications and emissions inventories, were placed on public notice at various dates specified above. The supporting documentation has been included in the docket. The only comment made specifically regarding the language pertaining to Iowa's electronic document receiving system was made by EPA and was resolved by EPA's approval of Iowa's electronic document receiving systems pursuant to CROMERR requirements.

The above submittals satisfy the completeness criteria of 40 CFR part 51, appendix V. In addition, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the revisions are also consistent with applicable EPA requirements of Title V of the CAA and 40 CFR part 70.

## III. What action is the EPA taking?

The EPA is taking final action to approve revisions to the Iowa SIP and the Operating Permits Program. The revisions update the definitions of ''EPA Reference Method'' and ''volatile organic compounds'', updates the definitions to adopt the most current EPA methods for measuring air pollutant emissions, performance testing, and continuous monitoring, and to reflect changes EPA has made to the definitions. The revisions also add regulatory cross-references, and define ''electronic format,'' ''electronic submittal,'' and ''electronic submittal format'' to facilitate the Department's launch of EASY Air, a new online electronic method for submitting air quality permit applications.

EPA has determined that approval of these revisions will not impact air quality and will ensure consistency between the state and federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

## IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Iowa Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

[1] 62 FR 27968, May 22, 1997.

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

*40 CFR Part 70*

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Licensing and registration, Reporting and recordkeeping requirements.

Dated: June 14, 2021.

**Edward H. Chu,**

*Acting Regional Administrator, Region 7.*

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 70 as set forth below:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart Q—Iowa

■ 2. In § 52.820, the table in paragraph (c) is amended by revising the entries for ''567–20.1'', ''567–22.1'', ''567–25.1'', and ''567–33.3'' to read as follows:

**§ 52.820 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Iowa Department of Natural Resources Environmental Protection Commission [567]** | | | | |
| **Chapter 20—Scope of Title-Definitions** | | | | |
| 567–20.1 | Scope of Title—Definitions | 7/22/2020 | 6/25/2021, [insert **Federal Register** citation]. | The definitions for ''anaerobic lagoon,'' ''odor,'' ''odorous substance,'' ''odorous substance source'' are not SIP approved. |
| * | * | * | * | * |
| **Chapter 22—Controlling Pollution** | | | | |
| 567–22.1 | Permits Required for New or Stationary Sources. | 7/22/2020 | 6/25/2021, [insert **Federal Register** citation]. | |
| * | * | * | * | * |
| **Chapter 25—Measurement of Emissions** | | | | |
| 567–25.1 | Testing and Sampling of New and Existing Equipment. | 7/22/2020 | 6/25/2021, [insert **Federal Register** citation]. | |
| * | * | * | * | * |
| **Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources-Prevention of Significant Deterioration (PSD) of Air Quality** | | | | |

EPA-APPROVED IOWA REGULATIONS—Continued

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 567–33.3 ..... | Special Construction Permit Requirements for Major Stationary Sources in Areas Designated Attainment or Unclassified (PSD). | 7/22/2020 | 6/25/2021, [insert **Federal Register** citation]. | Provisions of the 2010 $PM_{2.5}$ PSD—Increments, SILs and SMCs rule, published in the **Federal Register** on October 20, 2010, relating to SILs and SMCs that were affected by the January 22, 2013, U.S. Court of Appeals decision are not, at the state's request, included in Iowa's SIP provisions (see **Federal Register**, March 14, 2014) (Vol. 79, No. 50). |
| * | * | * | * | * |

* * * * *

## PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

■ 4. In appendix A to part 70 the entry for ''Iowa'' is amended by adding paragraph (w) to read as follows:

### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

*Iowa*

* * * * *

(w) The Iowa Department of Natural Resources submitted for program approval revisions to rules 567–22.100, 567–22.120, 567–22.105(1), 567–22.106(2), and 567–22.128(4). The state effective date for 567–22.105(1) and 567–22.106(2) is April 17, 2019. The state effective date for 567–22.100, 567–22.120, and 567–22.128(4) is July 22, 2020. This revision is effective August 24, 2021.

* * * * *

[FR Doc. 2021–13456 Filed 6–24–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[EPA–R08–OAR–2020–0741; FRL–10025–27–Region 8]**

## Approval and Promulgation of Implementation Plans; Montana; Butte $PM_{10}$ Nonattainment Area Limited Maintenance Plan and Redesignation Request

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the Limited Maintenance Plan (LMP) submitted by the State of Montana to EPA on March 23, 2020, for the Butte Moderate nonattainment area (NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$) and concurrently redesignate the NAA to attainment for the 24-hour $PM_{10}$ National Ambient Air Quality Standard (NAAQS). In order to approve the LMP and redesignation, EPA determined that the Butte, MT NAA has attained the 1987 24-hour $PM_{10}$ NAAQS of 150 μg/m³. This determination is based upon monitored air quality data for the $PM_{10}$ NAAQS during the years 2014 through 2018. The EPA is taking this action pursuant to the Clean Air Act (CAA).

**DATES:** This rule is effective on July 26, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2020–0741. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Kate Gregory, Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6175, email address: *gregory.kate@epa.gov.*

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

### I. Background

The background for this action is discussed in detail in our April 19, 2021 proposal (86 FR 20353). In that document, we proposed to approve the LMP for the Butte NAA and the State's request to redesignate the Butte NAA from nonattainment to attainment for the 1987 24-hour $PM_{10}$ NAAQS. Additionally, we proposed to determine that the Butte NAA has attained the NAAQS for $PM_{10}$. That determination was based upon monitored air quality data for the $PM_{10}$ NAAQS during the years 2014 through 2018. Finally, in our April 19, 2021 proposal, EPA proposed to approve the Butte LMP as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A.

The public comment period on the EPA's proposed rule opened on April 19, 2021, the date of its publication in the **Federal Register** (86 FR 20353) and closed on May 19, 2021. During this time, the EPA received two comments, both in support of this action and neither require response to comment.

### II. Final Action

For the reasons explained in our proposed action, we are approving the LMP for the Butte NAA and the State's request to redesignate the Butte NAA from nonattainment to attainment for the 1987 24-hour $PM_{10}$ NAAQS. Additionally, the EPA is determining that the Butte NAA has attained the

NAAQS for $PM_{10}$. This determination is based upon monitored air quality data for the $PM_{10}$ NAAQS during the years 2014 through 2018. The EPA is approving that the Butte LMP as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A.

## III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the EPA is finalizing the incorporation by reference of maintenance plans for the Butte $PM_{10}$ NAA and the Governor of Montana's redesignation requests for the Butte $PM_{10}$ NAAs to attainment. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, 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);
- 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; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

## List of Subjects

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, and Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2021.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

40 CFR parts 52 and 81 are amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart BB—Montana

■ 2. In § 52.1370, the table in paragraph (e) is amended by adding the entry ''Butte 1987 $PM_{10}$ Limited Maintenance Plan'' under the heading entitled ''(8) Silver Bow County'' at the end of the section to read as follows:

**§ 52.1370 Identification of plan.**

* * * * *

(e) * * *

[1] 62 FR 27968 (May 22, 1997).

| Title/subject | State effective date | Notice of final rule date | NFR citation |
|---|---|---|---|
| * * * | * | * | * * * |
| **(8) Silver Bow County** | | | |
| * * * | * | * | * * * |
| Butte 1987 $PM_{10}$ Limited Maintenance Plan | | 6/25/2021 | [insert **Federal Register** citation]. |
| * * * | * | * | * * * |

■ 3. In § 52.1374, add paragraph (f) to read as follows:

**§ 52.1374 Control strategy: Particulate matter.**

* * * * *

(f) On March 23, 2020, the State of Montana submitted limited maintenance plans for the Butte $PM_{10}$ nonattaiment areas and requested that this area be redesignated to attainment for the $PM_{10}$ National Ambient Air Quality Standards. The redesignation request and limited maintenance plans satisfy all applicable requirements of the Clean Air Act.

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

**Authority:** 42 U.S.C. 7401, *et seq.*

## Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.327, the table entitled ''Montana—PM–10'' is amended by revising the entry ''Silver Bow County, Butte'' to read as follows:

**§ 81.327 Montana.**

* * * * *

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| * * * * | * | | * | * |
| Silver Bow County, Butte<br>The following area of Butte-Silver Bow excluding the territorial limits of the City of Walkerville: Beginning at the Northwest corner of Section 2, T.3N., R.8W., thence Easterly to Northeast corner Section 5, T.3N., R.7W.; then Southerly to Northwest corner Section 9, T.3N., R.7W.; thence Easterly to Northeast corner Section 10, T.3N., R.7W.; thence Southerly to Southeast corner Section 22, T.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence Northerly to Northwest corner Section 19, T.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence Northerly to Southwest corner Section 35, T.3N., R.8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence Northerly to Northwest corner Section 27, T.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence Northerly to Northwest corner Section 17, T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence Northerly to the point of beginning. | 7/26/2021 | Attainment. | | |
| * * * * | * | | * | * |

* * * * *

[FR Doc. 2021–13618 Filed 6–24–21; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 13–184; FCC 19–117; FRS 33027]**

## Modernizing the E-Rate Program for Schools and Libraries

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Universal Service Schools and Libraries program contained in the Commission's *Modernizing the E-Rate Program for Schools and Libraries Report and Order (Category Two Order),* FCC 19–117. This document is consistent with the *Category Two Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

**DATES:** The amendment to § 54.513(d) published at 84 FR 70026, December 20, 2019, is effective June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kate Dumouchel, Wireline Competition Bureau at (202) 418–7400 or via email: *Kate.Dumouchel@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Commission made a submission for non-substantive changes to an existing collection for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on June 7, 2021, which were approved by the OMB on June 8, 2021. The information collection requirements are contained in the Commission's *Category Two Order,* FCC 19–117, published at 84 FR 70026, December 20, 2019. The OMB Control Number is 3060–0853. The Commission publishes this document as an announcement of the effective date of the rules published December 20, 2019. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L St., NE, Washington, DC 20554. Please include the OMB Control Number, 3060–0853, in your correspondence. We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

## Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on June 8, 2021, for the information collection requirements contained in 47 CFR 54.513(d), published at 84 FR 70026, December 20, 2019. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0853.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–0853. OMB Approval Date: June 8, 2021.

*OMB Expiration Date:* December 31, 2022.

*Title:* Certification by Administrative Authority to Billed Entity Compliance with the Children's internet Protection Act Form, FCC Form 479; Receipt of Service Confirmation and Certification of Compliance with the Children's internet Protection Act Form, FCC Form 486; and Funding Commitment and Adjustment Request Form, FCC Form 500.

*Form Numbers:* FCC Forms 479, 486 and 500.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents and Responses:* 58,500 respondents, 58,500 responses.

*Estimated Time per Response:* 1 hour for FCC Form 479, 1 hour for FCC Form 486, 1 hour for FCC Form 500, and .75 hours for maintaining and updating the internet Safety Policy.

*Frequency of Response:* On occasion and annual reporting requirements, recordkeeping requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 4(j), 201–205, 214, 254, 312(d), 312(f), 403 and 503(b) of the Communications Act of 1934, as amended. 5 U.S.C. 553(b)(3), 601–612; 15 U.S.C. 1, 632; 44 U.S.C. 3506(c)(4); 47 U.S.C. 1, 4(i), 4(j), 201–205, 214, 254, 312(d), 312(f), 403, 503(b).

*Total Annual Burden:* 53,575 hours.

*Total Annual Cost:* No cost.

*Nature and Extent of Confidentiality:* There is no assurance of confidentiality provided to respondents concerning this information collection. However, respondents may request materials or information submitted to the Commission or the Administrator be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* The requirements contained herein are necessary to implement the Congressional mandate for universal service. It provides the Commission and USAC with the necessary information to administer the E-Rate program, determine the amount of support entities seeking funding are eligible to receive, to determine if entities are complying with the Commission's rules, and to prevent waste, fraud, and abuse. The information will also allow the Commission to evaluate the extent to which the E-Rate program is meeting the statutory objectives specified in section 254 of the 1996 Act, the Commission's own performance goals set in the *2014 First E-Rate Order,* and to evaluate the need and feasibility for any future revisions to program rules.

Further, the purpose of this information is to ensure that schools and libraries that are eligible to receive discounted internet Access services (Category One), and Broadband Internal Connections, Managed Internal Broadband Services, and Basic Maintenance of Broadband Internal Connections (Basic Maintenance) (known together as Category Two Services) have in place internet safety policies. Schools and libraries receiving these services must certify, by completing a FCC Form 486 (Receipt of Service Confirmation and Certification of Compliance with the Children's internet Protection Act), that respondents are enforcing a policy of internet safety and enforcing the operation of a technology prevention measure. Also, respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service funding must file FCC Form 486 to indicate their service start date and to start the payment process. In addition, all members of a consortium must submit signed certifications to the Billed Entity of their consortium using a FCC Form 479; Certification by Administrative Authority to Billed Entity of Compliance with Children's internet Protection Act, in language consistent with the certifications adopted for the FCC Form 486.

Consortia must, in turn, certify collection of the FCC Forms 479 on the FCC Form 486. FCC Form 500 is used by E-rate participants to make adjustments to previously filed forms, such as changing the contract expiration date filed with the FCC Form 471, changing the funding year service start date filed with the FCC Form 486, cancelling or reducing the amount of funding commitments, requesting extensions of the deadline for nonrecurring services, and notifying USAC of equipment transfers.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2021–13488 Filed 6–24–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 21–152; RM–11899; DA 21–701; FR ID 34382]**

### Television Broadcasting Services Freeport, Illinois

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On April 14, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Gray Television Licensee, LLC (Petitioner), requesting the allotment of channel 9 to Freeport, Illinois in the DTV Table of Allotments as the community's first local service. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to allot channel 9 at Freeport. The newly allotted channel will be authorized pursuant to the Commission's competitive bidding rules.

**DATES:** Effective June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The proposed rule was published at 86 FR 21258 on April 23, 2021. The Petitioner filed comments in support of the petition, as required by the Commission's rules, reaffirming its commitment to apply for channel 9 and if authorized, to build a station promptly. No other comments were filed. We believe the public interest would be served by allotting channel 9 at Freeport, Illinois. Freeport (pop. 25,638) is the county seat and largest city in Stephenson County, and clearly qualifies for community of license status for allotment purposes. In addition, the proposal would result in a first local service to Freeport; channel 41 at Freeport will be deleted since WIFR(TV), which previously occupied the channel, submitted a winning bid to go off the air in the broadcast television incentive auction and subsequently suspended operations. Moreover, the allotment is consistent with the minimum geographic spacing requirements for new DTV allotments in the Commission's rules, and the allotment point complies with the rules as the entire community of Freeport is encompassed by the 43 dBμ contour.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 21–152; RM–11899; DA 21–701, adopted June 16, 2021, and released June 16, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

### Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICE

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

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in paragraph (i), amend the Post-Transition Table of DTV Allotments, under Illinois, by revising the entry for ''Freeport'' to read as follows:

**§ 73.622 Digital television table of allotments.**

* * * * *

(i) * * *

| Community | Channel No. |
|---|---|
| * * * * * | |
| **ILLINOIS** | |
| * * * * * | |
| Freeport | 9, 41 |
| * * * * * | |

[FR Doc. 2021–13563 Filed 6–24–21; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 21–71; RM–11887; DA 21–601; FR ID 33925]**

### Television Broadcasting Services; Hannibal, Missouri; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission published a document in the **Federal Register** of June 16, 2021, concerning a petition for rulemaking filed by KHQA Licensee, LLC, licensee of KHQA–TV, channel 7, Hannibal, Missouri, requesting the substitution of UHF channel 22 for VHF channel 7 in the DTV Table of Allotments. The document contained the incorrect call sign of the licensee. The document also contained an incomplete email address of the contact person.

**DATES:** June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Corrections

In FR Doc. 2021–12049, published in the **Federal Register** of June 16, 2021, appearing on page 31954, the following corrections are made:

1. On page 31954, in the third column, correct the **SUMMARY** caption to read:

**SUMMARY:** On March 7, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* in response to a petition for rulemaking filed by KHQA Licensee, LLC (Licensee), the licensee of KHQA–TV, channel 7 (CBS), Hannibal, Missouri, requesting the substitution of channel 22 for channel 7 at Hannibal in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 22 for channel 7 at Hannibal.

2. On page 31955, in the first column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

Dated: June 17, 2021.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

[FR Doc. 2021–13561 Filed 6–24–21; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 201214–0337]**

**RIN 0648–BJ98**

## Fisheries of the Northeastern United States; Golden Tilefish Fishery; Extension of Emergency Action

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

**ACTION:** Temporary rule; emergency action extension.

**SUMMARY:** This temporary rule extends emergency measures that allow a limited one-time carryover of up to 5 percent of unharvested fishing quota from the 2020 fishing year into the 2021 fishing year. This action is necessary to allow the golden tilefish individual fishing quota shareholders that were eligible for carryover under the emergency measures, but have not yet fully harvested that carryover, an opportunity to use it. This action is intended to provide additional time for quota shareholders to fully harvest their allocations.

**DATES:** The expiration date of the emergency rule published December 21, 2020 (85 FR 82944) is extended to November 1, 2021.

**ADDRESSES:** Copies of the Supplemental Information Report prepared for the 2021–2022 Golden Tilefish Specifications and emergency action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Dover, Suite 201, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, (978) 281–9341.

**SUPPLEMENTARY INFORMATION:**

### Background

At the request of the Mid-Atlantic Fishery Management Council, NMFS published a final rule on December 21, 2020 (85 FR 82944) that implemented emergency action for the Tilefish Fishery Management Plan (FMP) to allow a one-time carryover of unharvested Individual Fishing Quota (IFQ) from fishing year 2020 to 2021, up to 5 percent of the original 2020 allocation. A proposed rule for this action was published on November 13, 2020 (85 FR 72616) with a comment period through November 30, 2020. No comments were received on the emergency action.

The tilefish IFQ program does not normally allow any carryover of unharvested allocation from one fishing year into the next. Unforeseen changes in the market for seafood resulting from the COVID–19 pandemic, particularly the loss of restaurant sales due to local closure orders, substantially reduced demand for golden tilefish during the 2020 fishing year. Because of this unprecedented impact on the fishery, we implemented this one-time carry over under our emergency rulemaking authority specified in section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act.

This action extends this emergency action past the current expiration date of June 19, 2021, until the start of the next golden tilefish fishing year on November 1, 2021. This will allow tilefish IFQ quota shareholders who have not yet had an opportunity to harvest the IFQ pounds they carried over additional time to take full advantage of this opportunity.

Each IFQ quota shareholder was eligible to carry over 2020 golden tilefish quota pounds that were not harvested before the end of the 2020 fishing year, up to a maximum amount of 5 percent of their initial 2020 quota pounds. Of the 10 entities that hold quota share in the golden tilefish IFQ program, 5 had unharvested quota pounds at the end of the 2020 fishing year and were able to carry over some of those quota pounds into the 2021 fishing year. Some quota shareholders have already harvested their carryover while others have not yet taken full advantage of this opportunity. Extending this emergency action ensures that all those who received carryover are able to fully benefit from these measures.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. As noted in the December 21, 2020, final rule, NMFS has determined that allowing the carryover of unharvested tilefish IFQ quota pounds as described above meets the three criteria for emergency action.

Section 305(c) of the Magnuson-Stevens Act specifies that emergency regulations may only remain in effect for 180 days from the date of publication and may be extended for one additional period of not more than 186 days. Extending this action until the start of the next fishing year on November 1, 2021, would only be 135 days.

### Classification

NMFS is issuing this temporary rule pursuant to section 305(c) of the Magnuson Stevens Act, which authorizes NMFS to implement regulations at the request of the Council to address an emergency in the fishery. The Acting Assistant Administrator Fisheries, NOAA has determined that this rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to 5 U.S.C. 553(d)(3), the Acting Assistant Administrator Fisheries, NOAA finds good cause to waive the 30-day delay in effectiveness for this rule. This rule extends some measures of the rule currently in place through the end of the current fishing year. The need for this extension was fully anticipated and announced to the public in the initial emergency rule which published on December 21, 2020. Accordingly, the entities affected by this rule and the public have no need to be made aware of or adjust to this rule by delaying its effectiveness for 30 days. The primary reason for delaying the effectiveness of Federal regulations is not present, and, therefore, such a delay would serve no public purpose. It would be contrary to the public interest if the emergency measures are allowed to expire on June 19, 2021, because tilefish IFQ quota shareholders could lose any remaining carryover granted by

this emergency action. Moreover, allowing the emergency measures to lapse between June 19, 2021, and a later effective date of this extension may lead to confusion in the fishing community. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

The December 21, 2020, final rule that implemented the emergency action was determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: June 14, 2021.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2021–13619 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No.: 210616–0130]**

**RIN 0648–BH67**

## Fisheries of the Northeastern United States; Omnibus Deep-Sea Coral Amendment

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements the measures of the New England Fishery Management Council's Omnibus Deep-Sea Coral Amendment. This action protects deep-sea corals from the impacts of commercial fishing gear on Georges Bank and in the Gulf of Maine. These management measures are intended to reduce, to the extent practicable, impacts of fishing gear on deep-sea corals in New England while balancing the continued operations of commercial fisheries.

**DATES:** Effective July 26, 2021.

**ADDRESSES:** The New England Fishery Management Council developed an Environmental Assessment (EA) for this action that describes the measures in the Omnibus Deep-Sea Coral Amendment and other considered alternatives and analyzes the impacts of the measures and alternatives. Copies of supporting documents used by the New England Fishery Management Council, including the EA and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/omnibus-deep-sea-coral-amendment.*

Copies of the Final Regulatory Flexibility Analysis (FRFA) and the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Travis Ford, Fishery Policy Analyst, (978) 281–9233.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 20, 2019, pursuant to section 304(a)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS approved the Omnibus Deep-Sea Coral Amendment in its entirety as recommended by the New England Fishery Management Council. The Council developed this action, and the measures described in this rule, under the discretionary provisions for deep-sea coral protection in section 303(b) of the Magnuson-Stevens Act. This provision gives the Regional Fishery Management Councils the authority to:

(A) Designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear; and

(B) Designate such zones in areas where deep-sea corals are identified under section 408 (this section describes the deep-sea coral research and technology program), to protect deep-sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep-sea corals, after considering long-term sustainable uses of fishery resources in such areas.

This final rule implements the Amendment, which prohibits the use of all bottom-tending gear (with an exception for red crab pots) along the outer continental shelf in waters no shallower than 600 m to the Exclusive Economic Zone (EEZ) and prohibits the use of bottom-tending mobile gear in two areas in the Gulf of Maine (Mount Desert Rock and Outer Schoodic Ridge). In addition, this action creates a dedicated habitat research area in Jordan Basin but does not impose any additional restrictions on fishing in this area. This action also establishes provisions for vessels transiting through these areas and adds framework provisions for future modifications to the New England Deep-Sea Coral Protection Area measures. The Magnuson-Stevens Act requires NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with fishery management plans (FMP), the Magnuson-Stevens Act and its National Standards, and other applicable law.

NMFS published a Notice of Availability (NOA) announcing its review of the Amendment on August 26, 2019 (84 FR 44596). The public comment period on the NOA ended on October 25, 2019. Following the Amendment's approval in November 2019, NMFS published a proposed rule for this action on January 3, 2020, including implementing regulations (85 FR 285). The public comment period on the proposed rule ended on February 18, 2020.

#### *Georges Bank Deep-Sea Coral Protection Area*

The Omnibus Deep-Sea Coral Amendment establishes a deep-sea coral protection area on the outer continental shelf in New England waters. It complements the Frank R. Lautenberg Deep-Sea Coral Protection Area established by the Mid-Atlantic Fishery Management Council in Amendment 16 to the Atlantic Mackerel, Squid, and Butterfish FMP (81 FR 90246; December 14, 2016) as described in § 648.372. The Georges Bank Deep-Sea Coral Protection Area runs along the outer continental shelf in waters no shallower than 600 meters (m) and extends to the outer limit of the EEZ boundary to the east and north, and south to the inter-council boundary as described in § 600.105(a).

This area is designated with the landward boundary drawn between the 600-m contour as a hard landward boundary and the 650-m contour as a hard seaward boundary. In some areas the boundary crosses the 650-m contour to draw this line as straight as possible; however, the boundary was constrained on its shallow side by the 600-m contour. From the landward boundary, the boundaries extend along the northern and southern boundaries of the New England Council's management region and to the edge of the EEZ as the eastward boundary.

*Gear Restrictions in the Georges Bank Deep-Sea Coral Protection Area*

This action prohibits the use of bottom-tending commercial fishing gear within the designated Georges Bank Deep-Sea Coral Protection Area, including: Bottom-tending otter trawls; bottom-tending beam trawls; hydraulic dredges; non-hydraulic dredges; bottom-tending seines; bottom longlines; pots and traps; and sink or anchored gillnets. The prohibition on these gears protects deep-sea corals from interaction with and damage from bottom-tending fishing gear. Red crab pot gear is exempt from the prohibition.

*Mount Desert Rock Coral Protection Area*

This action designates a coral protection area in an 8-square mile ($mi^2$) (21-square kilometer ($km^2$)) area southwest of Mount Desert Rock, a small, rocky island off the eastern Maine coast, about 20 nautical miles (nmi) (37 km) south of Mount Desert Island, encompassing depths of 100–200 m. Vessels are prohibited from fishing with bottom-tending mobile gear within the Mount Desert Rock Coral Protection Area. Bottom-tending mobile gear includes but is not limited to: Bottom-tending otter trawls; bottom-tending beam trawls; hydraulic dredges; non-hydraulic dredges; and seines (with the exception of a purse seine). This protects corals in this area from fishing impacts from these gears. Vessels are still able to fish for lobster in this area using trap gear.

*Outer Schoodic Ridge Coral Protection Area*

This action designates a coral protection area in a 31-$mi^2$ (79-$km^2$) area on the Outer Schoodic Ridge, roughly 25 nmi (46 km) southeast of Mount Desert Island, encompassing depths of 104–248 m. Vessels are prohibited from fishing with bottom-tending mobile gear within the Outer Schoodic Ridge Coral Protection Area. Bottom-tending mobile gear includes but is not limited to: Bottom-tending otter trawls; bottom-tending beam trawls; hydraulic dredges; non-hydraulic dredges; and seines (with the exception of a purse seine). This protects corals in this area from fishing impacts from these gears. Vessels are still be able to fish for lobster in this area using trap gear.

*Transiting Provisions*

Vessels are allowed to transit the Georges Bank, Mount Desert Rock, and Outer Schoodic Ridge Coral Protection Areas provided the vessels bring bottom-tending fishing gear onboard the vessel, and reel bottom-tending trawl gear onto the net reel. These transiting provisions are consistent with those established by the Mid-Atlantic Council for the Frank R. Lautenberg Deep-Sea Coral Protection Area.

*Jordan Basin Dedicated Habitat Research Area*

This action designates the area around Jordan Basin in the Gulf of Maine as a dedicated habitat research area, but it does not impose any additional restrictions on fishing in this area. The purpose of this designation is to encourage further exploration of coral habitats at the site, and to encourage research on fishing gear impacts on these habitats.

*Framework Adjustments*

This action adds framework adjustment provisions to facilitate future modifications to the New England Deep-Sea Coral Protection Areas. The new measures that may be changed using a framework adjustment include adding, revising, or removing coral areas; changing fishing restrictions in coral areas; and developing new, or changing existing, coral area fishery access or exploratory fishing programs.

*Letters of Acknowledgement for Vessels Conducting Scientific Research*

The Council requested that researchers seek a Letter of Acknowledgement (LOA) from NMFS before conducting research in these areas. Scientific research on a scientific research vessel is not considered fishing and is therefore exempt from the requirements of the Magnuson-Stevens Act (Magnuson-Stevens Act, Sec. 3, 50 CFR 600.10 and 600.512). NMFS cannot require that scientific research institutions request an LOA when conducting scientific research at sea on a scientific research vessel, but we will encourage researchers to do so, consistent with regulations implementing the Magnuson-Stevens Act provisions at 50 CFR 600.512.

**Comments and Responses**

We received six comments on the NOA. Five comments were in support of our approval of the amendment, and the sixth comment, from the New England Field Office of the U.S. Fish and Wildlife Service, was a statement of no comment on the action. We received 16 comments on the proposed rule. Thirteen of these comments were in support of the proposed rule, and the remaining three comments were in opposition to the rule because the commenters did not believe it went far enough to protect deep-sea corals.

The Atlantic Offshore Lobstermen's Association, Oceana, Conservation Law Foundation (CLF), the Pew Charitable Trust (Pew), and Wild Oceans commented in general support of the action on both the NOA and the proposed rule. One individual commented on the NOA in support of the rule. The New England Aquarium (NEAq) and seven individuals commented in support of the proposed rule. CLF, Pew, and Wild Oceans (*collectively referred to as ''joint commenters'' below*) submitted a joint comment also in general support of the action. Supporting this joint comment was a comment from Pew including 7,628 signatures. Oceana also included a letter with 193 signatures supporting the proposed rule. While all of these comments recommended that NMFS approve the amendment in full, Oceana, NEAq, and the joint commenters suggested that the amendment could have done more to protect deep-sea corals and recommended additional actions the Council and NMFS could take to support the deep-sea coral protection areas.

*Comment 1:* Oceana, NEAq, and one individual commented that the amendment leaves some coral habitat vulnerable to damage from fishing gear, and the joint commenters noted that this action still allows for expansion into coral areas untouched by fishing. NEAq noted that 20 percent of the suitable deep-sea coral habitat is present in the top 50–600 m of seafloor and that the Council should add protections to that area in a future action. NEAq stated that the 50- to 600-m region is designated as essential fish habitat for several species, including commercially important species. Two additional individuals commented that the Council should ban commercial fishing in the areas and leave them open only for subsistence fishing.

*Response:* We agree that this action does not protect all deep-sea coral habitat in New England waters and allows the possibility of future

expansion of fishing. We note that this action also allows for the possibility of further expansion of deep-sea coral protections. The Council is not obligated to permanently protect all habitat suitable for deep-sea corals. This amendment was developed under the discretionary authority granted in section 303(b)(2)(B) of the Magnuson-Stevens Act that provides for protecting deep-sea coral after considering long-term sustainable uses of fishery resources. However, the Council's recommendation, which substantially protects deep-sea coral while allowing fishing to continue in a relatively small portion of the area, strikes a balance between continued operation of fisheries and deep-sea coral protection in a practical way. NMFS will encourage the Council to continue to consider further protections for areas of known-coral presence after considering the long-term sustainable uses of fishery resources in such areas.

*Comment 2:* CLF, Pew, and Wild Oceans jointly requested that NMFS require the Council to revisit the management exemption provided to the deep-sea red crab fishery. Oceana commented that the Council should regularly review the effects of red crab gear on coral and sponge habitat to ensure that the Amendment is achieving its goals. If the red crab gear is found to be threatening coral and sponge habitats, they suggest that revisions to the exemption may be warranted. They also requested that NMFS require the Council to consider a prohibition on anchoring to provide full protections from gears that can harm corals.

*Response:* NMFS does not have the authority to require the Council to consider a prohibition on anchoring of red crab gear to protect deep-sea corals. NMFS determined that the Council considered and complied with all the National Standards and the MSA's requirement to consider long-term sustainable uses of the fishery resources. Should the Council consider red crab gear prohibitions, NMFS will support the Council in the development of subsequent actions to further protect deep-sea coral.

*Comment 3:* The joint commenters also requested that NMFS require fishery managers to expand framework adjustment provisions in New England fishery management plans for future modifications to the deep-sea coral areas and management measures as new data become available.

*Response:* This action adds framework adjustment provisions to facilitate future modifications to the New England Deep-Sea Coral Protection Areas. The new measures that may be changed using a framework adjustment include: Adding, revising, or removing coral areas; changing fishing restrictions in coral areas; and developing new, or changing existing, coral area fishery access or exploratory fishing programs.

*Comment 4:* Oceana and NEAq discouraged the use of a framework to allow fishing in these newly protected areas. Oceana encouraged NMFS to carefully consider the suite of framework provisions included in the Amendment, only approve minor modifications that will strengthen conservation measures, and clearly state the qualifying actions required to approve framework measures. NEAq insisted that there be a full consultation with a wide variety of stakeholders, including scientists, fishermen, and non-governmental organizations, among others before allowing fishing within these areas.

*Response:* While the framework adjustment provisions included in the Amendment do allow for changes to coral protection areas and restrictions in those areas, NMFS will work with the Council to ensure that any framework adjustments are consistent with the goals and objectives of the Amendment and that the public is given the ability to participate, as with any Council action.

*Comment 5:* Both Oceana and the joint commenters requested that NMFS notify the Council if new information indicates the presence of corals outside of the protection area and instruct the Council to amend protections and conserve additional area. In addition, they encouraged NMFS to include a directive for the Council to review and revise the regulations implemented by the Amendment in the near future to ensure they are achieving the Amendment's goals and objectives.

*Response:* NMFS staff and members of the Council's Habitat Plan Development Team (PDT) actively inform the PDT and the Council of the results of new studies and deep-sea explorations and will continue to do so moving forward. However, NMFS does not have the authority to require the Council to increase protections. NMFS will work with the Council and its PDT on future actions to ensure that they consider new information that is relevant to the actions, consistent with MSA requirements.

*Comment 6:* Two individuals expressed concern that the vessel trip report (VTR) analysis used to consider financial impacts indicates that large and small businesses are facing substantially similar financial impacts overall, although the most highly exposed small businesses generate a larger fraction of their overall revenue from areas within the preferred alternative when compared to large businesses.

*Response:* The VTR data analysis indicates that between $6.5–$8.5 million in gross revenue will be potentially displaced under the preferred alternative, although analysis of the vessel monitoring system data suggests this revenue number is an overestimate. After Council discussions at the Council's coral workshops in March 2017, the Council determined that the designation of a broad coral protection zone in waters no shallower than 600 m would cause little change in bottom trawl, trap/pot, and gillnet effort, and that the use of the VTR data was leading to an overestimate of the potential displacement of effort because of the lack of precision in the data. The VTR's provide a single geographic location for a given trip. The VTR analysis puts uncertainty buffers around that point (in the form of concentric circles, representing the 25th, 50th, 75th, and 90th percentile confidence intervals based on statistical analyses of the distance between self-reported VTR points and observed hauls based on trip characteristics) and attribute the revenue from that trip proportionally across the buffer. For trips that occur close to the closure, that circle may bleed into the closure area, when, based on industry feedback, it is likely that no part of the trip actually occurred inside the closure. The industry input from the NEFMC coral workshops was that, due to the distribution of target species, the trawl fishery is active out to depths of about 500 m, the lobster fishery to 550 m, and the red crab fishery to 800 m. For those fisheries where it was possible, a comparison of VTR data and Vessel Monitoring System data, which provides more granular position data but lacks the relevant information on revenue and fishing effort, additionally suggest the values from VTR are overestimates in line with the workshop input.

Furthermore, this is an estimate of gross revenue from displaced effort, and fishermen could relocate that displaced effort to an area outside the closure and still generate revenue. The effort and costs associated with obtaining the catch elsewhere is likely to be higher than the that associated with any displaced fishing (if it is even economically, biologically, or geographically feasible). Otherwise, fishermen would presumably be fishing these other locations. Nevertheless, the gross revenue displaced can be viewed as a likely overestimated upper bound on impacts to the fishery.

The commenters did not provide any additional information to consider.

*Comment 7:* NEAq and two individuals commented that the economic benefit provided by deep-sea coral habitat to the ecosystem and the nation outweighs the economic impacts of prohibiting fishing in these areas. NEAq further commented that, ''Deep-sea corals may provide a number of other ecosystem services, including serving as paleoclimatic records of past ocean conditions, providing sources of material that may be used in the production of novel pharmaceutical compounds, and sequestering excess carbon dioxide in the atmosphere. If deep-sea corals in the proposed protected area provide just 1 percent of the value that NOAA prescribes to shallow-water coral ecosystems, the deep-sea coral ecosystems protected through this proposed rule may be valued at over $42 million annually, or about 6 times the revenue extracted by fishing. We urge NMFS to continue studying and exploring deep-sea coral communities to understand better and properly evaluate the contribution of deep-sea corals to biological diversity, habitat, and human health.''

*Response:* NOAA continues to conduct research on deep-sea coral. For example, after the Council developed this action, in 2019 NOAA's Office of Ocean Exploration and Research conducted surveys in both areas and documented many previously unknown high-density coral and sponge communities, as well as coexisting commercially harvested species. On one expedition alone, 26 of the 35 samples collected extended known species' habitat ranges, and some may be previously unknown to science. Surveys also discovered the deepest high-density community known in the Northeast U.S. at 2,700 m (8,750 ft) deep. The NOAA Deep Sea Coral Research and Technology Program (DSCRTP) is supporting analysis of this new information to inform future decision-making.

Also in 2019, NOAA's Office of Science and Technology, National Systematics Lab, Northeast Fisheries Science Center, Dalhousie University, and Fisheries and Oceans Canada led a U.S.-Canada transboundary expedition. Compared to the deeper New England slope and canyons, extremely high coral densities were observed in the Gulf of Maine. Remotely operated vehicle surveys documented commercially important fish and shellfish in previously unknown deep-sea coral gardens. The DSCRTP intends to begin the next New England and Mid-Atlantic Deep-Sea Coral Initiative starting in 2022, continuing fieldwork through 2024, followed by analysis of this data in 2025. This information was unavailable to the Council at the time this rule was developed. We expect the Council will consider this information and any other newly discovered and available information in future deep-sea coral actions.

Further, attempting to balance the value of all coral in areas managed through the Deep Sea Coral Amendment against the value of fishing in these areas does not provide an accurate view of the benefits of this action. The benefits derived from conservation actions undertaken in the Deep Sea Coral Amendment stem from the difference between no action (status quo) and the alternatives chosen. This is primarily the change in coral function and extent before and after this action. We expect that this action will preserve coral and promote its vitality, which is expected to provide benefits as noted by NEAq. However, comparing the total value generated from the stock of deep sea coral against the value of past fishing activity provides an inapt description of the benefits of this action. A more accurate view is a consideration of the net benefits due to increased conservation of deep sea coral along with the net benefits maintained by the fishery from its potential displacement of effort as compared to status quo.

## Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this Amendment and final rule are consistent with the Omnibus Deep-Sea Coral Amendment, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Office of Management and Budget determined this rule to be significant for purposes of Executive Order 12866. The suite of preferred alternatives in this action mitigate a substantial proportion of the negative impacts to the commercial fisheries compared to other alternatives in the document. However, this comes along with a trade-off with any conservation benefits associated with deep sea coral protection, the value of which are uncertain at this time. As described above, the intent of this action is to freeze the footprint of existing fishing, and this action was developed through the Council process with significant input from the fishing industry. The VTR data analysis indicates that between $10–$15 million in gross revenue will be potentially displaced under the preferred alternative, although analysis of the vessel monitoring system data suggests this revenue number is an overestimate.[1] Furthermore, this is an estimate of gross revenue from displaced effort, and fishermen could relocate that displaced effort to an area outside the closure and still generate revenue. A description of and caveats associated with the impact analyses undertaken in support of this action can be found in section 7.1 of the EA. The discussion in section 7.1 of the EA includes issues associated with quantifying the full range of costs and benefits associated with the Amendment. The expected effects of each alternative relative to the status quo for the fishery-related businesses and communities are discussed in sections 7.2–7.4 of the EA, and a discussion of the benefits and costs of the preferred alternative can be found in section 1.2 of the FRFA.

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has completed a FRFA in support of this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by public comments in response to the IRFA (see below), NMFS responses to those comments (as described above in the Comments and Responses section of this final rule), and a summary of the analyses completed in the Omnibus Deep-Sea Coral Amendment EA in section 11.3. In addition, because of the unusual delay between the Council's adoption of the Amendment and this final rule, NMFS prepared a standalone FRFA to recast analyses from 2014 constant dollars to 2020 constant dollars to be more accessible to the general public. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the Amendment and in the preambles to the proposed rule and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and/or the Council, and a copy

[1] As discussed later in the preamble, the use of the VTR data was leading to an overestimate of the potential displacement of effort because of the lack of precision in the data. Furthermore, the VTR analysis provides an estimate of gross revenue of displaced effort, and fishermen could relocate that displaced effort to an area outside the closure and still generate revenue.

of the IRFA, RIR, the FRFA, and the EA are available upon request (see **ADDRESSES**). Following are additional elements of the FRFA.

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

The proposed rule solicited public comment on whether the VTR analysis indicates that large and small businesses are facing substantially similar impact levels overall, although the most highly exposed small businesses generate a larger fraction of their overall revenue from areas within the preferred alternative when compared to large businesses. Two individuals expressed concern regarding this issue but did not provide any additional information to consider. See *Comment 6* above.

The proposed rule also solicited public comment on value estimates for the benefits associated with deep-sea coral conservation. The NEAq and two individuals commented that the economic benefit of the ecosystem services that deep-sea coral habitat provides outweighs the economic impacts of prohibiting fishing in these areas. NEAq further commented that, ''Deep-sea corals may provide a number of other ecosystem services, including serving as paleoclimatic records of past ocean conditions, providing sources of material that may be used in the production of novel pharmaceutical compounds, and sequestering excess carbon dioxide in the atmosphere. If deep-sea corals in the proposed protected area provide just 1 percent of the value that NOAA prescribes to shallow-water coral ecosystems, the deep-sea coral ecosystems protected through this proposed rule may be valued at over $42 million annually, or about 6 times the revenue extracted by fishing.'' See *Comment 7* above. As explained above, NMFS did not make any changes to the proposed rule as a result of these comments.

*Description and Estimate of the Number of Small Entities to Which This Rule Would Apply*

The description and estimate of the number of small entities that is available in the proposed rule was presented in 2014 constant dollars. However, because of the unusual delay between the Council's completion of the Amendment and this final rule, NMFS recast this analysis from 2014 constant dollars to 2020 constant dollars to be more accessible to the general public.

The RFA recognizes three kinds of small entities: Small businesses, small organizations, and small governmental jurisdictions. Small organizations and small governmental jurisdictions are not directly regulated by this action. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. Throughout this section, revenue is presented in 2020 dollars, for consistency with the remainder of the document, although classification was made using 2017 dollars, consistent with SBA guidelines. Further, SBA rules of affiliation are used to define a business entity. Thus, the following analysis is conducted upon unique business interests, which can represent multiple vessel-level permits.

The Deep-Sea Coral Amendment regulates all fishermen with federal permits allowing the holder to fish in the federal waters off Southern New England, Georges Bank, and the Gulf of Maine. In 2017, this represents 10 large commercial fishing businesses, 3,832 small commercial fishing businesses and 351 recreational for-hire businesses. However, based on VTR data, only ~200 of these small businesses had any documented fishing activity in the coral protection zone from 2015 to 2017, annually. Total revenue from estimates used in entity classification can be found in Table 1.

TABLE 1—TOTALS FOR REVENUE ESTIMATES USED FOR ENTITY CLASSIFICATION, IN $2020

| Year | Size | Entity type | Total revenue | Commercial revenue | For-hire revenue |
|---|---|---|---|---|---|
| 2015 | Large Business | Commercial Fishing | $201,865,333 | $201,865,333 | $0 |
| 2016 | Large Business | Commercial Fishing | 214,552,827 | 214,548,464 | 4,363 |
| 2017 | Large Business | Commercial Fishing | 224,672,712 | 224,672,712 | 0 |
| 2015 | Small Business | Commercial Fishing | 1,073,834,819 | 1,072,683,887 | 1,150,932 |
| 2016 | Small Business | Commercial Fishing | 1,177,052,910 | 1,176,007,530 | 1,045,380 |
| 2017 | Small Business | Commercial Fishing | 1,103,842,263 | 1,102,971,802 | 870,461 |
| 2015 | Small Business | Recreational For-hire | 111,023,269 | 55,709,178 | 55,314,091 |
| 2016 | Small Business | Recreational For-hire | 116,426,502 | 58,483,088 | 57,943,414 |
| 2017 | Small Business | Recreational For-hire | 109,749,129 | 55,131,243 | 54,617,886 |

Taking the recast analysis in 2020 constant dollars and public comments into consideration, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of the rule on these small entities. This is because the recreational for-hire sector is not active in the management regions identified in this action, and the alternatives considered were developed to take into account impacts on entities fishing in these areas. Further, the new size standards for for-hire vessels do not affect the decision to prepare a final regulatory flexibility analysis as opposed to a certification for this action. This is because all for-hire entities in the region are already classified as small businesses.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule*

This action contains no new collection-of-information, reporting, or recordkeeping requirements. There are potential economic impacts to small entities associated with this rule. Those impacts are described in detail in the Final Omnibus Deep Sea Coral Amendment, specifically, in the FRFA section 1.2.4.2 and in the analysis of the impacts on human communities in section 7.1.3 of the EA, which is still applicable.

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes*

Throughout the development of this action the Council considered public comments on how fisherman would be impacted. On March 13 and 15, 2017, the Council held workshops in New Bedford, MA, and Portsmouth, NH, respectively, to discuss the coral zone boundaries, considering the canyon and slope zones on Georges Bank (broad zone) at the first meeting, and the offshore Gulf of Maine zones at the second. Based on these discussions at the Council's coral workshops, it was determined that the designation of a broad coral protection zone in waters no shallower than 600 m causes little change in bottom trawl, trap/pot, and gillnet effort, and that the use of the VTR data was leading to an overestimate of the potential displacement of effort because of the lack of precision in the data. Furthermore, the VTR analysis provides an estimate of gross revenue of displaced effort, and fishermen could relocate that displaced effort to an area outside the closure and still generate revenue. The preferred alternative that this action implements is a direct result of input gathered at these workshops. In addition, the Council exempted the red crab fishery from these restrictions in the Georges Bank Deep-Sea Coral Protection Area because it is a small fishery that takes place entirely within the protection area, and prohibiting the red crab effort from the area would essentially end the red crab fishery.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as ''small entity compliance guides.'' The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a bulletin to permit holders that also serves as a small entity compliance guide was prepared. This final rule and the guide (*i.e.,* bulletin) will be sent via email to the Greater Atlantic Regional Fisheries Office scallop email list and are available on the website at: *http://www.greateratlantic.fisheries.noaa.gov/.* Hard copies of the guide and this final rule will be available upon request (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 17, 2021.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, add paragraphs (b)(13) through (15) to read as follows:

**§ 648.14 Prohibitions.**

* * * * *

(b) * * *

(13) Fish with bottom-tending gear within the Georges Bank Deep-Sea Coral Protection Area described at § 648.373(a)(2), unless transiting pursuant to § 648.373(d) or fishing red crab trap gear in accordance with § 648.264. Bottom-tending gear includes, but is not limited to, bottom-tending otter trawls, bottom-tending beam trawls, hydraulic dredges, non-hydraulic dredges, bottom-tending seines, bottom longlines, pots and traps, and sink or anchored gill nets.

(14) Fish with bottom-tending mobile gear within the Mount Desert Rock Coral Protection Area described at § 648.373(b), unless transiting pursuant to § 648.373(d). Bottom-tending mobile gear includes, but is not limited, to otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

(15) Fish with bottom-tending mobile gear within the Outer Schoodic Ridge Coral Protection Area described at § 648.373(c), unless transiting pursuant to § 648.373(d). Bottom-tending mobile gear includes, but is not limited to, otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

* * * * *

■ 3. In § 648.371 revise paragraph (d) and add paragraph (f) to read as follows:

**§ 648.371 Dedicated Habitat Research Areas.**

* * * * *

(d) *Transiting.* Unless otherwise restricted or specified in this paragraph (d), a vessel may transit the Dedicated Habitat Research Areas of this section provided that its prohibited gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(f) *Jordan Basin Dedicated Habitat Research Area.* (1) The Jordan Basin DHRA is defined by the following coordinates, connected in the order listed by straight lines:

TABLE 3 TO PARAGRAPH (f)(1)

| Point | Longitude | Latitude |
|---|---|---|
| DHRA1 | −67°51.38′ | 43°27.47′ |
| DHRA2 | −67°47.38′ | 43°27.46′ |
| DHRA3 | −67°47.18′ | 43°16.92′ |
| DHRA4 | −67°51.05′ | 43°17.05′ |
| DHRA1 | −67°51.38′ | 43°27.47′ |

(2) Fishing vessels, regardless of gear type, may fish within the Jordan Basin DHRA.

* * * * *

■ 4. Add § 648.373 to read as follows:

**§ 648.373 New England Deep-Sea Coral Protection Areas**

(a) *Georges Bank Deep-Sea Coral Protection Area.* (1) No vessel may fish with bottom-tending gear within the Georges Bank Deep-Sea Coral Protection Area described in this section, unless transiting pursuant to paragraph (d) of this section or fishing red crab trap gear in accordance with § 648.264. Bottom-tending gear includes, but is not limited to, bottom-tending otter trawls, bottom-tending beam trawls, hydraulic dredges, non-hydraulic dredges, bottom-tending seines, bottom longlines, pots and traps, and sink or anchored gillnets.

(2) The Georges Bank Deep-Sea Coral Protection Area is bound on the west by the New England/Mid-Atlantic Inter-council Boundary line (detailed in paragraph (a)(2)(i) of this section); bound on the north by a simplified line (detailed in paragraph (a)(2)(ii) of this section) following the 600m depth contour along the southern flank of Georges Bank; and bound on the east and south by the U.S.-Canada Maritime Boundary and the outer limit of the U.S. Exclusive Economic Zone (detailed in paragraph (a)(2)(iii) of this section).

(i) The western boundary is defined by the following coordinates, connected in the order listed, south to north, by straight lines:

TABLE 1 TO PARAGRAPH (a)(2)(i)

| Point | Longitude | Latitude | Note |
|---|---|---|---|
| 1 | −68°47.62′ | 38°2.21′ | (1) |
| 2 | −68°49.99′ | 38°4.84′ | |
| 3 | −68°57.35′ | 38°13.00′ | |
| 4 | −69°4.73′ | 38°21.15′ | |
| 5 | −69°12.13′ | 38°29.29′ | |
| 6 | −69°19.57′ | 38°37.42′ | |
| 7 | −69°27.03′ | 38°45.54′ | |
| 8 | −69°34.53′ | 38°53.66′ | |
| 9 | −69°42.05′ | 39°1.77′ | |
| 10 | −69°49.60′ | 39°9.86′ | |
| 11 | −69°57.18′ | 39°17.96′ | |
| 12 | −70°4.78′ | 39°26.04′ | |
| 13 | −70°12.42′ | 39°34.11′ | |
| 14 | −70°20.09′ | 39°42.18′ | |
| 15 | −70°27.78′ | 39°50.24′ | |
| 16 | −70°31.64′ | 39°54.26′ | |
| 17 | −70°32.09′ | 39°54.72′ | (2) |

**Notes:**
(1) POINT 1 represents the outer limit of the US EEZ.
(2) POINT 17 represents where the western and northern boundaries meet.

(ii) The northern (nearshore) boundary is defined by the following coordinates, connected in the order listed, west to east, by straight lines.

TABLE 2 TO PARAGRAPH (a)(2)(ii)

| Point | Longitude | Latitude | Note |
|---|---|---|---|
| 17 | −70°32.09′ | 39°54.72′ | (3) |
| 18 | −70°29.83′ | 39°59.78′ | |
| 19 | −70°28.72′ | 39°54.41′ | |
| 20 | −70°27.52′ | 39°53.44′ | |
| 21 | −70°26.05′ | 39°53.13′ | |
| 22 | −70°23.81′ | 39°53.13′ | |
| 23 | −70°22.44′ | 39°53.72′ | |
| 24 | −70°21.97′ | 39°54.94′ | |
| 25 | −70°20.12′ | 39°53.97′ | |
| 26 | −70°16.98′ | 39°53.60′ | |
| 27 | −70°17.35′ | 39°54.55′ | |
| 28 | −70°16.99′ | 39°54.77′ | |
| 29 | −70°17.55′ | 39°57.01′ | |
| 30 | −70°16.69′ | 39°57.06′ | |
| 31 | −70°14.54′ | 39°57.75′ | |
| 32 | −70°13.64′ | 39°58.44′ | |
| 33 | −70°12.58′ | 39°58.82′ | |
| 34 | −70°12.16′ | 39°58.32′ | |
| 35 | −70°13.85′ | 39°56.68′ | |
| 36 | −70°14.29′ | 39°56.56′ | |
| 37 | −70°12.51′ | 39°55.18′ | |
| 38 | −70°11.17′ | 39°55.2′ | |
| 39 | −70°11.19′ | 39°54.34′ | |
| 40 | −70°10.33′ | 39°53.64′ | |
| 41 | −70°7.98′ | 39°54.17′ | |
| 42 | −70°6.99′ | 39°54.94′ | |
| 43 | −70°6.56′ | 39°53.85′ | |
| 44 | −70°4.99′ | 39°53.24′ | |
| 45 | −70°02.97′ | 39°52.62′ | |
| 46 | −70°02.70′ | 39°53.66′ | |
| 47 | −70°01.24′ | 39°54.69′ | |
| 48 | −70°00.34′ | 39°53.26′ | |
| 49 | −69°59.41′ | 39°52.49′ | |
| 50 | −69°57.88′ | 39°52.61′ | |
| 51 | −69°57.05′ | 39°53.05′ | |

TABLE 2 TO PARAGRAPH (a)(2)(ii)—Continued

| Point | Longitude | Latitude | Note |
|---|---|---|---|
| 52 | −69°56.35′ | 39°53.59′ | |
| 53 | −69°56.11′ | 39°54.94′ | |
| 54 | −69°55.76′ | 39°55.08′ | |
| 55 | −69°54.62′ | 39°53.23′ | |
| 56 | −69°53.02′ | 39°54.29′ | |
| 57 | −69°52.21′ | 39°54.39′ | |
| 58 | −69°52.34′ | 39°53.64′ | |
| 59 | −69°50.97′ | 39°53.36′ | |
| 60 | −69°50.65′ | 39°53.73′ | |
| 61 | −69°49.45′ | 39°52.85′ | |
| 62 | −69°49.63′ | 39°52.32′ | |
| 63 | −69°48.88′ | 39°52.96′ | |
| 64 | −69°47.91′ | 39°52.54′ | |
| 65 | −69°48.06′ | 39°51.85′ | |
| 66 | −69°42.35′ | 39°52.03′ | |
| 67 | −69°42.19′ | 39°52.68′ | |
| 68 | −69°41.32′ | 39°52.27′ | |
| 69 | −69°39.66′ | 39°52.33′ | |
| 70 | −69°40.03′ | 39°53.03′ | |
| 71 | −69°39.34′ | 39°53.81′ | |
| 72 | −69°38.51′ | 39°53.04′ | |
| 73 | −69°38.11′ | 39°53.27′ | |
| 74 | −69°37.59′ | 39°52.38′ | |
| 75 | −69°36.93′ | 39°51.89′ | |
| 76 | −69°36.99′ | 39°53.42′ | |
| 77 | −69°37.44′ | 39°53.85′ | |
| 78 | −69°37.02′ | 39°54.34′ | |
| 79 | −69°37.52′ | 39°55.59′ | |
| 80 | −69°37.01′ | 39°57.70′ | |
| 81 | −69°36.71′ | 39°56.34′ | |
| 82 | −69°36.27′ | 39°55.53′ | |
| 83 | −69°34.57′ | 39°54.60′ | |
| 84 | −69°33.63′ | 39°52.98′ | |
| 85 | −69°32.47′ | 39°52.93′ | |
| 86 | −69°31.87′ | 39°53.95′ | |
| 87 | −69°30.29′ | 39°53.10′ | |
| 88 | −69°29.48′ | 39°53.43′ | |
| 89 | −69°28.95′ | 39°54.14′ | |
| 90 | −69°27.35′ | 39°54.43′ | |
| 91 | −69°27.56′ | 39°53.86′ | |
| 92 | −69°26.77′ | 39°53.38′ | |
| 93 | −69°26.07′ | 39°53.97′ | |
| 94 | −69°25.88′ | 39°53.50′ | |
| 95 | −69°24.94′ | 39°53.79′ | |
| 96 | −69°24.47′ | 39°53.50′ | |
| 97 | −69°23.95′ | 39°54.81′ | |
| 98 | −69°23.32′ | 39°54.05′ | |
| 99 | −69°21.95′ | 39°54.09′ | |
| 100 | −69°21.07′ | 39°54.38′ | |
| 101 | −69°20.72′ | 39°54.97′ | |
| 102 | −69°19.83′ | 39°54.78′ | |
| 103 | −69°19.16′ | 39°55.00′ | |
| 104 | −69°18.60′ | 39°56.03′ | |
| 105 | −69°18.28′ | 39°55.46′ | |
| 106 | −69°17.12′ | 39°55.53′ | |
| 107 | −69°16.92′ | 39°56.20′ | |
| 108 | −69°16.27′ | 39°55.87′ | |
| 109 | −69°15.58′ | 39°56.29′ | |
| 110 | −69°14.44′ | 39°57.54′ | |
| 111 | −69°13.82′ | 39°57.37′ | |
| 112 | −69°13.47′ | 39°58.01′ | |
| 113 | −69°12.44′ | 39°56.95′ | |
| 114 | −69°12.06′ | 39°57.69′ | |
| 115 | −69°11.10′ | 39°56.69′ | |
| 116 | −69°10.92′ | 39°57.04′ | |
| 117 | −69°10.86′ | 39°58.26′ | |
| 118 | −69°10.40′ | 39°58.14′ | |
| 119 | −69°10.07′ | 39°59.85′ | |
| 120 | −69°08.70′ | 39°59.01′ | |
| 121 | −69°07.72′ | 39°59.00′ | |
| 122 | −69°07.97′ | 39°58.50′ | |
| 123 | −69°07.00′ | 39°57.74′ | |

TABLE 2 TO PARAGRAPH (a)(2)(ii)—Continued

| Point | Longitude | Latitude | Note |
|---|---|---|---|
| 124 | −69°06.31′ | 39°57.59′ | |
| 125 | −69°05.31′ | 39°58.82′ | |
| 126 | −69°04.61′ | 39°58.14′ | |
| 127 | −69°04.44′ | 39°58.88′ | |
| 128 | −69°03.89′ | 39°58.95′ | |
| 129 | −69°04.27′ | 40°00.04′ | |
| 130 | −69°03.33′ | 40°00.15′ | |
| 131 | −69°03.04′ | 40°00.45′ | |
| 132 | −69°03.43′ | 40°02.96′ | |
| 133 | −69°02.67′ | 40°04.10′ | |
| 134 | −69°03.34′ | 40°05.17′ | |
| 135 | −69°02.91′ | 40°05.86′ | |
| 136 | −69°02.12′ | 40°04.15′ | |
| 137 | −69°01.85′ | 40°02.32′ | |
| 138 | −69°01.28′ | 40°01.87′ | |
| 139 | −69°00.75′ | 40°01.92′ | |
| 140 | −68°59.76′ | 40°00.83′ | |
| 141 | −68°59.08′ | 40°01.51′ | |
| 142 | −68°58.63′ | 40°00.89′ | |
| 143 | −68°57.67′ | 40°00.45′ | |
| 144 | −68°56.65′ | 40°00.44′ | |
| 145 | −68°56.3′ | 40°00.92′ | |
| 146 | −68°55.27′ | 40°00.56′ | |
| 147 | −68°55.34′ | 40°01.22′ | |
| 148 | −68°53.97′ | 40°01.40′ | |
| 149 | −68°53.58′ | 40°00.82′ | |
| 150 | −68°53.14′ | 40°01.24′ | |
| 151 | −68°52.73′ | 40°00.99′ | |
| 152 | −68°51.53′ | 40°02.81′ | |
| 153 | −68°50.76′ | 40°03.08′ | |
| 154 | −68°50.10′ | 40°03.77′ | |
| 155 | −68°50.40′ | 40°04.73′ | |
| 156 | −68°48.94′ | 40°04.35′ | |
| 157 | −68°49.05′ | 40°05.84′ | |
| 158 | −68°48.11′ | 40°05.05′ | |
| 159 | −68°47.58′ | 40°03.99′ | |
| 160 | −68°47.90′ | 40°03.25′ | |
| 161 | −68°47.71′ | 40°02.93′ | |
| 162 | −68°46.96′ | 40°03.36′ | |
| 163 | −68°46.51′ | 40°04.02′ | |
| 164 | −68°46.21′ | 40°03.41′ | |
| 165 | −68°45.61′ | 40°03.36′ | |
| 166 | −68°45.44′ | 40°03.86′ | |
| 167 | −68°45.08′ | 40°03.60′ | |
| 168 | −68°45.11′ | 40°04.24′ | |
| 169 | −68°44.63′ | 40°04.06′ | |
| 170 | −68°44.12′ | 40°04.58′ | |
| 171 | −68°43.78′ | 40°02.68′ | |
| 172 | −68°42.97′ | 40°03.02′ | |
| 173 | −68°42.28′ | 40°01.90′ | |
| 174 | −68°41.01′ | 40°02.72′ | |
| 175 | −68°41.16′ | 40°03.54′ | |
| 176 | −68°41.50′ | 40°04.04′ | |
| 177 | −68°41.06′ | 40°04.02′ | |
| 178 | −68°40.15′ | 40°05.30′ | |
| 179 | −68°39.31′ | 40°04.19′ | |
| 180 | −68°38.69′ | 40°04.57′ | |
| 181 | −68°37.78′ | 40°03.47′ | |
| 182 | −68°37.07′ | 40°04.08′ | |
| 183 | −68°36.76′ | 40°03.68′ | |
| 184 | −68°36.36′ | 40°04.02′ | |
| 185 | −68°36.55′ | 40°04.82′ | |
| 186 | −68°35.91′ | 40°05.56′ | |
| 187 | −68°35.16′ | 40°04.83′ | |
| 188 | −68°33.63′ | 40°04.04′ | |
| 189 | −68°32.76′ | 40°04.76′ | |
| 190 | −68°32.44′ | 40°05.91′ | |
| 191 | −68°31.58′ | 40°05.48′ | |
| 192 | −68°30.88′ | 40°05.81′ | |
| 193 | −68°30.89′ | 40°06.29′ | |
| 194 | −68°30.29′ | 40°06.40′ | |
| 195 | −68°31.11′ | 40°06.95′ | |

TABLE 2 TO PARAGRAPH (a)(2)(ii)—Continued

| Point | Longitude | Latitude | Note |
|---|---|---|---|
| 196 | −68°30.46′ | 40°07.60′ | |
| 197 | −68°30.46′ | 40°08.19′ | |
| 198 | −68°29.29′ | 40°08.05′ | |
| 199 | −68°29.48′ | 40°09.55′ | |
| 200 | −68°30.08′ | 40°11.48′ | |
| 201 | −68°28.16′ | 40°10.69′ | |
| 202 | −68°27.41′ | 40°10.95′ | |
| 203 | −68°27.66′ | 40°10.26′ | |
| 204 | −68°26.67′ | 40°09.09′ | |
| 205 | −68°26.81′ | 40°07.63′ | |
| 206 | −68°25.20′ | 40°06.46′ | |
| 207 | −68°24.46′ | 40°06.12′ | |
| 208 | −68°24.07′ | 40°07.70′ | |
| 209 | −68°23.39′ | 40°07.29′ | |
| 210 | −68°22.17′ | 40°07.15′ | |
| 211 | −68°21.86′ | 40°08.26′ | |
| 212 | −68°22.03′ | 40°08.77′ | |
| 213 | −68°21.58′ | 40°08.86′ | |
| 214 | −68°20.52′ | 40°09.57′ | |
| 215 | −68°19.88′ | 40°09.36′ | |
| 216 | −68°19.14′ | 40°10.44′ | |
| 217 | −68°18.51′ | 40°10.02′ | |
| 218 | −68°17.72′ | 40°09.64′ | |
| 219 | −68°17.76′ | 40°10.66′ | |
| 220 | −68°16.86′ | 40°10.68′ | |
| 221 | −68°16.78′ | 40°11.65′ | |
| 222 | −68°16.70′ | 40°12.27′ | |
| 223 | −68°16.81′ | 40°13.24′ | |
| 224 | −68°16.29′ | 40°14.68′ | |
| 225 | −68°14.75′ | 40°13.04′ | |
| 226 | −68°14.00′ | 40°12.79′ | |
| 227 | −68°13.88′ | 40°12.21′ | |
| 228 | −68°13.14′ | 40°11.49′ | |
| 229 | −68°13.30′ | 40°12.07′ | |
| 230 | −68°12.84′ | 40°12.48′ | |
| 231 | −68°12.54′ | 40°13.08′ | |
| 232 | −68°12.20′ | 40°12.80′ | |
| 233 | −68°11.51′ | 40°13.48′ | |
| 234 | −68°10.65′ | 40°12.05′ | |
| 235 | −68°10.05′ | 40°13.00′ | |
| 236 | −68°08.65′ | 40°12.16′ | |
| 237 | −68°08.33′ | 40°13.06′ | |
| 238 | −68°08.60′ | 40°14.17′ | |
| 239 | −68°08.15′ | 40°15.30′ | |
| 240 | −68°08.33′ | 40°15.56′ | |
| 241 | −68°09.02′ | 40°16.17′ | |
| 242 | −68°08.73′ | 40°16.56′ | |
| 243 | −68°09.02′ | 40°17.94′ | |
| 244 | −68°08.82′ | 40°18.63′ | |
| 245 | −68°09.14′ | 40°21.96′ | |
| 246 | −68°09.19′ | 40°22.96′ | |
| 247 | −68°07.89′ | 40°24.16′ | |
| 248 | −68°08.53′ | 40°22.91′ | |
| 249 | −68°08.36′ | 40°21.85′ | |
| 250 | −68°07.94′ | 40°20.88′ | |
| 251 | −68°07.22′ | 40°19.75′ | |
| 252 | −68°06.28′ | 40°17.81′ | |
| 253 | −68°05.00′ | 40°16.41′ | |
| 254 | −68°03.61′ | 40°17.70′ | |
| 255 | −68°03.27′ | 40°15.88′ | |
| 256 | −68°02.93′ | 40°15.07′ | |
| 257 | −68°01.95′ | 40°14.69′ | |
| 258 | −68°00.78′ | 40°15.22′ | |
| 259 | −68°00.67′ | 40°15.85′ | |
| 260 | −67°59.14′ | 40°14.75′ | |
| 261 | −67°58.80′ | 40°15.83′ | |
| 262 | −67°58.28′ | 40°15.58′ | |
| 263 | −67°57.85′ | 40°16.63′ | |
| 264 | −67°57.58′ | 40°17.38′ | |
| 265 | −67°56.51′ | 40°16.19′ | |
| 266 | −67°55.99′ | 40°16.45′ | |
| 267 | −67°55.23′ | 40°14.90′ | |

TABLE 2 TO PARAGRAPH (a)(2)(ii)—Continued

| Point | Longitude | Latitude | Note |
|---|---|---|---|
| 268 | −67°54.31′ | 40°16.24′ | |
| 269 | −67°53.88′ | 40°17.41′ | |
| 270 | −67°52.96′ | 40°16.95′ | |
| 271 | −67°52.29′ | 40°17.18′ | |
| 272 | −67°52.46′ | 40°19.25′ | |
| 273 | −67°52.26′ | 40°19.59′ | |
| 274 | −67°52.88′ | 40°20.05′ | |
| 275 | −67°52.54′ | 40°20.86′ | |
| 276 | −67°53.31′ | 40°21.24′ | |
| 277 | −67°53.07′ | 40°22.08′ | |
| 278 | −67°51.62′ | 40°21.24′ | |
| 279 | −67°51.26′ | 40°20.48′ | |
| 280 | −67°49.97′ | 40°18.81′ | |
| 281 | −67°49.29′ | 40°18.78′ | |
| 282 | −67°49.49′ | 40°18.49′ | |
| 283 | −67°49.40′ | 40°18.13′ | |
| 284 | −67°49.12′ | 40°18.09′ | |
| 285 | −67°47.94′ | 40°15.79′ | |
| 286 | −67°46.47′ | 40°16.00′ | |
| 287 | −67°46.23′ | 40°16.37′ | |
| 288 | −67°45.61′ | 40°16.18′ | |
| 289 | −67°45.80′ | 40°16.54′ | |
| 290 | −67°45.66′ | 40°17.53′ | |
| 291 | −67°45.34′ | 40°18.75′ | |
| 292 | −67°44.52′ | 40°18.25′ | |
| 293 | −67°44.13′ | 40°18.39′ | |
| 294 | −67°43.50′ | 40°18.84′ | |
| 295 | −67°43.42′ | 40°18.00′ | |
| 296 | −67°42.81′ | 40°18.27′ | |
| 297 | −67°42.61′ | 40°17.62′ | |
| 298 | −67°41.69′ | 40°17.88′ | |
| 299 | −67°41.81′ | 40°19.20′ | |
| 300 | −67°42.61′ | 40°20.29′ | |
| 301 | −67°39.96′ | 40°22.27′ | |
| 302 | −67°40.38′ | 40°24.07′ | |
| 303 | −67°39.92′ | 40°25.32′ | |
| 304 | −67°39.77′ | 40°24.13′ | |
| 305 | −67°39.64′ | 40°23.12′ | |
| 306 | −67°39.20′ | 40°21.31′ | |
| 307 | −67°39.88′ | 40°20.41′ | |
| 308 | −67°39.06′ | 40°19.39′ | |
| 309 | −67°37.75′ | 40°18.86′ | |
| 310 | −67°37.54′ | 40°19.41′ | |
| 311 | −67°36.18′ | 40°19.12′ | |
| 312 | −67°35.49′ | 40°20.23′ | |
| 313 | −67°34.74′ | 40°19.65′ | |
| 314 | −67°34.16′ | 40°21.13′ | |
| 315 | −67°33.06′ | 40°20.46′ | |
| 316 | −67°32.36′ | 40°21.41′ | |
| 317 | −67°31.99′ | 40°20.77′ | |
| 318 | −67°30.93′ | 40°20.91′ | |
| 319 | −67°30.69′ | 40°20.52′ | |
| 320 | −67°30.02′ | 40°21.66′ | |
| 321 | −67°29.38′ | 40°21.09′ | |
| 322 | −67°28.94′ | 40°21.57′ | |
| 323 | −67°28.35′ | 40°22.81′ | |
| 324 | −67°27.79′ | 40°22.19′ | |
| 325 | −67°26.75′ | 40°21.57′ | |
| 326 | −67°25.66′ | 40°22.31′ | |
| 327 | −67°25.43′ | 40°22.61′ | |
| 328 | −67°25.30′ | 40°23.42′ | |
| 329 | −67°25.36′ | 40°24.34′ | |
| 330 | −67°25.16′ | 40°24.64′ | |
| 331 | −67°25.53′ | 40°24.93′ | |
| 332 | −67°24.73′ | 40°25.43′ | |
| 333 | −67°24.13′ | 40°27.58′ | |
| 334 | −67°23.69′ | 40°24.23′ | |
| 335 | −67°22.74′ | 40°23.27′ | |
| 336 | −67°21.70′ | 40°23.12′ | |
| 337 | −67°21.33′ | 40°23.77′ | |
| 338 | −67°20.68′ | 40°23.40′ | |
| 339 | −67°20.05′ | 40°24.39′ | |

TABLE 2 TO PARAGRAPH (a)(2)(ii)—Continued

| Point | Longitude | Latitude | Note |
|---|---|---|---|
| 340 | −67°19.11′ | 40°23.85′ | |
| 341 | −67°18.75′ | 40°25.17′ | |
| 342 | −67°18.09′ | 40°24.77′ | |
| 343 | −67°17.32′ | 40°25.14′ | |
| 344 | −67°17.33′ | 40°25.59′ | |
| 345 | −67°16.37′ | 40°25.50′ | |
| 346 | −67°15.62′ | 40°25.40′ | |
| 347 | −67°15.19′ | 40°25.64′ | |
| 348 | −67°14.76′ | 40°26.24′ | |
| 349 | −67°14.99′ | 40°26.93′ | |
| 350 | −67°13.99′ | 40°26.63′ | |
| 351 | −67°13.29′ | 40°27.31′ | |
| 352 | −67°12.58′ | 40°26.87′ | |
| 353 | −67°12.77′ | 40°27.74′ | |
| 354 | −67°12.23′ | 40°28.01′ | |
| 355 | −67°12.05′ | 40°27.56′ | |
| 356 | −67°11.37′ | 40°27.75′ | |
| 357 | −67°10.84′ | 40°27.12′ | |
| 358 | −67°10.19′ | 40°27.14′ | |
| 359 | −67°09.05′ | 40°28.84′ | |
| 360 | −67°07.83′ | 40°28.25′ | |
| 361 | −67°07.55′ | 40°28.65′ | |
| 362 | −67°07.58′ | 40°29.49′ | |
| 363 | −67°05.80′ | 40°28.71′ | |
| 364 | −67°04.83′ | 40°29.41′ | |
| 365 | −67°04.52′ | 40°29.86′ | |
| 366 | −67°03.56′ | 40°29.83′ | |
| 367 | −67°03.27′ | 40°31.27′ | |
| 368 | −67°01.67′ | 40°30.25′ | |
| 369 | −67°00.06′ | 40°31.03′ | |
| 370 | −66°59.48′ | 40°31.63′ | |
| 371 | −67°00.01′ | 40°32.61′ | |
| 372 | −66°59.56′ | 40°32.78′ | |
| 373 | −67°00.34′ | 40°34.03′ | |
| 374 | −67°01.15′ | 40°34.92′ | |
| 375 | −67°01.25′ | 40°36.83′ | |
| 376 | −66°59.94′ | 40°35.55′ | |
| 377 | −66°59.40′ | 40°35.40′ | |
| 378 | −66°58.89′ | 40°35.52′ | |
| 379 | −66°58.73′ | 40°34.91′ | |
| 380 | −66°58.44′ | 40°34.94′ | |
| 381 | −66°58.13′ | 40°35.50′ | |
| 382 | −66°57.52′ | 40°34.93′ | |
| 383 | −66°57.43′ | 40°35.42′ | |
| 384 | −66°56.72′ | 40°35.16′ | |
| 385 | −66°56.44′ | 40°35.81′ | |
| 386 | −66°56.09′ | 40°35.36′ | |
| 387 | −66°55.56′ | 40°35.65′ | |
| 388 | −66°55.61′ | 40°34.90′ | |
| 389 | −66°54.85′ | 40°34.42′ | |
| 390 | −66°54.68′ | 40°35.40′ | |
| 391 | −66°52.45′ | 40°36.18′ | |
| 392 | −66°52.51′ | 40°36.80′ | |
| 393 | −66°51.93′ | 40°36.82′ | |
| 394 | −66°51.88′ | 40°37.40′ | |
| 395 | −66°51.38′ | 40°37.30′ | |
| 396 | −66°51.44′ | 40°37.81′ | |
| 397 | −66°50.36′ | 40°37.77′ | |
| 398 | −66°50.78′ | 40°38.81′ | |
| 399 | −66°49.27′ | 40°38.41′ | |
| 400 | −66°48.84′ | 40°38.70′ | |
| 401 | −66°49.25′ | 40°39.85′ | |
| 402 | −66°47.92′ | 40°39.57′ | |
| 403 | −66°47.83′ | 40°39.82′ | |
| 404 | −66°47.79′ | 40°40.82′ | |
| 405 | −66°46.91′ | 40°40.33′ | |
| 406 | −66°46.02′ | 40°40.07′ | |
| 407 | −66°45.89′ | 40°41.47′ | |
| 408 | −66°44.79′ | 40°41.19′ | |
| 409 | −66°44.30′ | 40°41.37′ | |
| 410 | −66°44.17′ | 40°42.32′ | |
| 411 | −66°43.43′ | 40°42.42′ | |

TABLE 2 TO PARAGRAPH (a)(2)(ii)—Continued

| Point | Longitude | Latitude | Note |
|---|---|---|---|
| 412 | −66°42.39′ | 40°42.67′ | |
| 413 | −66°42.87′ | 40°44.75′ | |
| 414 | −66°42.49′ | 40°45.21′ | |
| 415 | −66°42.67′ | 40°45.83′ | |
| 416 | −66°43.02′ | 40°46.23′ | |
| 417 | −66°41.12′ | 40°45.96′ | |
| 418 | −66°40.98′ | 40°45.61′ | |
| 419 | −66°40.63′ | 40°45.35′ | |
| 420 | −66°39.37′ | 40°45.98′ | |
| 421 | −66°39.74′ | 40°46.65′ | |
| 422 | −66°39.99′ | 40°46.93′ | |
| 423 | −66°39.23′ | 40°46.97′ | |
| 424 | −66°38.17′ | 40°47.99′ | |
| 425 | −66°37.69′ | 40°47.13′ | |
| 426 | −66°36.94′ | 40°47.36′ | |
| 427 | −66°37.05′ | 40°47.83′ | |
| 428 | −66°36.49′ | 40°47.87′ | |
| 429 | −66°36.12′ | 40°48.59′ | |
| 430 | −66°35.63′ | 40°48.13′ | |
| 431 | −66°35.30′ | 40°48.35′ | |
| 432 | −66°35.35′ | 40°49.96′ | |
| 433 | −66°34.96′ | 40°50.30′ | |
| 434 | −66°34.50′ | 40°50.33′ | |
| 435 | −66°34.26′ | 40°50.91′ | |
| 436 | −66°34.76′ | 40°51.34′ | |
| 437 | −66°33.57′ | 40°51.38′ | |
| 438 | −66°34.29′ | 40°52.10′ | |
| 439 | −66°33.55′ | 40°52.16′ | |
| 440 | −66°33.32′ | 40°52.70′ | |
| 441 | −66°32.88′ | 40°52.69′ | |
| 442 | −66°32.62′ | 40°51.96′ | |
| 443 | −66°32.01′ | 40°51.53′ | |
| 444 | −66°30.28′ | 40°53.07′ | |
| 445 | −66°30.69′ | 40°53.61′ | |
| 446 | −66°30.15′ | 40°53.84′ | |
| 447 | −66°30.14′ | 40°54.17′ | |
| 448 | −66°30.67′ | 40°54.62′ | |
| 449 | −66°28.81′ | 40°54.47′ | |
| 450 | −66°28.84′ | 40°55.04′ | |
| 451 | −66°28.16′ | 40°55.03′ | |
| 452 | −66°27.30′ | 40°55.99′ | |
| 453 | −66°25.16′ | 40°58.14′ | |
| 454 | −66°24.11′ | 40°59.64′ | |
| 455 | −66°24.37′ | 41°00.32′ | |
| 456 | −66°23.57′ | 41°00.33′ | |
| 457 | −66°22.61′ | 41°01.68′ | |
| 458 | −66°23.05′ | 41°02.64′ | |
| 459 | −66°24.77′ | 41°03.86′ | |
| 460 | −66°24.03′ | 41°04.11′ | |
| 461 | −66°24.60′ | 41°04.95′ | |
| 462 | −66°22.60′ | 41°04.23′ | |
| 463 | −66°21.17′ | 41°04.35′ | |
| 464 | −66°21.11′ | 41°05.02′ | |
| 465 | −66°19.77′ | 41°04.45′ | |
| 466 | −66°18.07′ | 41°06.00′ | |
| 467 | −66°18.24′ | 41°07.82′ | |
| 468 | −66°17.07′ | 41°08.68′ | |
| 469 | −66°16.90′ | 41°08.93′ | |
| 470 | −66°16.86′ | 41°08.98′ | (4) |

**Notes:**
(3) POINT 17 represents where the western and northern boundaries meet.
(4) POINT 470 represents the U.S.-Canada Maritime Boundary.

(iii) The eastern and southern boundary (from Point 470) follows the U.S.-Canada Maritime Boundary southeasterly to its intersection with the outer limit of the U.S. Exclusive Economic Zone. The boundary then follows the outer limit of the U.S. Exclusive Economic Zone southwesterly back to its origin at POINT 01.

(b) *Mount Desert Rock Coral Protection Area.* (1) No vessel may fish with bottom-tending mobile gear, as defined in § 648.2, within the Mount Desert Rock Coral Protection Area described in this section, unless transiting pursuant to paragraph (d) of this section. Bottom-tending mobile gear includes, but is not limited to, otter

trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

(2) The Mount Desert Rock Coral Protection Area is defined by the following coordinates, connected in the order listed by straight lines:

TABLE 3 TO PARAGRAPH (b)(2)

| Point | Longitude | Latitude |
|---|---|---|
| MDR1 | −68°13.16′ | 43°56.99′ |
| MDR2 | −68°12.00′ | 43°57.00′ |
| MDR3 | −68°11.45′ | 43°56.17′ |
| MDR4 | −68°12.21′ | 43°52.62′ |
| MDR5 | −68°14.32′ | 43°52.11′ |
| MDR1 | −68°13.16′ | 43°56.99′ |

(c) *Outer Schoodic Ridge Coral Protection Area.* (1) No vessel may fish with bottom-tending mobile gear, as defined in § 648.2, within the Outer Schoodic Ridge Coral Protection Area described in this section, unless transiting pursuant to paragraph (d) of this section. Bottom-tending mobile gear includes, but is not limited to, otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

(2) The Outer Schoodic Ridge Coral Protection Area is defined by the following coordinates, connected in the order listed by straight lines:

TABLE 4 TO PARAGRAPH (c)(2)

| Point | Longitude | Latitude |
|---|---|---|
| OSR1 | −67°35.60′ | 44°13.49′ |
| OSR2 | −67°33.10′ | 44°12.56′ |
| OSR3 | −67°39.70′ | 44°02.48′ |
| OSR4 | −67°42.29′ | 44°03.48′ |
| OSR1 | −67°35.60′ | 44°13.49′ |

(d) *Transiting.* Vessels may transit the New England Deep-Sea Coral Management Areas defined in this section, provided bottom-tending trawl nets are out of the water and stowed on the reel and any other fishing gear that is prohibited in these areas is onboard, out of the water, and not deployed. Fishing gear is not required to meet the definition of ''not available for immediate use'' in § 648.2, when a vessel transits the New England Deep-Sea Coral Management Areas.

(e) *Framework adjustments.* The Council may at any time initiate a framework adjustment to add or adjust management measures within the New England Deep-Sea Coral Management Areas if it finds that action is necessary to meet or be consistent with the goals and objectives of those areas. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. Measures that may be changed or implemented through framework action include:

(1) Adding, revising, or removing coral areas;

(2) Changing fishing restrictions in coral areas; and

(3) Developing new, or changing existing, coral area fishery access or exploratory fishing programs.

[FR Doc. 2021–13293 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 86, No. 120
Friday, June 25, 2021

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 2

**[Docket No. APHIS–2020–0101]**

**RIN 0579–AC69**

## Handling of Animals; Contingency Plans

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Animal and Plant Health Inspection Service issued a final rule on December 31, 2012, to establish regulations under which research facilities and dealers, exhibitors, intermediate handlers, and carriers must meet certain requirements for contingency planning and training of personnel. Implementation of the final rule was stayed on July 31, 2013, so that the agency could conduct additional review to further consider the impact of contingency plan requirements on regulated entities. Since that time, we have conducted such a review, and the 2021 Congressional Appropriations Act has required us to propose to lift the stay. We are therefore proposing to lift the stay and make minor revisions to the requirements in order to update compliance dates and clarify intent. The lifting of the stay and proposed revisions would better ensure that entities responsible for animals regulated under the Animal Welfare Act are prepared to safeguard the health and welfare of such animals in the event of possible emergencies or disasters.

**DATES:** We will consider all comments that we receive on or before August 24, 2021.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2020–0101 in the Search field.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Elizabeth Theodorson, DVM, MPH, Assistant Deputy Administrator, Animal Care, APHIS, 4700 River Road Unit 86, Riverdale, MD 20737; (970) 494–7473.

**SUPPLEMENTARY INFORMATION:**

### Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary has delegated authority for administering the AWA to the Administrator of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for APHIS' Animal Care program (AC). Regulations and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations).

Following the events experienced during the 2005 hurricane season, AC concluded that entities responsible for animals covered by the AWA could better safeguard the health and welfare of their animals by developing contingency plans for possible emergencies or disasters (situations which could reasonably be anticipated and expected to be detrimental to the good health and well-being of the animals in the regulated entity's possession). Consequently, on December 31, 2012, APHIS published in the **Federal Register** (77 FR 76815–76824, Docket No. APHIS–2006–0159) a final rule [1] establishing regulations under which research facilities and dealers, exhibitors, intermediate handlers, and carriers of animals regulated under the AWA must meet certain requirements for developing contingency plans and training personnel in their role and responsibilities related to the contingency plan.

After learning that a number of small entities considered the requirements of these regulations excessive for their specific cases, and determining there to be validity to such a claim, on July 31, 2013, we published in the **Federal Register** (78 FR 46255, Docket No. APHIS–2006–0159) a stay [2] of the regulations to reexamine any unique circumstances and costs that may vary by the type and size of businesses affected by the final rule.

Since that time, APHIS has issued *de minimis* exemptions to animal licensure. On June 4, 2018, we published in the **Federal Register** (83 FR 25549–25555, Docket No. APHIS–2014–0059) a final rule [3] that exempted from licensing dealers with four or fewer breeding female pet animals, small exotic or small wild mammals (such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, domesticated ferrets, chinchillas, and gerbils), and/or domesticated farm-type animals (such as cows, goats, pigs, sheep, llamas, and alpacas), and added an exemption from licensing for exhibitors who maintained eight or fewer pet animals, small exotic or small wild mammals, and/or domesticated farm-type animals for exhibition.

Following issuance of the 2018 final rule, APHIS notified 525 licensees operating small businesses that they may be newly eligible for exemption from requirements under the amended regulations. As of December 2020, 259 licensees have canceled their licenses, and we anticipate that this number will increase on a rolling basis as licenses meet their expiration dates. APHIS believes that these broadened exemptions address the concerns that led to the stay, and that contingency

[1] To view the final rule, go to *https://www.regulations.gov/document/APHIS-2006-0159-0209.*

[2] To view the stay of the regulations, go to *https://www.regulations.gov/document/APHIS-2006-0159-0214.*

[3] To view the final rule, go to *https://www.regulations.gov/document/APHIS-2014-0059-0032.*

planning requirements remain an important safeguard for the health and welfare of animals regulated under the AWA.

Additionally, on December 27, 2020, the 2021 Congressional Appropriations Act (Pub. L. 116–260) required APHIS to propose to lift the stay on the final rule establishing requirements for contingency plans within 180 days of issuance of that Act. Consistent with our own evaluation, as well as the terms of the Act, we are issuing this proposed rule to lift the stay.

We are also proposing to make minor changes to the contingency plan regulations. These changes include updating the compliance dates by which regulated entities must create their contingency plans to 180 days after the effective date of a final rule following this proposed rule; modifying the dates regarding when regulated entities must provide training to personnel to 60 days after the contingency plan being put in place; removing an extraneous reference to additional requirements for marine mammals to minimize confusion; and removing the requirement that facilities as well as dealers, exhibitors, intermediate handlers, and carriers document their personnel's participation in requisite trainings.

Finally, to increase the ease of and decrease the time burden associated with contingency planning, AC has created an optional form that entities may use to develop and document a contingency plan. The form would be available on the APHIS AC website, in the USDA Forms library on the USDA website, or upon request by email to *animalcare@usda.gov* or by mail to USDA/APHIS/AC, 2150 Centre Ave., Building B, Mailstop 3W11, Fort Collins, CO 80526–8117. We are proposing to add a reference to this form in the regulations.

*Executive Order 12866 and Regulatory Flexibility Act*

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from the implementation of this proposed rule.

While it is difficult to quantify the benefits of contingency planning, they are numerous. First, contingency planning can prevent loss of animal life and any resulting undisposed carcasses that pose a threat to public health. Second, loss of valuable research resources and income can be mitigated with contingency planning. Third, having a contingency plan can reduce the time of recovery from disasters and thus provide cost savings to the affected businesses and organizations and allow for business continuity. Finally, required contingency planning will reassure the general public that facilities have measures in place to ensure the welfare of the animals in times of catastrophic and common emergencies.

APHIS' AC program will be providing a fillable form that can be used to develop and document the contingency plan; however, entities that have contingency plans in place may use those. For example, we believe that Public Health Service-funded research facilities and Association of Zoos and Aquariums zoos and aquariums have already developed contingency plans; they would not need to adopt the template. The template is intended to aid entities currently without a written contingency plan, and we estimate it will take 1–2 hours per entity to complete the plan, which includes the time to collect and document the required information. We anticipate that the use of this form will improve compliance and expedite the time for annual review by regulated entities of the plan. APHIS also estimates it will take up to 1 hour to train employees on the operations of the plan, which consists of familiarizing employees with their roles and responsibilities as outlined in the plan. APHIS invites comments on the time it may take to develop and implement contingency plans for the proposed rule and to provide the employee training required by the proposed rule. The Agency invites suggestions for guidance or other information that would help regulated facilities achieve compliance at minimum costs.

We estimated lower and upper range estimates of costs for licensees and registrants to develop contingency plans in the first year. As noted above, we assume an average of 1 to 2 hours is required to prepare and implement a contingency plan using the form and 1 hour for employee training in the first year. We multiplied this time by the average industry-specific wage rate of the entities. Our estimate of the total one-time cost to develop the contingency plans across all affected entity categories ranges from about $185,000 to about $370,000 and $185,000 for employee training, as well as possible capital costs, which will differ from entity to entity and which we accordingly are not able to estimate in aggregate. These estimates may be high, given our inclusion of entities that may currently have comparable contingency plans and already provide employee training, but for which we lack verifying information. We request specific public comment on our estimates.

The 1 to 2 hours that we assume would be required to develop a contingency plan includes the time needed to identify resources for the plan's preparation and documentation. The 1-hour training estimate for all current and new employees considers the time it would take an employee to become familiar with their roles and responsibilities as outlined in the plan. The costs included in this analysis reflect training for the first year only. Contingency planning also requires recordkeeping, ensuring that the contingency plans are kept current, and employee training. The type of training and type of contingency plan required may differ depending on the type of organization or business, as well as its location and the location's climate history.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with contingency planning, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the *Regulations.gov* website or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Based on the foregoing, the USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that consultation is not required at this time. If consultation is requested, OTR will work with APHIS to ensure quality consultation is provided.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please send a copy of your comments to: (1) Docket No. APHIS–2020–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The proposed rule would amend the current regulations and would require all licensees and registrants, which include research facilities, dealers, exhibitors, intermediate handlers, and carriers, to develop, document, and maintain contingency plans for the handling of animals during all emergencies or disasters.

We are soliciting comments from the public (as well as affected agencies) concerning the new proposed optional APHIS form for creating and documenting them, as well as our proposed information collection and recordkeeping requirements. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

*Estimate of burden:* Public burden for this collection of information is estimated to average 1.75 hours per response.

*Respondents:* Dealers, exhibitors, research facilities, carriers, and intermediate handlers.

*Estimated annual number of respondents:* 8,795.

*Estimated annual number of responses per respondent:* 2.

*Estimated annual number of responses:* 17,590.

*Estimated total annual burden on respondents:* 30,783 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* website or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) A copy may also be obtained from Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

**List of Subjects in 9 CFR Part 2**

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 2 as follows:

## PART 2—REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Amend § 2.38:
■ a. By lifting the stay on paragraph (l);
■ b. In paragraph (l)(2):
■ i. In the first sentence by removing the date ''July 29, 2013'' and adding ''[*DATE 180 DAYS AFTER EFFECTIVE DATE OF FINAL RULE*]'' in its place;
■ ii. In the next to last sentence by removing the words ''and training records''; and
■ ii. By revising the last sentence; and
■ c. By revising paragraph (l)(3).

The revisions read as follows:

**§ 2.38 Miscellaneous.**

* * * * *

(l) * * *

(2) * * * The APHIS Contingency Plan form may be used to keep and maintain the information required by paragraph (l)(1) of this section and this paragraph (l)(2).

(3) The facility must provide training for its personnel regarding their roles and responsibilities as outlined in the plan. For current registrants, training of facility personnel must be completed within 60 days of the research facility putting their plan in place; for research facilities registered after [*DATE 180 DAYS AFTER EFFECTIVE DATE OF FINAL RULE*] training of facility personnel must be completed within 60 days of the facility putting its contingency plan in place. To fulfill this training requirement, employees hired 30 days or more before the contingency plan is put in place must be trained by the date the facility puts its contingency plan in place. For employees hired less than 30 days before that date or after that date, training must be conducted within 30 days of their start date. Any changes to the plan as a result of the annual review must be communicated to employees through training which must be conducted within 30 days of making the changes.

■ 3. Amend § 2.134:
■ a. By lifting the stay on the section;
■ b. In paragraph (b):
■ i. In the first sentence by removing the date ''July 29, 2013'' and adding ''[*DATE 180 DAYS AFTER EFFECTIVE DATE OF FINAL RULE*]'' in its place;
■ ii. In the fifth sentence by removing the words ''and training records''; and
■ iii. By revising the last sentence; and
■ c. By revising paragraph (c).

The revisions read as follows:

**§ 2.134 Contingency planning.**

* * * * *

(b) * * * The APHIS Contingency Plan form may be used to keep and maintain the information required by § 2.38(l)(1) and (2).

(c) Dealers, exhibitors, intermediate handlers, and carriers must provide training for their personnel regarding their roles and responsibilities as outlined in the plan. For current licensees and registrants, training of dealer, exhibitor, intermediate handler, and carrier personnel must be completed within 60 days of the licensee and registrant putting their contingency plan in place; for new dealers, exhibitors, intermediate handlers, or carriers licensed or registered after [*DATE 180 DAYS AFTER EFFECTIVE DATE OF FINAL RULE*], training of personnel must be completed within 60 days of the dealer, exhibitor, intermediate handler, or carrier putting their contingency plan in place. To fulfill this requirement, employees hired 30 days or more before the contingency plan is put in place must be trained by the date the licensee or registrant puts their contingency plan in place. For employees hired less than 30 days before that date or after that date, training must be conducted within 30 days of their start date. Any changes to the plan as a result of the annual review must be communicated to employees through training which must be conducted within 30 days of making the changes.

Done in Washington, DC, this 16th day of June 2021.

**Mae Wu,**

*Deputy Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2021–13152 Filed 6–24–21; 8:45 am]

**BILLING CODE 3410–34–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 365

**RIN 3064–AF72**

### Real Estate Lending Standards

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The FDIC is inviting comment on a proposed rule to amend Interagency Guidelines for Real Estate Lending Policies (Real Estate Lending Standards). The purpose of the proposed rule is to align the Real Estate Lending Standards with the community bank leverage ratio (CBLR) rule, which does not require electing institutions to calculate tier 2 capital or total capital. The proposed rule would allow a consistent approach for calculating the ratio of loans in excess of the supervisory loan-to-value limits (LTV Limits) at all FDIC-supervised institutions, using a methodology that approximates the historical methodology the FDIC has followed for calculating this measurement without requiring institutions to calculate tier 2 capital. The proposed rule would also avoid any regulatory burden that could arise if an FDIC-supervised institution subsequently decides to switch between different capital frameworks.

**DATES:** Comments must be received by July 26, 2021.

**ADDRESSES:** Interested parties are encouraged to submit written comments. Commenters should use the title ''Real Estate Lending Standards (RIN 3064–AF72)'' to facilitate the organization of comments. Interested parties are invited to submit written comments, identified by RIN 3064–AF72, by any of the following methods:

- *FDIC website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal ESS (RIN 3064–AF72), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* The guard station at the rear of the 550 17th Street NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Email: Comments@FDIC.gov.* Comments submitted must include ''RIN 3064–AF72.''

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

*Please note:* All comments received will be posted generally without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Alicia R. Marks, Examination Specialist, Division of Risk Management and Supervision, (202) 898–6660, *AMarks@FDIC.gov;* Navid K. Choudhury, Counsel, (202) 898–6526, or Catherine S. Wood, Counsel, (202) 898–3788, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, TDD users may contact (202) 925–4618.

**SUPPLEMENTARY INFORMATION:**

## I. Policy Objectives

The policy objective of the proposed rule is to provide consistent calculations of the ratios of loans in excess of the supervisory LTV Limits between banking organizations that elect, and those that do not elect, to adopt the CBLR framework, while not including capital ratios that some institutions are not required to compute or report. The proposed rule would amend the Real Estate Lending Standards set forth in Appendix A of 12 CFR part 365.

Section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) directs the FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) to develop a community bank leverage ratio for qualifying community banking organizations. The CBLR framework is intended to simplify regulatory capital requirements and provide material regulatory compliance burden relief to the qualifying community banking organizations that opt into it. In particular, banking organizations that opt into the CBLR framework do not have to calculate the metrics associated with the applicable risk-based capital requirements in the agencies' capital rules (generally applicable rule), including total capital.

The Real Estate Lending Standards set forth in Appendix A of 12 CFR part 365, as they apply to FDIC-supervised banks, contain a tier 1 capital threshold for institutions electing to adopt the CBLR and a total capital threshold for other banks. The proposed rule would provide a consistent treatment for all FDIC-supervised banks without requiring the computation of total capital. The proposed amendment is described in more detail in Section III, below.

## II. Background

The Real Estate Lending Standards, which were issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe standards for real estate lending to be used by FDIC-supervised institutions in adopting internal real estate lending policies. Section 201 of the EGRRCPA amended provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act relative to the capital rules administered by the agencies. The CBLR rule was issued by the agencies to implement section 201 of the EGRRCPA, and it provides a simple measure of capital adequacy for community banking organizations that meet certain qualifying criteria.[1] The FDIC is issuing this proposal to amend part 365 in response to changes in the type of capital information available after the implementation of the CBLR rule. Qualifying community banking organizations[2] that elect to use the CBLR framework (Electing CBOs) may calculate their CBLR without calculating tier 2 capital, and are therefore not required to calculate or report tier 2 capital or total capital.[3] The proposed revision to the Real Estate Lending Standards would allow a consistent approach for calculating loans in excess of the supervisory LTV Limits without having to calculate tier 2 or total capital as currently included in part 365 and its Appendix.

The proposal would also ensure that the FDIC's regulation regarding supervisory LTV Limits is consistent with how examiners are calculating credit concentrations, as provided by a statement issued by the agencies on March 30, 2020. The statement provided that the agencies' examiners will use tier 1 capital plus the appropriate allowance for credit losses as the denominator when calculating credit concentrations.[4]

## III. Revisions to the Real Estate Lending Standards

The FDIC is proposing to amend the Real Estate Lending Standards so all FDIC-supervised institutions, both Electing CBOs and other insured financial institutions, would calculate the ratio of loans in excess of the supervisory LTV Limits using tier 1 capital plus the appropriate allowance for credit losses[5] in the denominator. The proposed amendment would provide a consistent approach for calculating the ratio of loans in excess of the supervisory LTV Limits for all FDIC-supervised institutions. The proposed amendment would also approximate the historical methodology specified in the Real Estate Lending Standards for calculating the loans in excess of the supervisory LTV Limits without creating any regulatory burden for Electing CBOs and other banking organizations.[6] Further, the FDIC is proposing this approach to provide regulatory clarity and avoid any regulatory burden that could arise if Electing CBOs subsequently decide to switch between the CBLR framework and the generally applicable capital rules. The FDIC is proposing to amend the Real Estate Lending Standards only relative to the calculation of loans in excess of the supervisory LTV Limits due to the change in the type of capital information that will be available, and is not considering any revisions to other sections of the Real Estate Lending Standards. Additionally, due to a publishing error which excluded the third paragraph in this section in the *Code of Federal Regulations* in prior versions, the FDIC is including the complete text of the section on loans in excess of the supervisory loan-to-value limits.

## IV. Expected Effects

As of September 30, 2020, the FDIC supervises 3,245 insured depository institutions. The proposed revision to the Real Estate Lending Standards, if adopted, would apply to all FDIC-supervised institutions. The effect of the proposed revisions at an individual bank would depend on whether the amount of its current or future real estate loans with loan-to-value ratios that exceed the supervisory LTV thresholds is greater than, or less than, the sum of its tier 1 capital and allowance (or credit reserve in the case of CECL adopters) for loan and lease losses. Allowance levels, credit reserves, and the volume of real estate loans and their loan to value ratios can vary considerably over time. Moreover, the FDIC does not have comprehensive information about the distribution of current loan to value ratios. For these

[1] 85 FR 64003 (Oct. 9, 2020).

[2] The FDIC's CBLR rule defines qualifying community banking organizations as ''an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution'' with less than $10 billion in total consolidated assets that meet other qualifying criteria, including a leverage ratio (equal to tier 1 capital divided by average total consolidated assets) of greater than 9 percent. 12 CFR 324.12(a)(2).

[3] Total capital is defined as the sum of tier 1 capital and tier 2 capital. *See* 12 CFR 324.2.

[4] See the Joint Statement on Adjustment to the Calculation for Credit Concentration Ratios (FIL–31–2020).

[5] Banking organizations that have not adopted the current expected credit losses (CECL) methodology will use tier 1 capital plus the allowance for loan and lease losses (ALLL) as the denominator. Banking organizations that have adopted the CECL methodology will use tier 1 capital plus the portion of the allowance for credit losses (ACL) attributable to loans and leases.

[6] The proposed amendment approximates the historical methodology in the sense that both the proposed and historical approach for calculating the ratio of loans in excess of the LTV Limits involve adding a measure of loss absorbing capacity to tier 1 capital, and an institution's ALLL (or ACL) is a component of tier 2 capital. Under the agencies' capital rules an institution's entire amount of ALLL or ACL could be included in its tier 2 capital, depending on the amount of its risk-weighted assets base. Based on December 31, 2019, Call Report data—the last Call Report date prior to the introduction of the CBLR framework—96.0 percent of FDIC-supervised institutions reported that their entire ALLL or ACL was included in their tier 2 capital, and 50.5 percent reported that their tier 2 capital was entirely composed of their ALLL.

reasons, it is not possible to identify how many institutions have real estate loans that exceed the supervisory LTV thresholds that would be directly implicated by either the current Real Estate Lending Standards or the proposed revisions.

Currently, 3,080 FDIC supervised institutions have total real estate loans that exceed the tier 1 capital plus allowance or reserve benchmark in the proposed revision and are thus potentially affected by the proposed revisions depending on the distribution of their loan to value ratios. In comparison, 3,088 FDIC supervised institutions have total real estate loans exceeding the current total capital benchmark and are thus potentially affected by the current Real Estate Lending Standards. As described in more detail below, the population of banks potentially subject to the Real Estate Lending Standards is therefore almost unchanged by these proposed revisions, and their substantive effects are likely to be minimal.[7]

The FDIC believes that a threshold of ''tier 1 capital plus an allowance for credit losses'' is consistent with the way the FDIC and institutions historically have applied the Real Estate Lending Standards. Also, the typical (or median) FDIC-supervised institution that had not elected the CBLR framework reported no difference between the amount of its allowance for credit losses and its tier 2 capital.[8] Consequently, although the FDIC does not have information about the amount of real estate loans at each institution that currently exceeds, or could exceed, the supervisory LTV limits, the FDIC does not expect the proposed rule to have material effects on the safety-and-soundness of, or compliance costs incurred by, FDIC-supervised institutions.

## V. Alternatives

The FDIC considered two alternatives, however it believes that none are preferable to the proposal. The alternatives are discussed below.

First, the FDIC considered making no change to its Real Estate Lending Standards. The FDIC is not in favor of this approach because the FDIC does not favor an approach in which some banks use a tier 1 capital threshold and other banks use a total capital threshold, and because the existing provision could be confusing for institutions.

Second, the FDIC considered revising its Real Estate Lending Standards so that both Electing CBOs and other institutions would use tier 1 capital in place of total capital for the purpose of calculating the supervisory LTV Limits. While this would subject both Electing CBOs and other institutions to the same approach, because the amount of tier 1 capital at an institution is typically less than the amount of total capital, this alternative would result in a relative tightening of the supervisory standards with respect to loans made in excess of the supervisory LTV Limits. The FDIC believes that the general level of the current supervisory LTV Limits, which would be retained by this proposed rule, is appropriately reflective of the safety and soundness risk of depository institutions, and therefore the FDIC does not consider this alternative preferable to the proposed rule.

## VI. Request for Comments

The FDIC invites comment on all aspects of the proposed rule. In particular, the FDIC invites comment on the use of tier 1 capital plus the appropriate allowance for credit losses in the denominator to calculate the level of loans in excess of the supervisory LTV Limits. Additionally, what alternative capital metric for the denominator when calculating loans in excess of the supervisory LTV Limits should the FDIC consider?

## IV. Regulatory Analysis

### *A. Proposed Waiver of Delayed Effective Date*

The FDIC proposes to make all provisions of the rule effective upon publication of the final rule in the **Federal Register**. The Administrative Procedure Act (APA) allows for an effective date of less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''[9] The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. The FDIC believes that this waiting period would be unnecessary as the proposed rule, if codified, would likely lift burdens on FDIC-supervised institutions by allowing them to calculate the ratio of loans in excess of the supervisory LTV Limits without calculating tier 2 capital, and would also ensure that the approach is consistent, regardless of the institutions' CBLR election status. Consequently, the FDIC believes it would have good cause for the final rule to become effective upon publication.

The FDIC invites comment on whether good cause exists to waive the delayed effective date of the rule once finalized.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rule, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[10] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[11] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of September 30, 2020, the FDIC supervised 3,245 institutions, of which 2,434 were ''small entities'' for purposes of the RFA.[12] The effect of the proposed revisions at an individual bank would depend on whether the amount of its current or future real estate loans with loan-to-value ratios that exceed the supervisory LTV thresholds is greater than, or less than, the sum of its tier 1 capital and allowance (or credit reserve in the case of CECL adopters) for loan and lease losses. Allowance levels, credit reserves, and the volume of real estate loans and their loan to value ratios can vary considerably over time. Moreover, the FDIC does not have

[7] September 30, 2020, Call Report data.

[8] September 30, 2020, Call Report data.

[9] 5 U.S.C. 553(d)(3).

[10] 5 U.S.C. 601 *et seq.*

[11] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' 13 CFR 121.201 n.8 (2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . .'' 13 CFR 121.103(a)(6) (2019). Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[12] September 30, 2020, Call Report data.

comprehensive information about the distribution of current loan to value ratios. For these reasons, it is not possible to identify how many institutions have real estate loans that exceed the supervisory LTV thresholds that would be directly implicated by either the current Guidelines or the proposed revisions.

Currently, 2,305 small, FDIC supervised institutions have total real estate loans that exceed the tier 1 capital plus allowance or reserve benchmark in the proposed revision and are thus potentially affected by the proposed revisions depending on the distribution of their loan to value ratios. In comparison, 2,312 small, FDIC supervised institutions have total real estate loans exceeding the current total capital benchmark and are thus potentially affected by the current Real Estate Lending Standards. As described in more detail below, the population of banks potentially subject to the Real Estate Lending Standards is therefore almost unchanged by these proposed revisions, and their substantive effects are likely to be minimal.[13]

The FDIC believes that a threshold of ''tier 1 capital plus an allowance for credit losses'' is consistent with the way the FDIC and institutions historically have applied the Real Estate Lending Standards. Also, the typical (or median) small, FDIC-supervised institution that had not elected the CBLR framework reported no difference between the amount of its allowance for credit losses and its tier 2 capital.[14] Consequently, although the FDIC does not have information about the amount of real estate loans at each small institution that currently exceeds, or could exceed, the supervisory LTV limits, the FDIC does not expect the proposed rule to have material effects on the safety-and-soundness of, or compliance costs incurred by, small FDIC-supervised institutions. However, small institutions may have to incur some costs associated with making the necessary changes to their systems and processes in order to comply with the terms of the proposed rule. The FDIC believes that any such costs are likely to be minimal given that all small institutions already calculate tier 1 capital and the allowance for credit losses and had been subject to the previous thresholds for many years before the changes in the capital rules.

Therefore, and based on the preceding discussion, the FDIC certifies that the proposed rule, if codified as written, would not significantly affect a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

*C. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[15] the FDIC may not conduct or sponsor, and a 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 FDIC has reviewed this proposed rule and determined that it would not introduce any new or revise any collection of information pursuant to the PRA. Therefore, no submissions will be made to OMB with respect to this proposed rule.

*D. Riegle Community Development and Regulatory Improvement Act of 1994*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[16] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institution, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[17]

The FDIC believes that this proposed rule, if implemented, would not impose new reporting, disclosure, or other requirements, and would likely instead reduce such burdens by allowing Electing CBOs to avoid calculating and reporting tier 2 capital, as would be required under the current Real Estate Lending Standards. Additionally, even if this proposed rule could be considered subject to the requirements of section 302(b) of RCDRIA, the FDIC believes that there is good cause under section 302(b)(1)(A) to have the rule become effective upon publication in the **Federal Register** for the same reasons that it believes good cause exists under the APA (*see Proposed Waiver of Delayed Effective Date, supra*). The FDIC invites comment on the applicability of section 302(b) of RCDRIA to the proposed rule and, if it is applicable, whether good cause exists to waive the delayed effective date of the rule once finalized.

*E. Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act[18] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner and invites comment on the use of plain language.

**List of Subjects in 12 CFR Part 365**

Banks, Banking, Mortgages, Savings associations.

## PART 365—REAL ESTATE LENDING STANDARDS

**Authority and Issuance**

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 365 of chapter III of title 12 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 365 continues to read as follows:

**Authority:** 12 U.S.C. 1828(o) and 5101 *et seq.*

■ 2. Amend Appendix A to Subpart A by revising the section titled ''Loans in Excess of the Supervisory Loan-to-Value Limits'' to read as follows:

**Appendix A to Subpart A of Part 365—Interagency Guidelines for Real Estate Lending Policies**

* * * * *

**Loans in Excess of the Supervisory Loan-to-Value Limits**

The agencies recognize that appropriate loan-to-value limits vary not only among categories of real estate loans but also among individual loans. Therefore, it may be appropriate in individual cases to originate or purchase loans with loan-to-value ratios in excess of the supervisory loan-to-value limits, based on the support provided by other credit factors. Such loans should be identified in the institution's records, and

[13] *Id.*

[14] *Id.*

[15] 44 U.S.C. 3501–3521.

[16] 12 U.S.C. 4802(a).

[17] *Id.* at 4802(b).

[18] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

their aggregate amount reported at least quarterly to the institution's board of directors. (See additional reporting requirements described under ''Exceptions to the General Policy.'')

The aggregate amount of all loans in excess of the supervisory loan-to-value limits should not exceed 100 percent of total capital.[4] Moreover, within the aggregate limit, total loans for all commercial, agricultural, multifamily or other non-1-to-4 family residential properties should not exceed 30 percent of total capital. An institution will come under increased supervisory scrutiny as the total of such loans approaches these levels.

In determining the aggregate amount of such loans, institutions should: (a) Include all loans secured by the same property if any one of those loans exceeds the supervisory loan-to-value limits; and (b) include the recourse obligation of any such loan sold with recourse. Conversely, a loan should no longer be reported to the directors as part of aggregate totals when reduction in principal or senior liens, or additional contribution of collateral or equity (*e.g.,* improvements to the real property securing the loan), bring the loan-to-value ratio into compliance with supervisory limits.

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 15, 2021.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2021–12973 Filed 6–24–21; 8:45 am]

**BILLING CODE 6714–01–P**

[4] For the purposes of these Guidelines, for state non-member banks and state savings associations, ''total capital'' refers to the FDIC-supervised institution's tier 1 capital, as defined in § 324.2 of this chapter, plus the allowance for loan and leases losses or the allowance for credit losses attributable to loans and leases, as applicable. The allowance for credit losses attributable to loans and leases is applicable for institutions that have adopted the Current Expected Credit Losses methodology.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0451; Project Identifier AD–2021–00007–T]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2019–01–08, which applies to certain The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. AD 2019–01–08 requires modifications for galley mounted attendant seat fittings. Since the FAA issued AD 2019–01–08, the FAA determined that additional airplanes are subject to the unsafe condition. This proposed AD would retain the requirements of AD 2019–01–18 and expand the applicability to include additional airplanes. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD August 9, 2021.

**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 *https://www.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.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0451.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0451; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3569; email: *brandon.lucero@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0451; Project Identifier AD–2021–00007–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3569; email: *brandon.lucero@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Background

The FAA issued AD 2019–01–08, Amendment 39–19547 (84 FR 4318,

February 15, 2019) (AD 2019–01–08), for certain The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. AD 2019–01–08 was prompted by a report that showed non-compliance exists on some in-service galley mounted attendant seat fitting installations. AD 2019–01–08 requires modifications for galley mounted attendant seat fittings. The agency issued AD 2019–01–08 to address non-compliant flight attendant seats, which could fail in a high-G crash and result in potential injury to flight attendants and consequent inability of the flight attendants to assist with passenger evacuation in a timely manner.

**Actions Since AD 2019–01–08 Was Issued**

Since the FAA issued AD 2019–01–08, an operator reported that line numbers (L/Ns) 413, 421, 424, 425, 426, and 439, which are equipped with galley part number (P/N) 1013G42A00000 (one of the affected part numbers identified in Boeing Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017) were not included in AD 2019–01–08. A subsequent investigation by Boeing determined that L/Ns 1111, 1115, and 1137 were also missing from the effectivity of Boeing Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017, and therefore not included in the applicability of AD 2019–01–08.

**FAA's Determination**

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

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

The FAA reviewed Boeing Special Attention Service Bulletin 777–25–0649, Revision 2, dated October 8, 2020. This service information specifies procedures for modifying galley mounted attendant seat fittings. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Proposed AD Requirements in This NPRM**

Although this proposed AD does not explicitly restate the requirements of AD 2019–01–08, this proposed AD would retain all of the requirements of AD 2019–01–08. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would add airplanes to the applicability. This proposed AD would also require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0649, Revision 2, dated October 8, 2020, described previously.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0451.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 50 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Modification | 7 work-hours × $85 per hour = $595 | $0 | $595 | $29,750 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2019–01–08, Amendment 39–19547 (84 FR 4318, February 15, 2019), and

■ b. Adding the following new airworthiness directive:

**The Boeing Company:** Docket No. FAA–2021–0451; Project Identifier AD–2021–00007–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) action by August 9, 2021.

**(b) Affected ADs**

This AD replaces AD 2019–01–08, Amendment 39–19547 (84 FR 4318, February 15, 2019) (AD 2019–01–08).

**(c) Applicability**

This AD applies to The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–25–0649, Revision 2, dated October 8, 2020.

**(d) Subject**

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

**(e) Unsafe Condition**

This AD was prompted by a report that showed a non-compliance exists on some in-service galley attendant seat fitting installations, and a determination that additional airplanes are subject to the unsafe condition. The FAA is issuing this AD to address non-compliant flight attendant seats, which could fail in a high-G crash and result in potential injury to flight attendants and consequent inability of the flight attendants to assist with passenger evacuation in a timely manner.

**(f) Compliance**

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

**(g) Required Actions**

Except as specified by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–25–0649, Revision 2, dated October 8, 2020, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0649, Revision 2, dated October 8, 2020.

**(h) Exception to Service Information Specifications**

Where Boeing Special Attention Service Bulletin 777–25–0649, Revision 2, dated October 8, 2020, uses the phrase ''the Revision 2 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

**(i) No Reporting Requirement**

Although the service information referenced in Boeing Special Attention Service Bulletin 777–25–0649, Revision 2, dated October 8, 2020, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017 (which is incorporated by reference in AD 2019–01–08).

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2019–01–08 are approved as AMOCs for the corresponding provisions of Boeing Special Attention Service Bulletin 777–25–0649, Revision 2, dated October 8, 2020, that are required by paragraph (g) of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(5)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(l) Related Information**

(1) For more information about this AD, contact Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3569; email: *brandon.lucero@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on May 28, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021–13407 Filed 6–24–21; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0502; Project Identifier 2018–CE–043–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; B–N Group Ltd. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as failure of the rudder final drive rod because of cracks in the region of the taper pins. This proposed AD would require repetitively inspecting the rudder final drive rod assembly and replacing the rudder final drive assembly, if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 9, 2021.

**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 *https://www.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.

For service information identified in this NPRM, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; phone: +44 20 3371 4000; fax: +44 20 3371 4001; email: *info@bnaircraft.com;* website: *https://britten-norman.com/approvals-technical-publications/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

**Examining the AD Docket**

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0502; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1094; email: *penelope.trease@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0502; Project Identifier 2018–CE–043–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Background**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0153, dated July 19, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for B–N Group Ltd. (Britten-Norman Aircraft Ltd., or ''BNA'') Models BN–2, BN–2A, BN–2B, BN–2T, BN–2T–2, BN–2T–2R, and BN–2T–4R airplanes. The MCAI states:

> Occurrences have been reported of failures of the rudder final drive rod, [part number] P/N NB–45–0991. Cracks were found in the region of the taper pins. There is evidence that replacing the taper pins could be a significant factor contributing to the failure of this rod.
>
> This condition, if not detected and corrected, could lead to failure of the affected part, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, BNA issued the applicable SB [service bulletin], providing inspection instructions. Prompted by operator comments, BNA revised the applicable SB (issue 3) to introduce repetitive inspections.
>
> For the reason described above, this [EASA] AD requires repetitive inspections of the affected part and, depending on findings, replacement. This AD also prohibits replacement of taper pins on an affected part. BNA will amend the applicable Maintenance Manuals accordingly.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0502.

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

The FAA reviewed Britten-Norman Aircraft Limited Service Bulletin Number SB 363, Issue 3, dated May 23, 2018, and Service Bulletin Number SB 364, Issue 3, dated May 23, 2018. For the applicable airplane models identified on each document, this service information contains procedures for repetitively inspecting the rudder final drive rod assembly and replacing the rudder final drive assembly, if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**FAA's Determination**

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

**Proposed AD Requirements in This NPRM**

This AD requires accomplishing the actions specified in the service information already described.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 76 airplanes of U.S. registry. The FAA also estimates that inspecting the rudder final drive assembly would take about 1 work-hour at the average labor rate of $85 per work-hour.

Based on these figures, the FAA estimates the cost of this proposed AD on U.S. operators to be $6,460, or $85 per product, each inspection cycle.

In addition, the FAA estimates that any necessary follow-on actions to replace the rudder final drive assembly would take about 5 work-hours and require parts costing $1,200, for a cost of $1,625 per product. The FAA has no way of determining the number of airplanes that may need these actions.

**Authority for This Rulemaking**

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

detail the scope of the Agency's authority.

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

## Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**B–N Group Ltd.:** Docket No. FAA–2021–0502; Project Identifier 2018–CE–043–AD.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by August 9, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes, all serial numbers, certificated in any category, with a rudder final drive rod part number (P/N) NB–45–0991 installed.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 2720, Rudder Control System.

**(e) Unsafe Condition**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the rudder final drive rod because of cracks in the region of the taper pins. The FAA is issuing this AD to detect and correct defects on the rudder final drive rod assembly to prevent failure of the assembly. The unsafe condition, if not addressed, could result in loss of rudder control and reduced airplane control.

**(f) Compliance**

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

**(g) Inspection and Corrective Action**

(1) Inspect the rudder final drive rod assembly for loose taper pins, loose end connections, bending, and cracks within the applicable compliance times for your airplane specified in paragraph (g)(1)(i) or (ii) of this AD.

(i) For Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, and BN–2B–27 airplanes, within 100 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 1,000 hours TIS.

(ii) For Models BN–2T and BN–2T–4R airplanes, within 200 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 1,000 hours TIS.

(2) If a loose taper pin, a loose end connection, any bending, or a crack is found during any inspection required by paragraph (g)(1) of this AD, before further flight, replace the rudder final drive rod assembly by following section 7, Removal and Installation Instructions for Unserviceable Units, of Britten-Norman Service Bulletin Number SB 363, Issue 3, dated May 23, 2018 (SB 363, Issue 3) or Britten-Norman Service Bulletin Number SB 364, Issue 3, dated May 23, 2018 (SB 364, Issue 3), as applicable to your model airplane.

(3) If no loose taper pins, no loose end connections, no bending, and no cracks are found during the initial inspection required by paragraph (g)(1) of this AD, review the airplane maintenance records to determine whether any taper pins have been replaced or reworked on the rudder final drive rod assembly.

(4) If a taper pin has ever been replaced or reworked, without exceeding the initial compliance time in paragraph (g)(1)(i) or (ii) of this AD, replace the rudder final drive rod assembly by following section 7, Removal and Installation Instructions for Unserviceable Units, of SB 363, Issue 3 or SB 364, Issue 3, as applicable to your model airplane.

(5) As of the effective date of this AD, do not install a rudder final drive rod assembly P/N NB–45–0991 on any airplane unless:

(i) The rudder final drive rod assembly is unused (zero hours TIS); or

(ii) The taper pins in the rudder final drive rod assembly have never been replaced.

(6) As of the effective date of this AD, do not replace any taper pin on a rudder final drive rod assembly P/N NB–45–0991 installed on any airplane.

**(h) Alternative Methods of Compliance (AMOCs)**

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

**(i) Related Information**

(1) For more information about this AD, contact Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1094; email: *penelope.trease@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0153, dated July 19, 2018, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0502.

(3) For service information identified in this AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; phone: +44 20 3371 4000; fax: +44 20 3371 4001; email: *info@bnaircraft.com;* website: *https://britten-norman.com/approvals-technical-publications/.* You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO

64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on June 11, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021–13463 Filed 6–24–21; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0511; Project Identifier AD–2020–01229–E]**

**RIN 2120–AA64**

## Airworthiness Directives; Williams International Co., L.L.C. Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Williams International Co., L.L.C. (Williams) FJ44–2A, FJ44–2C, FJ44–3A, and FJ44–3A–24 model turbofan engines. This proposed AD was prompted by a report of cracks in high-pressure turbine (HPT) disk posts and failure of an HPT disk post. This proposed AD would require the removal and replacement of the affected HPT disk before reaching its new life limit. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 9, 2021.

**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 *https://www.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.

For service information identified in this NPRM, contact Williams International Co., L.L.C., Product Support, 2000 Centerpoint Pkwy., Pontiac, MI 48341; phone: (800) 859–3544; website: *http://www.williams-int.com/product-support.* You may view this service information at the Chicago ACO Branch, 2300 East Devon Avenue, Des Plaines, IL 60018. For information on the availability of this material at the FAA, call (781) 238–7759.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0511; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Kyle Bush, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7870; fax: (847) 294–7834; email: *kyle.bush@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0511; Project Identifier AD–2020–01229–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kyle Bush, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Background

The FAA received a report that Williams discovered cracks in one HPT disk post during a scheduled inspection of an FJ44–2A model turbofan engine. An operator also discovered that one HPT disk post failed, while the engine was in service, resulting in the release of an HPT blade.

Williams initiated an investigation to understand the root cause of the cracks and to determine the necessary corrective action. Williams found that, between August 2018 and July 2019, nine FJ44–2A HPT disks were rejected during inspection after discovery of cracks in the HPT disk post. As part of its investigation, Williams conducted several tests and analysis to determine the failure mechanism. Engine tests confirmed that FJ44–2A and FJ44–2C model turbofan engines operate at a higher temperature than most recently certified engines. Metallurgical evaluation showed cracking is inter-granular with oxidation attack near and around the crack, with no fatigue striations. Metallurgical evaluation and comparison of HPT disk, part number (P/N) 67093, installed on both FJ44–2A and FJ44–3A model turbofan engines, showed cracking of the HPT disk.

As a result of this investigation, Williams determined the root cause of this cracking was due to higher temperatures and a difference in manufacturing processes (electrical discharge machining vs. broaching). Williams determined that these cracks have only occurred on HPT disks with P/N 67093. Williams subsequently issued service information to instruct operators to remove the HPT disk, P/N 67093. This condition, if not addressed, could result in failure of the engine, in-flight shutdown of the engine, and loss of control of the aircraft.

### FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

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

The FAA reviewed Williams International Service Bulletin (SB) WISB–72–1032, dated March 23, 2020. This service information specifies procedures for removing and replacing the HPT rotor assemblies that include HPT disk, P/N 67093. The service information also provides instructions for incorporating the latest HPT combustor/fuel slinger module on FJ44–2A and FJ44–2C model turbofan engines. 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**.

**Other Related Service Information**

The FAA reviewed Williams International SB WISB–72–1034, Revision 1, dated June 10, 2020. Williams International SB WISB–72–1034 describes procedures for re-identifying the HPT rotor assembly and HPT disk.

**Proposed AD Requirements in This NPRM**

This proposed AD would require removing the HPT disk, P/N 67093, from service before reaching its new life limit and replacing it with a part eligible for installation.

**Differences Between This Proposed AD and the Service Information**

The Accomplishment Instructions, paragraph 2.D., of Williams International SB WISB–72–1032, dated March 23, 2020, instruct operators of FJ44–2A and FJ44–2C model turbofan engines to replace or rework the HPT combustor/fuel slinger module on FJ44–2A and FJ44–2C model turbofan engines, while this proposed AD does not. Replacement or rework of the HPT combustor/fuel slinger module is not necessary to resolve the unsafe condition in this proposed AD and is therefore not proposed by this AD.

The Accomplishment Instructions, paragraphs 2.C. and E. and 3.C. and D., of Williams International SB WISB–72–1032, dated March 23, 2020, specify procedures for removing and replacing the HP turbine rotor assembly containing HPT disk, P/N 67093, whereas this proposed AD mandates removing and replacing the HPT disk, P/N 67093. Although removing the HPT rotor assembly is a necessary step in the replacement of the HPT disk, this proposed AD only requires replacement of the HPT disk to resolve the unsafe condition addressed by this proposed AD.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 213 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Remove and replace the HPT disk | 33 work-hours × $85 per hour = $2,805 | $16,694 | $19,499 | $4,153,287 |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Williams International Co., L.L.C.:** Docket No. FAA–2021–0511; Project Identifier AD–2020–01229–E.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by August 9, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Williams International Co., L.L.C. (Williams) FJ44–2A, FJ44–2C, FJ44–3A, and FJ44–3A–24 model turbofan engines with a serial number identified in paragraph 1.A., Effectivity, of Williams International Service Bulletin WISB–72–1032, dated March 23, 2020 (the SB), with an installed high-pressure turbine (HPT) disk, part number (P/N) 67093.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

**(e) Unsafe Condition**

This AD was prompted by a report of cracks in the HPT disk posts and failure of an HPT disk post, resulting in the release of an HPT blade. The FAA is issuing this AD to prevent cracking and failure of the HPT disk posts. The unsafe condition, if not addressed, could result in uncontained release of the HPT blade, damage to the engine, and damage to the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) For FJ44–2A and FJ44–2C model turbofan engines, within the compliance times specified in Table 1 to paragraph (g) of this AD, remove the affected HPT disk from service and replace it with a part eligible for installation using paragraphs 2.C. and E., Accomplishment Instructions—FJ44–2A & FJ44–2C, of the SB.

(2) For FJ44–3A and FJ44–3A–24 model turbofan engines, within the compliance times specified in Table 1 to paragraph (g) of this AD, remove the affected HPT disk from service and replace it with a part eligible for installation using paragraphs 3.C. and D., of the SB.

**Table 1 to Paragraph (g) – Compliance Time**

| HPT disk, P/N 67093, cycles since new (CSN) as of the effective date of this AD | Replace within HPT disk cycles |
|---|---|
| Less than 1,000 CSN | 1,620 CSN |
| 1,000 to 2,000 CSN | 2,530 CSN |
| 2,001 to 3,000 CSN | 3,245 CSN |
| 3,001 to 4,000 CSN | 4,130 CSN |
| 4,001 or higher CSN | 130 cycles after the effective date of this AD |

**(h) Definition**

For the purpose of this AD, a part eligible for installation is an HPT disk with a P/N other than P/N 67093.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Chicago ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information.

(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) Related Information**

(1) For more information about this AD, contact Kyle Bush, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7870; fax: (847) 294–7834; email: *kyle.bush@faa.gov*.

(2) For service information identified in this AD, contact Williams International Co., L.L.C., Product Support, 2000 Centerpoint Pkwy, Pontiac, MI 48341; phone: (800) 859–3544; website: *http://www.williams-int.com/product-support*. You may view this referenced 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 (781) 238–7759.

Issued on June 21, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021–13516 Filed 6–24–21; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2021–0169; Airspace Docket No. 21–ASO–3]**

**RIN 2120–AA66**

## Proposed Amendment of Class D and Class E Airspace; South Florida

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class D and Class E airspace in the south Florida area, by updating the geographic coordinates of the following airports; Fort Lauderdale-Hollywood International Airport, Miami-Opa Locka Executive Airport, (formerly Opa Locka Airport), North Perry Airport, Pompano Beach Airpark, Miami International Airport, Homestead ARB, Boca Raton Airport, Miami Executive Airport (formerly Kendall-Tamiami Executive Airport). This action would also update the geographic coordinates of the Fort Lauderdale Very High Frequency Omnidirectional Range Collocated with Distance Measuring Equipment (VOR/DME), and the QEEZY Locator Outer Marker (LOM). This action would also make an editorial change replacing the term Airport/Facility Directory with the term Chart Supplement in the legal descriptions of associated Class D and E airspace. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

**DATES:** Comments must be received on or before August 9, 2021.

**ADDRESSES:** Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0169; Airspace Docket No. 21–ASO–3, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and

subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D and E airspace in the south Florida area.

## Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2021–0169 and Airspace Docket No. 21–ASO–3) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0169 Airspace Docket No. 21–ASO–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

## Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class D and Class E surface airspace, Class E airspace designated as an extension to a Class C surface area, and Class E airspace extending upward from 700 feet above the surface in the south Florida area, by updating the geographical coordinates of several airports and associated navigation aids. Also, the FAA proposes to update the airport name of Miami Executive Airport (formerly Kendall-Tamiami Executive Airport), and Miami Opa-Locka Executive Airport (formerly Opa Locka Airport), and Homestead ARB (formerly Dade County-Homestead Regional Airport) in the Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface. Also, the FAA proposes to amend the Miami, Opa Locka Executive Airport, FL Class D header, (formerly Miami, Opa Locka Airport, FL). In addition, the FAA proposes to replace the outdated term Airport/Facility Directory with the term Chart Supplement in the associated Class D and E airspace legal descriptions for these airports. Also, Boca Raton Class E airspace extending upward from 700 feet above the surface would exclude the reference to Pompano Beach Class D airspace, as this is unnecessary verbiage.

Class D and E airspace designations are published in Paragraphs 5000, 6002, 6003 and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

## Regulatory Notices and Analyses

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

under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**ASO FL D Hollywood, FL [Amended]**

North Perry Airport, FL
(Lat. 26°00′04″ N, long. 80°14′27″ W)
Miami-Opa Locka Executive Airport
(Lat. 25°54′27″ N, long. 80°16′42″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the North Perry Airport; excluding the portion north of the north boundary of the Miami, FL, Class B airspace area and that portion south of a line connecting the 2 points of intersection with a 4.3-mile radius centered on the Miami-Opa Locka Executive Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

**ASO FL D Miami, Opa Locka Executive Airport, FL [Amended]**

Miami-Opa Locka Executive Airport, FL
(Lat. 25°54′27″ N, long. 80°16′42″ W)
North Perry Airport
(Lat. 26°00′05″ N, long. 80°14′26″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Miami-Opa Locka Executive Airport excluding that airspace south of 25°52′09″ N, and that portion north of a line connecting the 2 points of intersection with a 4-mile radius centered on the North Perry Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

**ASO FL D Fort Lauderdale Executive Airport, FL [Amended]**

Fort Lauderdale Executive Airport, FL
(Lat. 26°11′50″ N, long. 80°10′15″ W)
Fort Lauderdale-Hollywood International Airport, FL
(Lat. 26°04′18″ N, long. 80°08′59″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Fort Lauderdale Executive Airport; excluding that portion within the Fort Lauderdale-Hollywood International Airport, FL, Class C airspace area and that portion northeast of a line between lat. 26°15′49″ N; long. 80°11′00″ W; and lat. 26°12′59″ N; long. 80°09′14″ W and that portion north of a line 1 mile north of and parallel to the extended runway centerline of Runway 8/26 at Fort Lauderdale Executive Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

**ASO FL D Pompano Beach, FL [Amended]**

Pompano Beach, Airpark, FL
(Lat. 26°14′51″ N, long. 80°06′40″ W)
Fort Lauderdale Executive Airport, FL
(Lat. 26°11′50″ N, long. 80°10′15″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Pompano Beach Airpark; excluding that portion southwest of a line between lat. 26°15′49″ N; long. 80°11′00″ W; and lat. 26°12′59″ N; long. 80°09′14″ W and that portion south of a line 1 mile north of and parallel to the extended runway centerline of Runway 8/26 at Fort Lauderdale Executive Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

**ASO FL D Miami Executive Airport, FL [Amended]**

Miami Executive Airport, FL
(Lat. 25°38′51″ N, long. 80°26′00″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 3.5-mile radius of the Miami Executive Airport, FL; excluding that airspace within the Miami, FL, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6003 Class E Airspace Designated as an Extension to Class C.*

* * * * *

**ASO FL E3 Fort Lauderdale, FL [Amended]**

Fort Lauderdale-Hollywood International Airport, FL
(Lat. 26°04′18″ N, long. 80°08′59″ W)
Fort Lauderdale VOR/DME
(Lat. 26°04′26″ N, long. 80°09′59″ W)

That airspace extending upward from the surface within 3.5 miles each side of the Fort Lauderdale VOR/DME 083° radial extending from a 5-mile radius of Fort Lauderdale-Hollywood International Airport to 7 miles east of the VOR/DME; excluding that portion south of the north boundary of the Miami, FL, Class B airspace area.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Miami, FL [Amended]**

Miami International Airport, FL
(Lat. 25°47′43″ N, long. 80°17′24″ W)
Homestead ARB
(Lat. 25°29′19″ N, long. 80°23′01″ W)
Miami Opa-Locka Executive Airport
(Lat. 25°54′27″ N, long. 80°16′42″ W)
Fort Lauderdale-Hollywood International Airport
(Lat. 26°04′18″ N, long. 80°08′59″ W)
Miami Executive Airport
(Lat. 25°38′51″ N, long. 80°26′00″ W)
QEEZY LOM
(Lat. 25°38′29″ N, long. 80°30′17″ W)
Fort Lauderdale Executive Airport
(Lat. 26°11′50″ N, long. 80°10′14″ W)
Pompano Beach Airpark
(Lat. 26°14′51″ N, long. 80°06′40″ W)
North Perry Airport
(Lat. 26°00′04″ N, long. 80°14′27″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Miami International Airport, Homestead ARB, Miami Opa-Locka Executive Airport, Fort Lauderdale-Hollywood International Airport, and Miami Executive Airport, and within 2.4 miles each side of the 267° bearing from the QEEZY LOM extending from the 7-mile radius to 7 miles west of the LOM, and within a 6.5-mile radius of Fort Lauderdale Executive Airport, Pompano Beach Airpark and North Perry Airport.

**ASO FL E5 Boca Raton, FL [Amended]**

Boca Raton Airport, FL
(Lat. 26°22′43″ N, long. 80°06′26″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Boca Raton Airport.

Issued in College Park, Georgia, on June 17, 2021.

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2021–13274 Filed 6–24–21; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2021–0472; Airspace Docket No. 21–AEA–9]**

## Proposed Revocation of Class E Airspace; Red Hook, NY

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to remove Class E airspace in Red Hook, NY, as Skyhawk Airport has been abandoned, and controlled airspace is no longer required. This action would enhance the safety and management of controlled airspace within the national airspace system.

**DATES:** Comments must be received on or before August 9, 2021.

**ADDRESSES:** Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0472; Airspace Docket No. 21–AEA–9, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove Class E airspace extending upward from 700 feet above the surface at Skyhawk Airport, Red Hook, NY, due to the closing of the airport.

### Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–0472 and Airspace Docket No. 21–AEA–9) and be submitted in triplicate to the DOT Docket Operations (see **ADDRESSES**section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0472; Airspace Docket No. 21–AEA–9.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Proposal

The FAA proposes an amendment to 14 CFR part 71 to remove Class E airspace extending upward from 700 feet above the surface at Skyhawk Airport, Red Hook, NY, as the airport has closed. Therefore, the airspace is no longer necessary. This action would enhance the safety and management of controlled airspace within the national airspace system.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

### Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical

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

**Environmental Review**

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AEA NY E5 Red Hook, NY [Removed]**

Issued in College Park, Georgia, on June 21, 2021.

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2021–13489 Filed 6–24–21; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2021–0069; Airspace Docket No. 21–ASO–1]**

**RIN 2120–AA66**

## Proposed Amendment of Class E Airspace; Courtland, AL

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Courtland Airport, Courtland, AL, by amending the name and geographical coordinates of Courtland Airport, formerly Industrial Airpark Airport.

**DATES:** Comments must be received on or before August 9, 2021.

**ADDRESSES:** Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0069; Airspace Docket No. 21–ASO–1, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Courtland, AL, to support IFR operations in the area.

**Comments Invited**

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2021–0069 and Airspace Docket No. 21–ASO–1) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0069; Airspace Docket No. 21–ASO–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments

received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

**Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA proposes an amendment to 14 CFR part 71 to modify Class E airspace extending upward from 700 feet above the surface at Courtland Airport, Courtland, AL, by updating the airport's name and geographical coordinates. In addition, the reference to Muscle Shoals Airport would be removed from the description, as it is not necessary (FAA Order 7400.2M, 18–2–1, note).

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

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

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASO AL E5 Courtland, AL [Amended]**

Courtland Airport, AL
(Lat. 34°39′29″ N, long. 87°20′55″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Courtland Airport.

Issued in College Park, Georgia, on June 17, 2021.

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2021–13273 Filed 6–24–21; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2021–0477; Airspace Docket No. 21–AGL–10]**

**RIN 2120–AA66**

## Proposed Amendment of Class D and Class E Airspace; Belleville, IL

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the Class D and Class E airspace at Scott AFB/MidAmerica St. Louis Airport, Belleville, IL. The FAA is proposing this action as the result of a biennial airspace review. The name of the airport would also be updated to coincide with the FAA's aeronautical database.

**DATES:** Comments must be received on or before August 9, 2021.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0477/Airspace Docket No. 21–AGL–10 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and

subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace, the Class E airspace area designated as an extension to Class D airspace, and the Class E airspace extending upward from 700 feet above the surface at Scott AFB/MidAmerica St. Louis Airport, Belleville, IL, to support instrument flight rule operations at this airport.

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0477/Airspace Docket No. 21–AGL–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at https://www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

## Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace at Scott AFB/MidAmerica St. Louis Airport, Belleville, IL, by removing the city associated with the airport to comply with changes to FAA Order 7400.2N, Procedures for Handling Airspace Matters; updating the name (previously Scott AFB/MidAmerica Airport) of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

Amending the Class E airspace area designated as an extension to Class D airspace at Scott AFB/MidAmerica St. Louis Airport by adding an extension 1.3 miles each side of the 048° bearing from the Scott TACAN extending from the 4.9-mile radius of the airport to 5.7 miles northeast of the Scott TACAN; amending the northwest extension to 1 mile (decreased from 1.5 miles) each side of the 314° (previously 312°) radial from the Scott TACAN extending from the 4.9-mile radius from the airport to 9.5 miles (decreased from 10 miles) northwest of the Scott TACAN; removing the city associated with the airport to comply with changes to FAA Order 7400.2N; updating the name of the airport (previously Scott AFB/MidAmerica Airport) to coincide with the FAA's aeronautical database; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

And amending the Class E airspace extending upward from 700 feet above the surface to at Scott AFB/MidAmerica St. Louis Airport by adding an extension 8 miles northwest and 10 miles southeast of the 048° bearing from the Scott TACAN extending from the 7.4-mile radius of the airport to 22 miles northeast of the Scott TACAN; adding an extension 1 mile each side of the 137° bearing from the airport extending from the 7.4-mile radius of the airport to 8.1 miles southeast of the airport; amending the southeast extension to 1.5 miles (decreased from 1.7 miles) each side of the 142° (previously 140°) radial from the Scott TACAN extending from the 7.4-mile radius of the airport to 12.7 miles (decreased from 14 miles) southeast of the Scott TACAN; amending the northwest extension to 4 miles (increased from 1.5 miles) each side of the 314° (previously 312°) radial from the Scott TACAN extending from the 7.4-mile radius of the airport to 10.5 miles (increased from 10 miles) northwest of the Scott TACAN; removing the city associated with the airport to comply with changes to FAA Order 7400.2N; updating the name of the airport (previously Scott AFB/MidAmerica Airport) to coincide with the FAA's aeronautical database; and removing the exclusionary language as it is not required.

This action is due to a biennial airspace review.

Class D and Class E airspace designations are published in paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

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

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**AGL IL D Belleville, IL [Amended]**

Scott AFB/MidAmerica St. Louis Airport, IL
(Lat. 38°32′43″ N, long. 89°50′07″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.9-mile radius of the Scott AFB/MidAmerica St. Louis Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*

* * * * *

**AGL IL E4 Belleville, IL [Amended]**

Scott AFB/MidAmerica St. Louis Airport, IL
(Lat. 38°32′43″ N, long. 89°50′07″ W)
Scott TACAN
(Lat. 38°32′43″ N, long. 89°51′06″ W)

That airspace extending upward from the surface within 1.3 miles each side of the 048° bearing from the Scott TACAN extending from the 4.9-mile radius of Scott AFB/MidAmerica St. Louis Airport to 5.7 miles northeast of the Scott TACAN, and within 1 mile each side of the 314° radial from the Scott TACAN extending from the 4.9-mile radius of the Scott AFB/MidAmerica St. Louis Airport to 9.5 miles northwest of the Scott TACAN. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AGL IL E5 Belleville, IL [Amended]**

Scott AFB/MidAmerica St. Louis Airport, IL
(Lat. 38°32′43″ N, long. 89°50′07″ W)
Scott TACAN
(Lat. 38°32′43″ N, long. 89°51′06″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Scott AFB/MidAmerica St. Louis Airport, and within 8 miles northwest and 10 miles southeast of the 048° bearing from the Scott TACAN extending from the 4.9-mile radius from Scott AFB/MidAmerica St. Louis Airport to 22 miles northeast of the Scott TACAN, and within 1 mile each side of the 137° bearing from the Scott AFB/MidAmerica St. Louis Airport extending from the 7.4-mile radius of Scott AFB/MidAmerica St. Louis Airport to 8.1 miles southeast of Scott AFB/MidAmerica St. Louis Airport, and within 1.5 miles each side of the 142° radial from the Scott TACAN extending from the 7.4-mile radius of Scott AFB/MidAmerica St. Louis Airport to 12.7 miles southeast of the Scott TACAN, and within 4 miles each side of the 314° radial from the Scott TACAN extending from the 7.4-mile radius of Scott AFB/MidAmerica St. Louis Airport to 10.5 miles northwest of the Scott TACAN.

Issued in Fort Worth, Texas, on June 21, 2021.

**Martin A. Skinner,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2021–13490 Filed 6–24–21; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2021–0171; Airspace Docket No. 21–ASO–4]**

**RIN 2120–AA66**

## Proposed Amendment of Class E Airspace; Tuscaloosa, AL

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Tuscaloosa National Airport, Tuscaloosa, AL. The FAA is proposing this action as a result of an airspace review caused by the decommissioning of the CRIMSON Very High Frequency Omnidirectional Range collocated with Tactical Air Navigation (VORTAC). This action would also update name of Tuscaloosa National Airport, (formerly Tuscaloosa Municipal Airport) AL. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

**DATES:** Comments must be received on or before August 9, 2021.

**ADDRESSES:** Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0171; Airspace Docket No. 21–ASO–4 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E Airspace Designations and Reporting Points, and subsequent amendments can be viewed

online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; Telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace for Tuscaloosa National Airport, Tuscaloosa, AL, to support IFR operations in the area.

## Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2021–0171 and Airspace Docket No. 21–ASO–4) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0171; Airspace Docket No. 21–ASO–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

## Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface at Tuscaloosa National Airport, Tuscaloosa, AL, as the CRIMSON VORTAC is being decommissioned. The Class E airspace extending upward from 700 feet above the surface would be amended by increasing the radius from 7.0 miles to 9.4 miles, adding an extension 4.0 miles each side of the 117° bearing from the airport extending from the 9.4-mile radius to 11.8 miles southeast of the airport and within 2.0 miles each side of the of the 041° bearing extending from the 9.4-mile radius to 11.5 miles northeast of the airport and within 4.0 miles each side of the 296° bearing extending from the 9.4-mile radius to 10.8 miles northwest of the airport and within 2.0 miles each side of the 221° bearing extending from the 9.4-mile radius to 11.8 miles southwest of the airport. This action would also update name of Tuscaloosa National Airport, (formerly Tuscaloosa Municipal Airport) AL.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

## Regulatory Notices and Analyses

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

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and

Procedures'', prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASO AL E5 Tuscaloosa, AL [Amend]**

Tuscaloosa National Airport, AL
(Lat. 33°13′14″ N, long. 87°36′41″ W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Tuscaloosa National Airport and within 4.0 miles each side of the 117° bearing from the airport extending from the 9.4-mile radius to 11.8 miles southeast of the airport and within 2.0 miles each side of the of the 041° bearing extending from the 9.4-mile radius to 11.5 miles northeast of the airport and within 4.0 miles each side of the 296° bearing extending from the 9.4-mile radius to 10.8 miles northwest of the airport and within 2.0 miles each side of the 221° bearing extending from the 9.4-mile radius to 11.8 miles southwest of the airport.

Issued in College Park, Georgia, on June 21, 2021.

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2021–13492 Filed 6–24–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 100

**[Docket No. FR–6251–P–01]**

**RIN 2529–AB02**

## Reinstatement of HUD's Discriminatory Effects Standard

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** In 2020, HUD published a rule titled ''HUD's Implementation of the Fair Housing Act's Disparate Impact Standard'' (''2020 Rule''). Prior to the effective date of the 2020 rule, the U.S. District Court for the District of Massachusetts issued a preliminary injunction in *Massachusetts Fair Housing Center* v. *HUD,* staying HUD's implementation and enforcement of the rule. Consequently, the 2020 Rule never took effect. After reconsidering the 2020 Rule, HUD is proposing to recodify its previously promulgated rule titled, ''Implementation of the Fair Housing Act's Discriminatory Effects Standard'' (''2013 Rule''), which, as of the date of publication of this Proposed Rule, remains in effect due to the preliminary injunction. HUD believes the 2013 Rule better states Fair Housing Act jurisprudence and is more consistent with the Fair Housing Act's remedial purposes.

**DATES:** Comment due date: August 24, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410. All communications should refer to the above docket number and title. There are two methods for submitting public comments.

1. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Pennington, Acting Associate General Counsel for Fair Housing, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0500, email *HUDDisparateImpact2021@hud.gov* or telephone number 202–402–3330 (this is not a toll-free number). Persons with hearing and speech impairments may contact this phone number via TTY by calling the Federal Relay Service at 800–877–8399 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Title VIII of the Civil Rights Act of 1968, as amended (''Fair Housing Act'' or ''Act''), prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities because of race, color, religion, sex, disability, familial status, or national origin.[1] Through the Fair

[1] 42 U.S.C. 3601–3619, 3631. This preamble uses the term ''disability'' to refer to what the Act and its implementing regulations term a ''handicap'' because that is the preferred term. *See, e.g., Hunt*

Housing Act, Congress codified its remedial purpose, providing that ''[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' [2] The Act's protections are meant to be ''broad and inclusive.'' [3] Congress passed the Act in the wake of the assassination of Dr. Martin Luther King, Jr., recognizing that ''residential segregation and unequal housing and economic conditions in the inner cities'' were ''significant, underlying causes of the social unrest'' [4] and that both open and covert race discrimination were preventing integrated communities.[5] As the Supreme Court reiterated more recently, the Act's expansive purpose is to ''eradicate discriminatory practices within a sector of the Nation's economy'' and to combat and prevent segregation and discrimination in housing.[6] Congress considered the realization of this policy ''to be of the highest priority.'' [7]

The Act gives HUD the authority and responsibility for administering and enforcing the Act, including the authority to conduct formal adjudications of complaints and to promulgate rules to interpret and carry out the Act.[8] Through that authority, HUD proposes this rulemaking.

*Discriminatory Effects Law Under the Fair Housing Act Prior to HUD's 2013 Rule*

HUD's 2013 Rule broke no new ground, but instead largely codified longstanding judicial and agency consensus regarding discriminatory effects law. Courts had long found that discrimination under the Act may be established through evidence of discriminatory effects, *i.e.,* facially neutral practices with an unjustified discriminatory effect. Indeed, all federal courts of appeals to have addressed the question had held that liability under the Act could be established by a showing that a neutral policy or practice either has a disparate impact on a protected group or creates, perpetuates, or increases segregation, even if such a policy or practice was not adopted for a discriminatory purpose.[9] As the Sixth Circuit explained, the Act ''proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.'' [10]

HUD had for decades—consistent with this judicial consensus—concluded that facially neutral practices that have an unjustified discriminatory effect on the basis of a protected characteristic, regardless of intent, violate the Act.[11] For example, in 1994, HUD, along with nine other agencies and the Department of Justice, issued a joint policy statement that recognized disparate impact liability under the Act.[12]

Although there had been some minor variation in the application of the discriminatory effects framework prior to the 2013 Rule, HUD and the federal appellate courts were largely in agreement. HUD has always used a three-step burden-shifting approach,[13] as did many federal courts of appeals prior to the 2013 Rule.[14] Thus, HUD's 2013 Rule simply codified a familiar standard.

*HUD's 2013 Discriminatory Effects Rule*

In February 2013, after notice and public comment, and taking decades of caselaw into consideration, HUD published the 2013 Rule, which ''formalize[d] its long-held recognition of discriminatory effects liability under the Act and, for purposes of providing consistency nationwide, formalize[d] a burden-shifting test for determining whether a given practice has an unjustified discriminatory effect, leading to liability under the Act.'' [15] In promulgating the 2013 Rule, HUD noted the Act's ''broad remedial intent;'' [16] HUD's prior positions, including that discriminatory effects liability was ''imperative to the success of the civil rights law enforcement;'' [17] and the consistent application of discriminatory effects liability in the four previous decades (with minor variations) by HUD, the Department of Justice, nine other federal agencies, and federal courts.[18]

Among other things, the 2013 Rule codified a three-part burden-shifting framework consistent with frameworks on which HUD and courts had long relied: (1) The plaintiff or charging party is first required to prove as part of the prima facie showing that a challenged practice caused or predictably will cause a discriminatory effect; (2) if the plaintiff or charging party makes this prima facie showing, the defendant or respondent must then prove that the challenged practice is necessary to achieve one or more substantial,

v. *Aimco Props., L.P.,* 814 F.3d 1213, n.1 (11th Cir. 2016) (noting the term disability is generally preferred over handicap).

[2] 42 U.S.C. 3601.

[3] *Trafficante* v. *Metro. Life Ins. Co.,* 409 U.S. 205, 209 (1972).

[4] *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 576 U.S. 519, 529 (2015) (citing Report of the National Advisory Commission on Civil Disorders 91 (1968) (Kerner Commission Report).

[5] *Id.* at 529 (citing Kerner Commission Report).

[6] *Id.* at 539.

[7] *Trafficante,* 409 U.S. at 211 (1972).

[8] *See* 42 U.S.C. 3608(a), 3612, 3614a.

[9] *See, e.g., Graoch Assocs. # 33, L.P.* v. *Louisville/Jefferson County Metro Human Relations Comm'n,* 508 F.3d 366, 378 (6th Cir. 2007) (citing *Arthur* v. *City of* Toledo, 782 F.2d 565, 575 (6th Cir. 1986)); *Hallmark Developers, Inc.* v. *Fulton County, Ga.,* 466 F.3d 1276, 1286 (11th Cir. 2006) (citing *Hous. Investors, Inc.* v. *City of Clanton, Ala.,* 68 F. Supp. 2d 1287, 1298 (M.D. Ala. 1999)); *Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d 926, 937 (2nd Cir. 1988) (citing *Metro Hous. Dev. Corp.* v. *Vill. of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977), aff'd, 488 U.S. 15 (1988) (per curium); *Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 987 n.3 (4th Cir. 1984) (citing *Metro Hous. Dev. Corp* v. *Vill. of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977)); *Metro. Housing Dev. Corp.* v. *Village of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977) (citing *Trafficante* v. *Metropolitan Life Ins. Co.,* 409 U.S. 205, 209–10 (1972)); *United States.* v. *City of Black Jack, Missouri,* 508 F. 2d 1179, 1184–86 (8th Cir. 1974).

[10] *Graoch Assocs. #33, L.P.,* 508 F.3d at 374 (quoting *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 431 (1971) (a Title VII case)).

[11] 78 FR, 11460, 11461 (Feb. 15, 2013) (*citing, e.g., HUD* v. *Twinbrook Village Apts.,* No. 02–00025600–0256–8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001) (''A violation of the [Act] may be premised on a theory of disparate impact.''); *HUD* v. *Carlson,* No. 08–91–0077–1, 1995 WL 365009 (HUD ALJ June 12, 1995) (''A policy or practice that is neutral on its face may be found to be violative of the Act if the record establishes a prima facie case that the policy or practice has a disparate impact on members of a protected class, and the Respondent cannot prove that the policy is justified by business necessity.''); *HUD* v. *Ross,* No. 01–92–0466–18, 1994 WL 326437, at *5 (HUD ALJ July 7, 1994) (''Absent a showing of business necessity, facially neutral policies which have a discriminatory impact on a protected class violate the Act.''); *HUD* v. *Carter,* No. 03–90–0058–1, 1992 WL 406520, at *5 (HUD ALJ May 1, 1992) (''The application of the discriminatory effects standard in cases under the Fair Housing Act is well established.'').

[12] 78 FR 11460, 11461 (citing *Policy Statement on Discrimination in Lending,* 59 FR 18266, 18269 (Apr. 15, 1994)).

[13] *See, e.g., HUD* v. *Pfaff,* 1994 WL 592199, at *8 (HUD ALJ Oct. 27, 1994); *HUD* v. *Mountain Side Mobile Estates P'ship,* 1993 WL 367102, at *6 (HUD ALJ Sept. 20, 1993); *HUD* v. *Carter,* 1992 WL 406520, at *6 (HUD ALJ May 1, 1992); *Twinbrook Village Apts.,* 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001); *see also Policy Statement on Discrimination in Lending,* 59 FR. 18266, 18269 (Apr. 15, 1994) (applying three-step test without specifying where the burden lies at each step).

[14] *See, e.g., Oti Kaga, Inc.* v. *S. Dakota Hous. Dev. Auth.,* 342 F.3d 871, 883 (8th Cir. 2003); *Lapid –Laurel, L.L.C.* v. *Zoning Bd. of Adjustment,* 284 F.3d 442, 466–67 (3d Cir. 2002); *Langlois* v. *Abington Hous. Auth.,* 207 F.3d 43, 49–50 (1st Cir. 2000); *Huntington Branch NAACP* v. *Town of Huntington,* 844 F.2d 926, 939 (2d Cir. 1988).

[15] 78 FR 11460.

[16] *See also* 2011 Notice of Proposed Rulemaking, 76 FR 70911, 70922 (Nov. 16, 2011) (''In keeping with the 'broad remedial intent' of Congress in passing the Fair Housing Act, and consequently the Act's entitlement to a 'generous construction' HUD . . . has repeatedly determined that the Fair Housing Act is directed to the consequences of housing practices, not simply their purpose.'') (citing *Havens Realty* v. *Coleman,* 455 U.S. 363, 380 (1982); *City of Edmonds* v. *Oxford House, Inc.,* 514 U.S. 725, 731–732 (1995) (internal citations removed)).

[17] 78 FR 11460, 11461 (citing 126 Cong. Rec. 31,166–31,167 (1980) (statement of Sen. Mathias reading into the record letter of HUD Secretary)).

[18] 78 FR 11460, 11461–62.

legitimate, nondiscriminatory interests of the defendant or respondent; and (3) if the defendant or respondent meets its burden at step two, the plaintiff or charging party may still prevail by proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.[19]

*The 2015 Inclusive Communities Supreme Court Decision*

In 2015, the Supreme Court confirmed that the Act provides for discriminatory effects liability in *Texas Department of Housing and Community Affairs* v. *Inclusive Communities Project, Inc.*[20] The Court was asked to answer two questions: (1) Whether disparate-impact claims are cognizable under the Act, and (2) if they are, what standards and burdens of proof should apply?[21] The Court declined to consider the second question.[22]

The Court found that Congress's use of the phrase ''otherwise make unavailable'' in § 804(a) and the term ''discriminate'' in § 805(a) parallel language that the Court had previously held to provide for discriminatory effects liability under other civil rights statutes.[23] Moreover, the Court held that Congress's 1988 amendment of the Act without altering the relevant text of §§ 804(a) or 805(a) indicated that Congress ''accepted and ratified the unanimous [pre-1988] holdings of the [c]ourts of [a]ppeals finding disparate-impact liability.'' [24] The Court further held that Congress's addition of provisions that presuppose disparate impact liability as part of the 1988 amendments further provided ''convincing confirmation of Congress' understanding that disparate-impact liability exists under the FHA.'' [25] The Court further observed that disparate impact claims are ''consistent with the FHA's central purpose'' of ''eradicat[ing] discriminatory practices within a sector of our [n]ation's economy.'' [26]

As the Court recognized: ''Much progress remains to be made in our Nation's continuing struggle against racial isolation. . . . But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse. The FHA must play an important part in avoiding the Kerner Commission's grim prophecy that our Nation is moving toward two societies, one black, one white—separate and unequal. The Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society.'' [27]

In reaching this holding, the Court explained that from its first decision to recognize disparate impact liability, in *Griggs* v. *Duke Power Co.,* it ''put important limits'' on the scope of liability.[28] For example, with respect to employment discrimination claims under Title VII of the Civil Rights Act, *Griggs* explained that an employer can justify a practice that has a disparate impact with a ''business necessity'' defense, such that Title VII ''does not prohibit hiring criteria with a 'manifest relationship' to job performance.'' [29] Similarly, after holding that the Act provided for disparate impact liability, the *Inclusive Communities* Court noted that, under the Act, ''disparate-impact liability has always been properly limited in key respects.'' [30] Quoting *Griggs,* the Court explained that it has always been true that disparate impact liability under the Act ''mandates the 'removal of artificial, arbitrary, and unnecessary barriers,' not the displacement of valid governmental policies.'' [31]

The Court then sketched out some of these long-standing limitations on the scope of disparate-impact liability, including: (i) The requirement that ''housing authorities and private developers [have] leeway to state and explain the valid interest served by their policies . . . analogous to the business necessity standard under Title VII;'' and (ii) the requirement that a ''claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity.'' [32]

HUD accounted for these same well-settled limitations in the 2013 Rule, which requires a charging party or plaintiff to challenge a specific practice causing the alleged discriminatory effect and permits a defendant to defend a practice that causes such an impact by demonstrating that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. The Court did not call into question the 2013 Rule's framework for analyzing discriminatory effects claims, nor did it suggest that HUD should make any modifications to that framework. To the contrary, the Court cited HUD's 2013 Rule multiple times with approval.[33] For instance, the Court noted that the burden-shifting framework of *Griggs* and its progeny, adopted by HUD in the 2013 Rule, adequately balanced the interests of plaintiffs and defendants by giving housing providers the ability ''to state and explain the valid interest served by their policies.'' [34] Multiple courts have since read *Inclusive Communities* as affirming or endorsing the 2013 Rule's burden-shifting test.[35]

[19] 78 FR 11460, 11482; *see, e.g., Inclusive Cmtys. Project, Inc.,* 576 U.S. at 527 (overviewing the 2013 Rule's burden shifting framework).

[20] *Inclusive Cmtys. Project, Inc.,* 576 U.S. at 519, 532–35.

[21] *See* Petition for a Writ of Certiorari, *in Tex. Dep't of Hous. & Cmty. Affairs et al.,* v. *Inclusive Cmtys. Project, Inc.,* 573 U.S. 991, No. 13–1371, 2014 U.S. S. Ct. Briefs LEXIS 1848, at *9; *See Questions Presented in, Tex. Dep't of Hous. & Cmty. Affairs et al.,* v. *Inclusive Cmtys Project, Inc.,* 573 U.S. 991, The United States Supreme Court 1, 1, *https://www.supremecourt.gov/qp/13-01371qp.pdf.*

[22] *Inclusive Cmtys. Project, Inc.,* 573 U.S. 991 (2014), 2014 U.S. LEXIS 4912 at *1 (''Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit granted limited to Question 1 presented by the petition.''); *See also Questions Presented in, Inclusive Cmtys Project, Inc.,* 573 U.S. 991, The United States Supreme Court 1, 1, *https://www.supremecourt.gov/qp/13-01371qp.pdf.*

[23] *Inclusive Cmtys. Project, Inc.,* at 534 (citing *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971); *Bd. of Educ.* v. *Harris,* 444 U.S. 130 (1979); *Smith* v. *City of Jackson,* 544 U.S. 228 (2005)).

[24] *Id.* at 536.

[25] *Id.* at 537.

[26] *Id.* at 539 (citing 42 U.S.C. 3601).

[27] *Id.*at 546–47 (internal citations and quotations omitted).

[28] *Id.* at 531.

[29] *Id.* (quoting *Griggs,* 401 U.S. at 431–32).

[30] *Id.* at 540.

[31] *Id.* (quoting *Griggs,* 401 U.S. at 431).

[32] *Id.* at 541, 542.

[33] *Id.* at 527 (explaining the 2013 Rule, its burden shifting framework, and how the second prong is analogous to Title VII's requirement that a challenged practice be job related), 528 (noting the Court of Appeals for the Fifth Circuit relied on HUD's 2013 Rule), 541 (citing the 2013 Rule in explaining that disparate impact liability is properly limited to give housing authorities and private developers leeway to state and explain the valid interest served by their policies via step two of the burden shifting framework); 542 (approvingly noting that HUD recognized in its 2013 Rule that disparate impact liability ''does not mandate that affordable housing be located in neighborhoods with any particular characteristic'').

[34] *Id.* at 540–541.

[35] *See, e.g., MHANY Mgmt. Inc.* v. *Cnty. of Nassau,* 819 F.3d 581, 618 (2d Cir. 2016) (''The Supreme Court implicitly adopted HUD's approach''); *Ave 6E Invs., LLC* v. *City of Yuma,* 818 F.3d 493, 512–513 (9th Cir. 2016) (citing the 2013 Rule in describing the three-prong analytical structure set forth in *Inclusive Communities*); *Nat'l Fair Hous. All.* v. *Travelers Indem. Co.,* 261 F. Supp. 3d 20, 28–29 (D.D.C. 2017) (stating that the Supreme Court ''carefully explained that disparate-impact liability has always been properly limited'' and that ''disparate-impact liability under the FHA can be proven under a burden-shifting framework analogous to that used in employment discrimination cases.'') (internal citations and quotations omitted); *Prop. Cas. Insurers Ass'n of Am.* v. *Carson,* No. 13–CV–8564, 2017 U.S. Dist. LEXIS 94502, at *28–*30 (N.D. Ill. June 20, 2017) (finding that HUD's 2013 adoption of the 3-step burden-shifting framework a reasonable interpretation of the Act, finding that ''in short, the Supreme Court in *Inclusive Communities* . . . did not identify any aspect of HUD's burden-shifting approach that required correction.''); *Burbank Apartments Tenant Ass'n* v. *Kargman,* 474 Mass. 107, 126–27 (Mass. 2016) (explaining that it was following the ''burden-shifting framework laid out by HUD and adopted by the Supreme Court in

*HUD's 2016 Notice: Application of the Fair Housing Act's Discriminatory Effects Standard to Insurance*

In 2016, HUD published a notice (''2016 Notice'') supplementing its response to certain comments concerning homeowners insurance received during rulemaking for the 2013 Rule.[36] The notice responded to an order issued in *Property Casualty Insurers Association of America (PCIAA)* v. *Donovan.* In that case, the U.S. District Court for the Northern District of Illinois had issued a decision upholding the 2013 Rule's burden-shifting framework for analyzing discriminatory effects claims,[37] while remanding for further consideration of certain comments concerning homeowners insurance.[38] In its 2016 Notice, HUD stated, *inter alia,* that ''[a]fter careful reconsideration of the insurance industry comments in accordance with the court's decision . . . HUD has determined that categorical exemptions or safe harbors for insurance practices are unworkable and inconsistent with the broad fair housing objectives and obligations embodied in the Act. HUD continues to believe that the commenters' concerns regarding application of the discriminatory effects standard to insurance practices can and should be addressed on a case-by-case basis.'' [39]

*HUD's 2020 Disparate Impact Rule*

On June 20, 2018, HUD published an Advance Notice of Proposed Rulemaking (''ANPRM''), inviting public comment on ''what changes, if any'' should be made to the 2013 Rule.[40] HUD then published a Notice of Proposed Rulemaking on August 19, 2019 (''2019 Proposed Rule''). In the 2019 Proposed Rule, HUD proposed to ''amend HUD's interpretation of the Fair Housing Act's disparate impact standard to better reflect the Supreme Court's 2015 ruling in *Inclusive Communities,* and to provide clarification regarding the application of the standard to State laws governing the business of insurance.'' [41]

In response to the 2019 Proposed Rule, HUD received approximately 45,000 comments, most of which opposed the proposed changes and many of which raised significant legal and policy concerns with the 2019 Proposed Rule. Commenters objected that the proposed changes did not align with caselaw and made discriminatory effects claims effectively impossible to plead and prove in many instances, thus contravening the core holding of *Inclusive Communities.*[42] HUD's own experience investigating, charging, and litigating discriminatory effects cases aligned with these comments, as will be detailed later.

On September 24, 2020, HUD published the 2020 Rule, which, *inter alia,* removed the definition of discriminatory effect, added pleading elements that made it far more difficult to initiate a case, altered the burden-shifting framework, created new defenses, and limited available remedies in disparate impact claims.[43] Some of these changes are described more fully below, along with HUD's explanation for why it now believes they are unwarranted.

*Massachusetts Fair Housing Ctr. v. HUD Order Staying Implementation of the 2020 Rule.*

Following publication of the 2020 Rule, HUD was sued in three separate federal courts—*Massachusetts Fair Housing Ctr., et al.* v. *HUD,* No. 3:20–cv–11765 (D. Mass.); *National Fair Housing Alliance, et al.* v. *HUD,* No. 3:20-cv-07388 (N.D. Cal.); *Open Communities, et al.* v. *HUD,* No. 3:20–cv–01587 (D. Conn.). The plaintiffs in each case contended that the 2020 Rule was invalid because it was inconsistent with the Act and that its promulgation violated the Administrative Procedure Act (''APA''). Prior to the effective date of the 2020 Rule, the U.S. District Court for the District of Massachusetts in *Massachusetts Fair Housing Ctr.* v. *HUD* issued a preliminary injunction staying the implementation and postponing the effective date of the 2020 Rule. The district court ordered HUD to ''preserve the status quo pursuant to the regulations in effect as of the date of this Order.'' [44]

In its order, the district court preliminarily found that many significant changes made by the 2020 Rule were likely not supported by *Inclusive Communities* or other case law. Similarly, the court concluded that the 2020 Rule did not appear to bring clarity to the discriminatory effects framework, but rather introduced new concepts that had never been part of disparate-impact caselaw without fully explaining their meaning. In support of its conclusions, the court pointed to numerous provisions in the 2020 Rule as problematic, including § 100.500(b) (''requiring at 'the pleadings stage,' among other things, that plaintiffs 'sufficiently plead facts to support' . . . '[t]hat the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a practical business, profit, policy consideration, or requirement of law'''); § 100.500(c)(2) (permitting defendants to '''rebut a plaintiff's allegation under (b)(1) . . . that the challenged policy or practice is arbitrary, artificial, and unnecessary by producing evidence showing that the challenged policy or practice' merely '*advances a valid interest'''*; § 100.500(c)(3) (requiring ''at the third step of the burden-shifting framework that the plaintiff prove 'a less discriminatory policy or practice exists that would serve the defendant's identified interest (or interests) in an *equally effective manner without imposing materially greater costs* on, or creating *other material burdens* for, the defendant''' (emphasis in original)); § 100.500(d)(1) and (d)(2)(iii) (''conflating of a plaintiff's prima facie burden and pleading burden''); and § 100.500(d)(2)(i) (the outcome prediction defense).[45]

The district court stated that the ''practical business, profit, policy consideration'' language, the ''outcome prediction'' defense, changes to the third element of the burden-shifting framework, and the conflating of a plaintiff's prima facie burden and pleading burden, ran the risk of ''effectively neutering'' discriminatory effects liability under the Act, and were all likely unsupported by *Inclusive Communities* or other judicial decisions.[46] The district court also stated that the 2020 Rule's use of ''new and undefined terminology, altered burden-shifting framework, and perplexing defenses'' accomplished ''the opposite of clarity'' and was likely ''arbitrary and capricious.'' [47] The court stated that ''[t]here can be no doubt that the 2020 Rule weakens, for housing

[*Inclusive Communities*].''); *but see Inclusive Cmtys. Project* v. *Lincoln Prop. Co.,* 920 F.3d 890, 902 (5th Cir. 2019) (noting that ''debate exists regarding whether in *ICP* the Supreme Court adopted the [2013] regulation's approach or modified it'' but that it believed that *ICP* ''announced a more demanding test'' through the announcement of ''safeguards'' to incorporate into the burden shifting framework, such as a ''robust causality'' requirement'').

[36] 81 FR 69012, 69012.

[37] *Prop. Cas. Insurers Ass'n of Am.* v. *Donovan,* 66 F. Supp. 3d 1018, 1051–53 (N.D. Ill. 2014).

[38] *Id.* at 1049, 1054.

[39] 81 FR 69012, 69012.

[40] 83 FR 28560.

[41] 84 FR 42854.

[42] *See, e.g.,* 85 FR 60317, 60319 (overview of some of the comments making these points).

[43] 85 FR 60288.

[44] *Mass. Fair Hous. Ctr.* v. *HUD,* No. 20–11765–MGM, 2020 U.S. Dist. LEXIS 205633, at *20–21 (D. Mass. Oct. 25, 2020).

[45] *Id.* at *9, *10 n.2, *17–18.

[46] *Id.* at *17–18.

[47] *Id.* at *18-*19.

discrimination victims and fair housing organizations, disparate impact liability under the Fair Housing Act. . . . In addition, the 2020 Rule arms defendants with broad new defenses which appear to make it easier for offending defendants to dodge liability and more difficult for plaintiffs to succeed. In short, these changes constitute a massive overhaul of HUD's disparate impact standards, to the benefit of putative defendants and to the detriment of putative plaintiffs.'' [48] The court stated that the 2020 Rule's ''massive changes . . . pose a real and substantial threat of imminent harm'' to the Massachusetts Fair Housing Center by raising the burdens and costs of pursuing claims under a discriminatory effects theory.[49]

## II. HUD'S Reconsideration of the 2020 Rule

On January 26, 2021, President Biden issued a Memorandum ordering the Department to ''take all steps necessary to examine the effects of the [2020 Rule], including the effect that amending the [2013 Rule] has had on HUD's statutory duty to ensure compliance with the Fair Housing Act'' and ''take any necessary steps . . . to implement the Fair Housing Act's requirements that HUD administer its programs in a manner that . . . furthers . . . HUD's overall duty to administer the Act [] including by preventing practices with an unjustified discriminatory effect.'' [50]

Consistent with the President's Memorandum, HUD has reconsidered the 2020 Rule and proposes that the 2013 Rule be recodified. In so proposing, HUD considered prior public comments on the various rulemakings described above, HUD's responses to those comments, HUD's 2016 supplemental explanation regarding the 2013 Rule's applicability to the insurance industry, legal precedent including *Inclusive Communities,* the *Massachusetts Fair Housing Center* court's order, and HUD's own experience with discriminatory effects cases over 40 years.

In HUD's experience, the 2013 Rule sets a more appropriately balanced standard for pleading, proving, and defending a fair housing case alleging a policy or practice has a discriminatory effect. The 2013 Rule provides greater clarity about what each party must show by relying on concepts that have a long history in judicial and agency precedent. It appropriately balances the need to ensure that frivolous claims do not go forward with a realistic understanding of the practical challenges to litigating these claims. With regard to the 2020 Rule, HUD's experience investigating and prosecuting discriminatory effects cases informs that many of the points made by commenters and the Massachusetts District Court are, in HUD's opinion, correct, including that the changes the 2020 Rule makes, such as amending pleading standards, changing the burden shifting framework, and adding defenses, all favoring respondents, will at the very least introduce unnecessary confusion and will at worst make discriminatory effects liability a practical nullity.

HUD now proposes to recodify the 2013 Rule's discriminatory effects standard and invites comments on this proposal. HUD believes that this standard is more consistent with the Act's purpose, prior caselaw under the Act, including *Inclusive Communities,* other civil rights authorities, including the Equal Credit Opportunity Act and Title VII, and HUD's prior interpretations of the Act. While HUD previously stated that the 2020 Rule was simply intended to implement the Supreme Court's opinion in *Inclusive Communities,* HUD now believes that *Inclusive Communities* maintained the fundamentals of long-established disparate-impact precedent rather than changing them. Moreover, based on HUD's experience investigating and litigating discriminatory effects cases, HUD believes that the practical effect of the 2020 Rule's amendments is to severely limit HUD's and plaintiffs' use of the discriminatory effects framework in ways that substantially diminish that frameworks' effectiveness in accomplishing the purposes that *Inclusive Communities* articulated.

By comparison, in HUD's experience, the 2013 Rule has provided a workable and balanced framework for investigating and litigating discriminatory effects claims that is consistent with the Act, HUD's own guidance, *Inclusive Communities,* and other jurisprudence.

As noted above, the Court in *Inclusive Communities* heavily relied on *Griggs,* which is the foundation of Title VII disparate impact jurisprudence, to illustrate the well-settled principles of disparate impact under the Act, all of which are fully consistent with the 2013 Rule.[51] In *Griggs,* the Court explained that, under Title VII, ''[w]hat is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.'' [52] Quoting from its foundational decision in *Griggs,* the Supreme Court in *Inclusive Communities* observed that ''[d]isparate-impact liability mandates the 'removal of artificial, arbitrary, and unnecessary barriers,' not the displacement of valid governmental policies.'' [53] This quotation from a seminal decision of longstanding disparate impact doctrine is properly read as maintaining existing law, not profoundly changing it. As *Inclusive Communities* explicitly stated, ''disparate-impact liability *has always been* properly limited in key respects'' (emphasis added), making clear that it was not adding additional pleading or proof requirements or calling for a significant departure from pre-existing precedent under the Act and Title VII.[54] Furthermore, reading *Inclusive Communities* to support a heightened pleading standard is contradicted by the fact that the ''heartland'' cases cited by the Court would not have survived a motion to dismiss under that standard because plaintiffs in those cases did not have specific facts to plausibly allege that a policy or practice was arbitrary, artificial, or unnecessary until after discovery.[55] Finally, because *Inclusive Communities* considered a judgment reached after discovery and bench trial, the Court had no occasion or opportunity to consider the proper pleading standards for cases brought under the Act. The parties did not brief or argue such questions to the Court, making it particularly unlikely that the Court intended to reach them.

For these reasons and others, HUD believes that *Inclusive Communities'* quotation of *Griggs'* decades-old ''artificial, arbitrary, and unnecessary'' formulation is best construed as

[48] *Id.* at *10.

[49] *Id.* at *19.

[50] *See* 86 FR 7487, 7488.

[51] *See generally Inclusive Cmtys. Project, Inc.,* 576 U.S. 519 (2015).

[52] *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 430–31 (1971).

[53] *Inclusive Cmtys. Project, Inc.,* 576 U.S. at 540 (quoting *Griggs,* 401 U.S. at 431); *see also Inclusive Cmtys. Project, Inc.,* 576 U.S. at 544 (cautioning against proof standards that ''displace valid governmental and private priorities, rather than solely 'remov[ing] . . . artificial, arbitrary, and unnecessary barriers' '') (quoting *Griggs,* 401 U.S. at 431) (alterations in original).

[54] *Id.* at 540.

[55] *See, e.g., Town of Huntington, NY* v. *Huntington Branch, NAACP,* 488 U.S. 15 (1988); *United States* v. *City of Black Jack,* 508 F.2d 1179, 1184, 1187–88 (8th Cir. 1974) (specific facts produced during the case supported the court's determination that the policy was one of those ''artificial, arbitrary, and unnecessary'' practices that is properly invalidated under disparate impact doctrine); *Greater New Orleans Fair Hous. Action Ctr.* v. *St. Bernard Parish,* 641 F. Supp. 2d 563, 567–568 (E.D. La. 2009) (relying on information gathered after the pleadings to find disparate impact).

maintaining continuity with longstanding disparate-impact jurisprudence, as reflected in the 2013 Rule. Accordingly, HUD proposes to recodify the 2013 Rule.

HUD believes other changes the 2020 Rule made create problems that could be cured by a return to the 2013 Rule. For example, the 2020 Rule eliminated the 2013 Rule's definition of ''discriminatory effect,'' stating that the definition was unnecessary because it ''simply reiterated the elements of a disparate impact claim.'' [56] In eliminating this definition, the 2020 Rule erased ''perpetuation of segregation'' as a recognized type of discriminatory effect distinct from disparate impact, contrary to well established precedent.[57] HUD now proposes to reaffirm that perpetuation of segregation remains, as it always has been, a basis for contending that a policy has an unlawful discriminatory effect. HUD now believes that for clarity, a discriminatory effects rule should explicitly state that perpetuation of segregation is a type of discriminatory effect, distinct from disparate impact.

The 2020 Rule also eliminated from the Act's prohibitions policies or practices that could ''predictably result[ ] in a disparate impact on a group of persons,'' *i.e.,* those for which the disparate impact has not yet manifested but will predictably do so.[58] As HUD stated in 2013, the Act prohibits discrimination that is predictable because it defines an ''aggrieved person'' as any person who ''believes that such person will be injured by a discriminatory housing practice *that is about to occur.*'' [59] And consistent with the Act's plain language, courts have found that predictable discriminatory effects may violate the Act: ''[t]o establish a prima facie case of racial discrimination, the plaintiff need prove no more than that the conduct of the defendant actually or predictably results in racial discrimination; in other words, that it has a discriminatory effect.'' [60] The 2020 Rule did not adequately explain how the Act and caselaw construing it can be read to require waiting until harm is inflicted before an action with predictable discriminatory effects can be challenged, nor does HUD perceive that any such explanation would be availing, given the plain language of the Act and the caselaw interpreting it. Thus, HUD proposes to recodify the 2013 Rule to correct this error.

In addition, the 2020 Rule created new and confusing defenses at both the pleading and post-pleading stage, including that the challenged policy or practice is ''reasonably necessary to comply with a third-party requirement.'' [61] The 2020 Rule's preamble stated that this defense would not require a showing that the challenged policy is the only way to comply with such a requirement, only that the policy serves that purpose.[62] HUD now believes that this defense is inconsistent with the Act, which specifies that state and local laws requiring or permitting discriminatory housing practices are invalid. The defense would preclude many otherwise proper discriminatory effects claims, because, for example, a plaintiff may not have any practical means of knowing whether some other party's policies also contributed to the defendant's practice. Nothing in *Inclusive Communities* suggests this defense is required, let alone reasonable, for HUD to create. Accordingly, HUD proposes to eliminate these provisions by recodifying the 2013 Rule.

The 2020 Rule also created a new ''outcome prediction'' defense, which would in practice exempt most insurance industry practices (and many other housing-related practices that rely on outcome predictions, such as lending practices) from liability under a disparate impact standard. This is inconsistent with HUD's repeated finding, including in the 2020 Rule, that ''a general waiver of disparate impact law for the insurance industry would be inappropriate.'' [63] Although unclear, it appears that this defense would suggest using comparators that are, in HUD's experience, inappropriate. At the very least, the defense introduces unnecessary confusion into the doctrine.

The 2020 Rule limited remedies in discriminatory effects cases in three respects. It specified that ''remedies should be concentrated on eliminating or reforming the discriminatory practice so as to eliminate disparities between persons in a particular protected class and other persons.'' [64] It prohibited HUD in administrative proceedings from pursuing anything but ''equitable remedies'' except that ''where pecuniary damage is proved, HUD will seek compensatory damages or restitution.'' [65] And it restricted HUD from seeking civil penalties in discriminatory effects cases unless the respondent had been adjudged within the last 5 years to have committed intentional unlawful housing discrimination under the Act.[66] HUD believes that these limitations have no basis in law and run contrary to public interest and the purpose of the Act. While the 2020 Rule cited *Inclusive Communities* as supporting these limitations,[67] no part of *Inclusive Communities* suggested such limitations.[68] Moreover, they are in conflict with the plain language of the Act, which provides in all cases for a wide variety of remedies, including injunctive relief, actual damages, punitive damages, and civil penalties.[69]

[56] 84 FR 42854; 85 FR 60288, 60306–07, 60332.

[57] *See, e.g., Graoch Assocs. # 33, L.P.,* 508 F.3d at 378 (6th Cir. 2007) (there are ''two types of discriminatory effects which a facially neutral housing decision can have: The first occurs when that decision has a greater adverse impact on one racial group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.''); *Ave. 6E Invs.* v. *City of Yuma,* 818 F.3d 493, 503 (9th Cir. 2016) (''[A]s the Supreme Court recently reaffirmed [in *ICP*], the FHA also encompasses a second distinct claim of discrimination, disparate impact, that forbids actions by private or governmental bodies that create a discriminatory effect upon a protected class or perpetuate housing segregation without any concomitant legitimate reason.'') (emphasis added); *see also Huntington Branch, NAACP* v. *Huntington,* 844 F.2d 926, 937 (2nd Cir. 1988)*; Metro. Hous. Dev. Corp.* v. *Vill. of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977); *Nat'l Fair Hous. All.* v. *Bank of Am., NA.,* 401 F. Supp. 3d 619, 641 (D. Md. 2019) (allowing claim to proceed past motion to dismiss where plaintiff pleaded facts sufficient to allege that defendant's policies ''forestall housing integration and freeze existing racial segregation patterns''); *Hallmark Devs., Inc.* v. *Fulton Cnty.,* 386 F. Supp. 2d 1369, 1383 (N.D. Ga. 2005).

[58] 84 FR 42854; 85 FR 60288, 60306–07, 60322.

[59] 42 U.S.C. 3602(1)(2) (emphasis added).

[60] *See Inclusive Cmtys. Project, Inc.,* 576 U.S. at 539–40 (2015) (describing *City of Black Jack,* 508 F.2d at 1184 as ''at the heartland of disparate-impact liability'').

[61] 85 FR 60288, 60316–17.

[62] 85 FR 60288, 60290.

[63] 85 FR 60321 (citing ''Application of the Fair Housing Act's Discriminatory Effects Standard to Insurance'' 81 FR 69012).

[64] 85 FR 60288, 60333.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *See Inclusive Cmtys. Project,* 576 U.S. at 544–45 (noting considerations for courts on how to properly construct remedial orders (*i.e.,* be consistent with the Constitution, concentrate on the elimination of the offending practice, strive to be race-neutral), but in no way suggesting that remedial orders should be the sole or favored remedy in disparate impact cases, or that civil penalties in administrative proceedings are somehow inappropriate).

[69] *See, e.g.,* 42 U.S.C. 3601 note (''Nothing in the Fair Housing Act as amended by this Act limits any . . . remedy available under the Constitution or any other Act of the Congress not so amended''); 42 U.S.C. 3612(g)(3) (''If the administrative law judge finds that a respondent has engaged . . . in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public

Continued

Whereas Congress has chosen to limit the remedies available in disparate-impact cases under Title VII,[70] it has made no such choice with respect to the Act. Thus, HUD proposes to eliminate these provisions by recodifying the 2013 Rule.

In sum, HUD now believes that the 2013 Rule is preferable to the 2020 Rule. It believes the 2013 Rule is more consistent with judicial precedent construing the Fair Housing Act, including *Inclusive Communities,* as well as the Act's broad remedial purpose. Based on its experience interpreting and enforcing the Act, HUD also believes the 2020 Rule, if put into effect, threatens to limit the effectiveness of the Act's discriminatory effects doctrine in ways that are inconsistent with the doctrine continuing to play its critical role in ''moving the Nation toward a more integrated society.'' [71] On the other hand, HUD believes that the 2013 Rule provided clarity, consistency, and a workable, balanced framework, recognized by the Supreme Court, under which to analyze discriminatory effects claims, and under which HUD can better ensure it has the tools to further its ''duty to administer the Act [ ] including by preventing practices with an unjustified discriminatory effect.'' [72]

## III. This Proposed Rule

For the reasons described above, HUD proposes to amend §§ 100.5 and 100.500 to recodify the discriminatory effects regulation specified in the 2013 Rule. As HUD has stated, the 2013 Rule was consistent with *Inclusive Communities.*[73] The vast majority of courts that considered this issue subsequent to *Inclusive Communities* also found that the 2013 Rule was consistent with *Inclusive Communities.*[74] HUD thus proposes this rule because it believes the 2013 Rule accurately reflects the discriminatory effects framework under the Act, whereas the 2020 Rule does not.

HUD does not propose to amend § 100.70. The 2020 Rule made changes unrelated to § 100.500 by simply adding examples to an already non-exhaustive list of prohibited activities under the Act at § 100.70(d)(5).[75] Specifically, it noted that enacting or implementing ''building codes,'' ''permitting rules,'' or ''requirements'' that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of a protected class is prohibited.

## IV. Findings and Certifications

### *Regulatory Review—Executive Orders 13563 and 12866*

Executive Order 13563 (''Improving Regulation and Regulatory Review'') directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, emphasizes the importance of quantifying both costs and benefits, of harmonizing rules, of promoting flexibility, and of periodically reviewing existing rules to determine if they can be made more effective or less burdensome in achieving their objectives. Under Executive Order 12866 (''Regulatory Planning and Review''), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (''OMB'') in accordance with the requirements of the order. This proposed rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

Because the 2020 Rule never took effect, and therefore did not affect the obligations of any regulated entities, this proposed rule is only recodifying the 2013 Rule and will have no impact on regulated entities except to affirm that the 2013 Rule remains in effect. Furthermore, the 2013 Rule itself had little direct effect on regulated entities because it only ''formalize[d] the longstanding interpretation of the Fair Housing Act to include discriminatory effects liability'' and ''[was] not a significant departure from HUD's interpretation to date or that of the majority of federal courts.'' [76] Therefore, HUD does not believe that deeper analysis is needed on the impact of this rule. However, HUD invites comment on this question.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule amends the Code of Federal Regulations to accurately reflect HUD's discriminatory effects regulation as it currently exists. As a result, all entities, big and small, have a responsibility to comply with the law.

As discussed above, this Proposed Rule would continue to apply the 2013 Rule, which has been in effect uninterrupted for over seven years. HUD concludes, as it did when it published the 2013 Rule, that the majority of entities, large or small, currently comply and will remain in compliance with the Fair Housing Act. All entities, large and

interest, assess a civil penalty against the respondent. . .''); 42 U.S.C. 3612(p) (''[i]n any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section 812, the administrative law judge or the court . . . in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fees and costs.''); 42 U.S.C. 3613(c)(1) (''in a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred . . . the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order . . . .'').

[70] 42 U.S.C. 2000e–5(g)(1).

[71] *Inclusive Cmtys. Project,* 576 U.S. at 547.

[72] 86 FR 7487, 7488.

[73] *See, e.g.,* Defendants' Opposition to Plaintiff's Motion for Leave to Amend Complaint, *Prop. Cas. Ins. Assoc. of Am.* v. *Carson and the U.S. Dep't of Hous. and Urb. Dev.,* No. 1:13–cv–08564 (N.D. Ill. 2017); Defendants' Memorandum in Support of Their Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment, *Am. Ins. Assoc.* v. *U.S. Dep't of Hous. and Urb. Dev. et al.,* No. 1:13–cv–00966 (RJL) (D.D.C. 2016).

[74] *See, e.g., MHANY Mgmt. Inc.* v. *County of Nassau,* 819 F.3d 581, 618–619 (2d Cir. 2016) (deferring to HUD's [2013] regulation, noting that ''the Supreme Court implicitly adopted HUD's [burden shifting] approach [in 24 CFR 100.500(c)]''); *Ave. 6E Invs., LLC,* 818 F.3d at 512–13 (9th Cir. 2016) (citing *Inclusive Communities* and the 2013 Rule at 100.500(c) for the same proposition); *Nat'l Fair Hous. All.* v. *Travelers Indem. Co.,* 261 F. Supp. 3d 20, 29 (D.D.C. 2017) (citing *Inclusive Communities* and HUD's 2013 Rule at 100.500(c) as standing for the same proposition); *Prop. Cas. Insurers Ass'n of Am.* v. *Carson,* No. 13–CV–8564, 2017 U.S. Dist. LEXIS 94502, at *29–30 (N.D. Ill. June 20, 2017) (finding that HUD's 2013 adoption of the 3-step burden-shifting framework was a reasonable interpretation of the Act and that ''in short, the Supreme Court in *Inclusive Communities* . . . did not identify any aspect of HUD's burden-shifting approach that required correction.''); *Burbank Apartments Tenant Ass'n* v. *Kargman,* 474 Mass. 107, 126–27 (Mass. 2016) (explaining that it was following the ''burden-shifting framework laid out by HUD and adopted by the Supreme Court in [*Inclusive Communities*].'').

[75] 85 FR 60326.

[76] 78 FR 11460, 11480.

small, have been subject to the Fair Housing Act for over fifty years and subject to the 2013 Rule for over seven years. For the minority of entities that have failed to institutionalize methods to avoid engaging in illegal housing discrimination and plan to come into compliance as a result of this rulemaking, the costs will simply be the costs of compliance with a preexisting statute and regulation. This proposed rule does not change that substantive obligation; it merely recodifies the regulation that more accurately reflects the law. Any burden on small entities is simply incidental to the pre-existing requirements to comply with this body of law. Furthermore, HUD anticipates that this Proposed Rule would eliminate confusion for all entities, including small Fair Housing Advocacy organizations, by ensuring HUD's regulation accurately reflects the current standards. Accordingly, the undersigned certifies that this Proposed Rule would not have a significant economic impact on a substantial number of small entities. HUD invites comments on this certification. HUD specifically invites comments on the number of small entities which commenters believe may be affected by this regulation.

*Environmental Impact*

This proposed rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (''UMRA'') establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

**List of Subjects in 24 CFR Part 100**

Aged, Civil rights, Fair housing, Incorporation by reference, Individuals with disabilities, Mortgages, and Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 100 as follows:

## PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

■ 1. The authority citation for 24 CFR part 100 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3600–3620.

### Subpart A—General

■ 2. In § 100.5, revise paragraph (b) and remove paragraph (d) to read as follows:

**§ 100.5 Scope.**

* * * * *

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions. The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.

* * * * *

### Subpart G—Discriminatory Effect

■ 3. Revise § 100.500 to read as follows:

**§ 100.500 Discriminatory effect prohibited.**

Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if supported by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.

(a) *Discriminatory effect.* A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

(b) *Legally sufficient justification.* (1) A legally sufficient justification exists where the challenged practice:

(i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and

(ii) Those interests could not be served by another practice that has a less discriminatory effect.

(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the two elements of a legally sufficient justification are set forth in paragraphs (c)(2) and (3) of this section.

(c) *Burdens of proof in discriminatory effects cases.* (1) The charging party, with respect to a claim brought under 42 U.S.C. 3612, or the plaintiff, with respect to a claim brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.

(2) Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.

(3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

(d) *Relationship to discriminatory intent.* A demonstration that a practice is supported by a legally sufficient justification, as defined in paragraph (b) of this section, may not be used as a defense against a claim of intentional discrimination.

Dated: June 17, 2021.

**Jeanine Worden,**

*Acting Assistant Secretary, Office of Fair Housing and Equal Opportunity.*

[FR Doc. 2021–13240 Filed 6–24–21; 8:45 am]

BILLING CODE 4210–67–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG–2021–0346]**

**RIN 1625–AA08**

## Special Local Regulation; St. Mary's River, St. George Creek, Piney Point, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish temporary special local regulations for certain waters of the St. Mary's River. This action is necessary to provide for the safety of life on these navigable waters located at Piney Point, MD, during a high-speed power boat demonstration event on October 2, 2021, and October 3, 2021. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 26, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0346 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

The Southern Maryland Boat Club of Leonardtown, MD has notified the Coast Guard that it will be conducting the Southern Maryland Boat Club Piney Point Regatta from 8 a.m. to 4 p.m. on October 2, 2021, and from 8 a.m. to 4 p.m. on October 3, 2021. The high-speed power boat demonstration event consists of approximately 55 participating vintage and historic race boats—including runabouts, v-bottoms, tunnel hulls, and hydroplanes—8 to 21 feet in length. The vessels will be participating in an exhibition, operating in heats along a marked racetrack-type course 1 mile in length and 150 feet in width, located in the St. George Creek at Piney Point, MD. The regatta is not a competition, but rather a demonstration of vintage race craft. Hazards from the high-speed power boat demonstration event include participants operating within and adjacent to designated navigation channels and interfering with vessels intending to operate within those channels as well as operating near approaches to local public boat landings. The COTP, Maryland-National Capital Region has determined that potential hazards associated with the high-speed power boat event would be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of St. George Creek.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 7:30 a.m. on October 2, 2021, through 5 p.m. on October 3, 2021. The regulations would be enforced from 7:30 a.m. to 5 p.m. on October 2, 2021, and from 7:30 a.m. to 5 p.m. on October 3, 2021. The regulated area would cover all navigable waters of St. George Creek within an area bounded by a line connecting the following points: From the shoreline at Cedar Point at position latitude 38°09′03.4″ N, longitude 076°29′55.7″ W; thence south along the shoreline to Coade Bar at latitude 38°08′22.5″ N, longitude 076°29′19.9″ W; thence southwest across St. George Creek to Dodson Point at latitude 38°08′03.8″ N, longitude 076°29′44.6″ W; thence north along the shoreline and the eastern extent of the St. George Island (SR–249) Bridge to Long Bar (at the entrance to St. George Harbor) at latitude 38°30′13.0″19′16.0″ N, longitude 076°08′50.6″ W; thence northeast across St. George Creek to and terminating at the point of origin. The regulated area is approximately 1,750 yards in length and 940 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions and the restrictions that would apply to mariners. These areas include ''Race Area,'' ''Buffer Area,'' and ''Spectator Area.''

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event scheduled to take place from 8 a.m. to 4 p.m. on October 2, 2021, and from 8 a.m. to 4 p.m. on October 3, 2021. The COTP and the Coast Guard Event PATCOM would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Southern Maryland Boat Club Piney Point Regatta participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at a safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area in a manner

that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels would direct spectators to the designated spectator area. Only participant vessels and official patrol vessels would be allowed to enter the race area. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of St. George Creek for 19 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic that is able to do so safely would be able to transit the regulated area on the eastern portion of the waterway away from the event area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for 19 total enforcement hours. Normally, such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## V. Public Participation and Request for Comments

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

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0346 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. 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**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, 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. Add § 100.T05–0346 to read as follows:

### § 100.T05–0346 Southern Maryland Boat Club Piney Point Regatta, St. Mary's River, St. George Creek, Piney Point, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of St. George Creek, within an area bounded by a line connecting the following points: from the shoreline at Cedar Point at position latitude 38°09′03.4″ N, longitude 076°29′55.7″ W; thence south along the shoreline to Coade Bar at latitude 38°08′22.5″ N, longitude 076°29′19.9″ W; thence southwest across St. George Creek to Dodson Point at latitude 38°08′03.8″ N, longitude 076°29′44.6″ W; thence north along the shoreline and the eastern extent of the St. George Island (SR–249) Bridge to Long Bar (at the entrance to St. George Harbor) at latitude 38°08′50.6″ N, longitude 076°30′13.0″ W; thence northeast across St. George Creek to and terminating at the point of origin. The race area, buffer area, and spectator area are within the regulated area.

(2) *Race area.* The race area is a polygon in shape measuring approximately 560 yards in length by 240 yards in width. The area is bounded by a line commencing near Hodgson Point at position latitude 38°08′38.22″ N, longitude 076°30′02.48″ W, thence southeast to latitude 38°08′24.43″ N, longitude 076°29′50.71″ W; thence southwest to latitude 38°08′20.40″ N, longitude 076°29′58.16″ W, thence northwest to latitude 38°08′34.26″ N, longitude 076°30′09.97″ W; thence northeast to and terminating at the point of origin.

(3) *Buffer area.* The buffer area is a polygon in shape measuring approximately 270 feet in all directions surrounding the entire race area described in paragraph (a)(2) of this section. The area is bounded by a line commencing near Hodgson Point at position latitude 38°08′42.0″ N, longitude 076°30′01.6″ W; thence southeast to latitude 38°08′23.7″ N, longitude 076°29′46.0″ W, thence southwest to latitude 38°08′16.7″ N, longitude 076°29′59.0″ W; thence northwest to latitude 38°08′34.9″ N, longitude 076°30'14.7″ W, thence northeast to and terminating at the point of origin.

(4) *Spectator area.* The designated spectator area is a polygon in shape with its length measuring approximately 475 yards and its width measuring approximately 300 yards at its northern portion and 50 yards at it southern portion. The area is bounded by a line commencing at position latitude 38°08′47.2″ N, longitude 076°29′52.9″ W; thence southeast to latitude 38°08′41.9″ N, longitude 076°29′47.5″ W; thence southwest to latitude 38°08′37.8″ N, longitude 076°29′55.3″ W; thence southeast to latitude 38°08′31.3″ N, longitude 076°29′50.1″ W, thence southwest to latitude 38°08′30.4″ N, longitude 076°29′51.7″ W; thence northwest to latitude 38°08′42.0″ N, longitude 076°30′01.6″ W, thence northeast to and terminating at the point of origin.

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

*Buffer area* is a neutral area that surrounds the perimeter of the race area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and spectator vessels or nearby transiting vessels. This area provides separation between a race area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor as participating in the ''Southern Maryland Boat Club Piney Point Regatta'' event, or otherwise designated by the event sponsor as having a function tied to the event.

*Race area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

*Spectator area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

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

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7:30 a.m. to 5 p.m. on October 2, 2021 and from 7:30 a.m. to 5 p.m. on October 3, 2021.

Dated: June 15, 2021.

**David E. O'Connell,**

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

[FR Doc. 2021–13291 Filed 6–24–21; 8:45 am]

BILLING CODE 9110–04–P

## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 385

**[Docket No. 21–CRB–0001–PR (2023–2027)]**

## Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Proposed rule.

**SUMMARY:** The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms applicable during the period beginning January 1, 2023, and ending December 31, 2027, for the section 115 statutory license for making and distributing phonorecords of nondramatic musical works.

**DATES:** Comments and objections, if any, are due no later than July 26, 2021.

**ADDRESSES:** You may send comments, identified by docket number 21–CRB–0001–PR (2023–2027), online through eCRB at *https://app.crb.gov.*

*Instructions:* To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at *https://app.crb.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to eCRB at *https://app.crb.gov* and perform a case search for docket 21–CRB–0001–PR (2023–2027).

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Specialist, at 202–707–7658 or *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Section 115 of the Copyright Act, title 17 of the United States Code, requires a copyright owner of a nondramatic musical work to grant a license (also known as the ''mechanical'' compulsory license) to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee complies with the statute and regulations. In addition to the production or distribution of physical phonorecords (compact discs, vinyl, cassette tapes, and the like), section 115 applies to digital transmissions of phonorecords, including permanent digital downloads and ringtones.

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 115 license. 17 U.S.C. 801(b)(1), 804(b)(4). Accordingly, the Judges commenced the current proceeding in January 2021, by publishing notice of the commencement and a request that interested parties submit petitions to participate. *See* 86 FR 25 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from *Amazon.com* Services LLC, Apple Inc., Copyright Owners (joint petitioners Nashville Songwriters Association International (NSAI) and National Music Publishers Association (NMPA)), Google LLC, George Johnson, Joint Record Company Participants (filed by Recording Industry Association of America, Inc. for joint petitioners Sony Music Entertainment, UMG Recordings,

Inc., and Warner Music Group Corp.), Pandora Media, LLC, David Powell, SoundCloud Operations Inc.,[1] Spotify USA Inc., and Brian Zisk.

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than September 10, 2021. On May 25, 2021, the Judges received a motion stating that several participants[2] had reached a partial settlement regarding the rates and terms under Section 115 of the Copyright Act, namely, for physical phonorecords, permanent downloads, ringtones, and music bundles for the 2023–2027 rate period and seeking approval of that partial settlement. *See Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations,* Docket No. 21–CRB–0001–PR (2023–2027) at 1 (May 25, 2021) (Motion). The movants state that ''the settlement represents the consensus of buyers and sellers representing the vast majority of the market for 'mechanical' rights for [the 37 CFR 385] Subpart B Configurations.''[3] Motion at 4.

The settlement proposes that ''Subpart B Configuration Rates and Terms presently set forth in 37 CFR part 385 subpart B . . . continue to be applicable to the Record Company Participants and all other licensees of 'mechanical' rights in musical works for the Subpart B Configurations, for the rate period covered by the Proceeding, with only a few minor editorial changes to the applicable regulations.'' Motion at 3.

The proposed editorial changes apply to §§ 385.10 and 385.11 of Subpart B and to two definitions in Subpart A and would clarify the regulations. For example, the definition of Licensed Activity needs to be changed to remove the reference to Subpart B because the term Licensed Activity does not appear in Subpart B. *See* 37 CFR 385.2, 385.10–11; Motion at 6–7 (redline of regulations with rationale for changes).

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. This section provides that the Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound by the terms, rates, or other determination set by the agreement and (2) participants in the proceeding that would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any *participant* objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

If the Judges adopt rates and terms reached pursuant to a negotiated settlement, those rates and terms are binding on all copyright owners of musical works and those using the musical works in the activities described in the proposed regulations.

The Judges propose an additional minor revision to change an outdated cross reference. They propose to shorten the cross reference 17 U.S.C. 115(c)(3)(C) and (D) to 17 U.S.C. 115 because the section no longer has a subsection (c)(3). *See* 17 U.S.C. 115; Orrin G. Hatch-Bob Goodlatte Music Modernization Act, Public Law 115–264, 132 Stat. 3676, 3679–3684 (Oct. 11, 2018).

The Judges solicit comments on whether they should adopt the proposed regulations as statutory rates and terms relating to the making and distribution of physical or digital phonorecords of nondramatic musical works.

Comments and objections regarding the rates and terms and the minor revisions must be submitted no later than July 26, 2021.

**List of Subjects in 37 CFR Part 385**

Copyright, Phonorecords, Recordings.

**Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 385 as follows:

## PART 385—RATES AND TERMS FOR USE OF NONDRAMATIC MUSICAL WORKS IN THE MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

■ 1. The authority citation for part 385 continues to read as follows:

**Authority:** 17 U.S.C. 115, 801(b)(1), 804(b)(4).

### Subpart A—Regulations of General Application

■ 2. In § 385.2 revise the introductory text of the definition for ''*Eligible Limited Download*'', the definition for ''*Licensed Activity*'', and the fourth sentence for definition ''*Sound Recording Company*'' to read as follows:

**§ 385.2 Definitions.**

* * * * *

*Eligible Limited Download* means a transmission of a sound recording embodying a musical work to an End User of a digital phonorecord under 17 U.S.C. 115 that results in a Digital Phonorecord Delivery of that sound recording that is only accessible for listening for— * * *

* * * * *

*Licensed Activity,* as the term is used in subparts C and D of this part, means delivery of musical works, under voluntary or statutory license, via Digital Phonorecord Deliveries in connection with Interactive Eligible Streams, Eligible Limited Downloads, Limited Offerings, mixed Bundles, and Locker Services.

* * * * *

*Sound Recording Company* means a person or entity that:

* * * * *

(4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under the authority of a person identified in paragraphs (1) through (3) of this section.

* * * * *

### Subpart B—Physical Phonorecord Deliveries, Permanent Downloads, Ringtones, and Music Bundles

■ 3. Revise § 385.10 to read as follows:

**§ 385.10 Scope.**

This subpart establishes rates and terms of royalty payments for making and distributing physical phonorecords, Permanent Downloads, Ringtones, and Music Bundles, in accordance with the provisions of 17 U.S.C. 115.

■ 4. Revise § 385.11 paragraph (a) to read as follows:

**§ 385.11 Royalty rates.**

(a) Physical phonorecords and Permanent Downloads. For every physical phonorecord and Permanent Download the Licensee makes and distributes or authorizes to be made and distributed, the royalty rate payable for each work embodied in the phonorecord

[1] SoundCloud Operations Inc. withdrew from the proceeding on May 21, 2021.

[2] The participants who filed the motion are the ''Publisher/Songwriter Participants'' (NMPA and NSAI) and the ''Record Company Participants'' (Sony Music Entertainment, UMG Recordings, Inc. and Warner Music Group Corp.). Motion at 1.

[3] Participants *Amazon.com* Services LLC, Google LLC, Pandora Media, LLC, and Spotify USA Inc. do not object to the settlement, Motion at 4 n.2, however, the movants state that they understand that participant George Johnson intends to object to it. Motion at 4.

or Permanent Download shall be either 9.1 cents or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

* * * * *

**Jesse M. Feder,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2021–12950 Filed 6–24–21; 8:45 am]

**BILLING CODE 1410–72–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

## National Endowment for the Humanities

## 45 CFR Part 1174

**RIN 3136–AA36**

## Implementation of the Program Fraud Civil Remedies Act of 1986

**AGENCY:** National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The National Endowment for the Humanities (NEH) is proposing to issue regulations to implement the Program Fraud Civil Remedies Act of 1986 (PFCRA). The PFCRA authorizes certain Federal agencies, including NEH, to impose civil penalties and assessments through administrative adjudication against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to NEH. The proposed rule will establish the procedures that NEH will follow in implementing the PFCRA, as well as specify the hearing and appeal rights of persons subject to penalties and assessments under the PFCRA.

**DATES:** Send comments on or before July 26, 2021.

**ADDRESSES:** You may send comments by email to *gencounsel@neh.gov.*

*Instructions:* Include ''3136–AA36'' in the subject line of the email.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *gencounsel@neh.gov.*

**SUPPLEMENTARY INFORMATION:**

### 1. Background

In October 1986, Congress enacted the PFCRA, 31 U.S.C. 3801–3812. The PFCRA established an administrative remedy against any person who makes, or causes to be made, a false claim or written statement to certain Federal agencies. The PFCRA requires these Federal agencies to follow certain procedures in recovering penalties and assessments against people who file false claims or statements for which the liability is $150,000 or less. Initially, the PFCRA did not apply to NEH. Section 10 of the Inspector General Reform Act of 2008, Public Law 110–409, 122 Stat. 4314, however, expanded the PFCRA's scope to include NEH.

The PFCRA requires each covered agency to promulgate rules and regulations necessary to implement its provisions. Following the PFCRA's enactment, the President's Council on Integrity and Efficiency requested that the Department of Health and Human Services lead an inter-agency task force to develop model PFCRA regulations. This action was in keeping with the Senate Governmental Affairs Committee's desire that ''the regulations would be substantially similar throughout the government'' (S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985)). The Council recommended that all covered agencies adopt the model rule.

Accordingly, NEH is implementing the PFCRA's provisions through this proposed rule—which substantively conforms to the model rule—in order to establish procedures by which NEH will seek to recover penalties and assessments against persons who file, or cause to have filed, false claims or statements with NEH for which liability is $150,000 or less.

### 2. Maximum Penalty Amount

The PFCRA established a maximum penalty of $5,000 for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), 28 U.S.C. 2461 note, required all Federal agencies to (1) adjust the penalty amount to 2016 inflation levels with an initial ''catch-up'' inflation adjustment; and (2) make subsequent annual adjustments for inflation.[1] This proposed rule incorporates the initial ''catch-up'' adjustment to 2016 inflation levels and the annual adjustments for 2017 through 2021, and applies those adjustments cumulatively to the civil monetary penalties that the PFCRA imposes.[2]

#### *A. Initial ''Catch-Up'' and 2021 Adjustments for Inflation*

NEH determined the first ''catch-up'' adjustment to 2016 inflation levels using the formula set forth in the 2015 Act. Specifically, NEH calculated the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for October of the last year in which Congress adjusted the PFCRA civil penalties (October 1986) and the CPI–U for October 2015, and then rounded to the nearest dollar.

NEH similarly determined each subsequent annual adjustment by calculating the percent increase between the CPI–U for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment.

Table 1, below, details the above calculations.

TABLE 1—ANNUAL ADJUSTMENTS TO PFCRA CIVIL MONETARY PENALTIES, 2016–2021

| Effective date | Baseline maximum penalty | Applicable multiplier based on percent increase in CPI–U | New baseline maximum penalty |
|---|---|---|---|
| August 1, 2016 | $5,000 | [3] 2.15628 | $10,781 |
| January 15, 2017 | 10,781 | [4] 1.01636 | 10,957 |
| January 15, 2018 | 10,957 | [5] 1.02041 | 11,181 |
| January 15, 2019 | 11,181 | [6] 1.02522 | 11,463 |
| January 15, 2020 | 11,463 | [7] 1.01764 | 11,665 |

[1] For a more detailed explanation of the 2015 Act and the civil monetary penalty inflation adjustment calculations that it requires, see NEH's regulation implementing the 2015 Act at 85 FR 35566.

[2] Table 1 details the annual adjustments to the PFCRA maximum penalty amount for years 2016–2021.

TABLE 1—ANNUAL ADJUSTMENTS TO PFCRA CIVIL MONETARY PENALTIES, 2016–2021—Continued

| Effective date | Baseline maximum penalty | Applicable multiplier based on percent increase in CPI–U | New baseline maximum penalty |
|---|---|---|---|
| January 15, 2021 | 11,665 | [8] 1.01182 | 11,803 |

*B. Future Annual Adjustments*

The 2015 Act requires agencies to make annual adjustments to civil penalty amounts no later than January 15 of each year following the initial adjustment. NEH will calculate future annual adjustments using the same method as the adjustments previously described herein. If the CPI–U does not increase, then the civil penalties remain the same.

NEH will publish a Notice in the **Federal Register** containing the amount of these annual inflation adjustments no later than January 15 of each year.

**Request for Comments**

NEH requests comments, which NEH must receive at the above address, by the above date.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

**Executive Order 13132, Federalism**

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

**Executive Order 12988, Civil Justice Reform**

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rulemaking is written in clear language designed to help reduce litigation.

**Executive Order 13175, Indian Tribal Governments**

Under the criteria in Executive Order 13175, NEH evaluated this rulemaking and determined that it will not have any potential effects on Federally recognized Indian Tribes.

**Executive Order 12630, Takings**

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

**Regulatory Flexibility Act of 1980**

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

**Paperwork Reduction Act of 1995**

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

**Unfunded Mandates Reform Act of 1995**

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

**National Environmental Policy Act of 1969**

This rulemaking will not have a significant effect on the human environment.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rulemaking will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**E-Government Act of 2002**

All information about NEH required to be published in the **Federal Register** may be accessed at *www.neh.gov.* The website *www.regulations.gov* contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

**Plain Writing Act of 2010**

To ensure this proposed rule speaks in plain and clear language so that the public can use and understand it, NEH modeled the language of the proposed rule on the Federal Plain Language Guidelines.

**List of Subjects in 45 CFR 1174**

Claims, Fraud, Penalties.

■ For the reasons set forth in the preamble, the National Endowment for the Humanities proposes to amend 45 CFR chapter XI by adding part 1174, to read as follows:

## PART 1174—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

### Subpart A—Purpose, Definitions, and Basis for Liability

Sec.
1174.1 Purpose.
1174.2 Definitions.
1174.3 Basis for civil penalties and assessments.

### Subpart B—Procedures Leading to Issuance of a Complaint

Sec.
1174.4 Who investigates program fraud.
1174.5 Review of suspected program fraud by the reviewing official.
1174.6 Prerequisites for issuing a complaint.
1174.7 Contents of a complaint.
1174.8 Service of a complaint.

### Subpart C—Procedures Following Service of a Complaint

Sec.
1174.9 Answer to a complaint.
1174.10 Default upon failure to file an answer.

[3] Office of Management and Budget, Memorandum M–16–06 (February 24, 2016).
[4] Office of Management and Budget, Memorandum M–17–11 (December 16, 2016).
[5] Office of Management and Budget, Memorandum M–18–03 (December 15, 2017).
[6] Office of Management and Budget, Memorandum M–19–04 (December 14, 2018).
[7] Office of Management and Budget, Memorandum M–20–05 (December 16, 2019).
[8] Office of Management and Budget, Memorandum M–21–10 (December 23, 2020).

1174.11 Referral of complaint and answer to the ALJ.

**Subpart D—Hearing Procedures**

Sec.
1174.12 Notice of hearing.
1174.13 Location of the hearing.
1174.14 Parties to the hearing and their rights.
1174.15 Separation of functions.
1174.16 The ALJ's role and authority.
1174.17 Disqualification of reviewing official or ALJ.
1174.18 Parties' rights to review documents.
1174.19 Discovery.
1174.20 Discovery Motions.
1174.21 Depositions.
1174.22 Exchange of witness lists, statements, and exhibits.
1174.23 Subpoenas for attendance at the hearing.
1174.24 Protective orders.
1174.25 Filing and serving documents with the ALJ.
1174.26 Computation of time.
1174.27 The hearing and the burden of proof.
1174.28 Presentation of evidence.
1174.29 Witness testimony.
1174.30 Ex parte communications.
1174.31 Sanctions for misconduct.
1174.32 Post-hearing briefs.

**Subpart E—Decisions and Appeals**

Sec.
1174.33 Initial decision.
1174.34 Determining the amount of penalties and assessments.
1174.35 Reconsideration of the initial decision.
1174.36 Finalizing the initial decision.
1174.37 Procedures for appealing the ALJ's decision.
1174.38 Appeal to the authority head.
1174.39 Judicial review.
1174.40 Collection of civil penalties and assessments.
1174.41 Rights to administrative offset.
1174.42 Deposit in Treasury of the United States.
1174.43 Voluntary settlement of the administrative complaint.
1174.44 Limitations regarding criminal misconduct.

**Authority:** 31 U.S.C. 3801–3812; 5 U.S.C. App. 8G(a)(2).

## Subpart A—Purpose, Definitions, and Basis for Liability

### § 1174.1 Purpose.

This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (PFCRA). The PFCRA provides the National Endowment for the Humanities (NEH), and other Federal agencies, with an administrative remedy to impose civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted or presented, false, fictitious, or fraudulent claims or written statements to NEH. The PFCRA also provides due process protections to all persons who are subject to administrative proceedings under this part.

### § 1174.2 Definitions.

For the purposes of this part—

*ALJ* means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

*Authority* means the National Endowment for the Humanities (NEH).

*Authority head* means the NEH Chairperson or the Chairperson's designee.

*Benefit* means anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status or loan guarantee.

*Claim* means any request, demand or submission that a person makes—

(a) to the authority—

(1) for property, services, or money (including money representing grants, loans, insurance, or benefits); or

(2) which has the effect of decreasing an obligation to pay or account for property, services, or money; or

(b) to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) for property or services if the United States—

(i) provided such property or services;

(ii) provided any portion of the funds for the purchase of such property or services; or

(iii) will reimburse such recipient or party for the purchase of such property or services; or

(2) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) provided any portion of the money requested or demanded; or

(ii) will reimburse such recipient or party for any portion of the money paid on such request or demand.

*Complaint* means the administrative complaint that the reviewing official serves on the defendant under § 1174.8.

*Defendant* means any person alleged in a complaint to be liable for a civil penalty or assessment pursuant to the PFCRA.

*Government* means the United States Government.

*Individual* means a natural person.

*Initial decision* means the written decision of the ALJ under § 1174.33, and includes a revised initial decision issued following a remand or a motion for reconsideration.

*Knows or has reason to know* means that a person, with respect to a claim or statement—

(a) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) acts in reckless disregard of the truth or falsity of the claim or statement;

and no proof of specific intent to defraud is required.

*Makes* shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made shall likewise include the corresponding forms of such terms.

*Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

*Representative* means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States, or the District of Columbia, or the Commonwealth of Puerto Rico, or any other individual who the defendant designates in writing.

*Reviewing official* means the NEH General Counsel or the General Counsel's designee.

*Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry that a person makes—

(a) with respect to a claim (or eligibility to make a claim) or to obtain the approval or payment of a claim; or

(b) with respect to (or with respect to eligibility for)—

(1) a contract with, or a bid or proposal for a contract with, or

(2) a grant, loan, or benefit from,

the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

### § 1174.3 Basis for civil penalties and assessments.

(a) Claims.

(1) Any person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $11,803 for each claim that person makes that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such a claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of the authority.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section may also be subject to an assessment of not more than twice the amount of that claim or the portion thereof that violates paragraph (a)(1) of this section. Such assessment shall be in lieu of damages that the Government sustained because of such a claim.

(b) Statements.

(1) Any person shall be subject, in addition to any other remedy prescribed by law, to a civil penalty of not more than $11,803 for each written statement that person makes that the person knows or has reason to know—

(i) Asserts a material fact which is false, fictitious or fraudulent; or

(ii) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such a statement; and

(iii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the statement's contents.

(2) A person will only be subject to a civil penalty under paragraph (b)(1) of this section if the written statement made by the person contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the statement's contents.

(3) Each written representation, certification, or affirmation constitutes a separate statement.

(4) A statement shall be considered made to the authority when it is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of the authority.

(c) Proof of specific intent to defraud is not required to establish liability under this section.

(d) In any case in which more than one person is liable for making a false, fictitious, or fraudulent claim or statement under this section, each person may be held liable for a civil penalty and assessment.

(e) In any case in which more than one person is liable for making a claim under this section on which the Government has made payment, the authority may impose an assessment against any such person or jointly and severally against any combination of persons.

(f) The authority will annually adjust for inflation the maximum amount of the civil penalties described in this section, and will publish a document in the **Federal Register** containing the new maximum amount no later than January 15 of each year.

## Subpart B—Procedures Leading to Issuance of a Complaint

### § 1174.4 Who investigates program fraud.

The Inspector General, or his or her designee, is the investigating official responsible for investigating allegations that a person has made a false claim or statement. In this regard, the Inspector General has authority under the PFCRA and the Inspector General Act of 1978, 5 U.S.C. App. 3, as amended, to issue administrative subpoenas for the production of records and documents.

### § 1174.5 Review of suspected program fraud by the reviewing official.

(a) If the investigating official concludes that the results of his or her investigation warrant an action under this part, the investigating official shall submit to the reviewing official a report containing the investigation's findings and conclusions.

(b) If the reviewing official determines that the report provides adequate evidence that a person made a false, fictitious or fraudulent claim or statement, the reviewing official shall transmit to the Attorney General written notice of the reviewing official's intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official's statement concerning:

(1) The reasons for the referral;

(2) The claims or statements that form the basis for liability;

(3) The evidence that supports liability;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(5) Any exculpatory or mitigating circumstances that may relate to the claims or statements that are known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(c) If, at any time, the Attorney General (or designee) requests in writing that the authority stay this administrative process, the authority head must stay the process immediately. The authority head may resume the process only upon receipt of the Attorney General's written authorization.

### § 1174.6 Prerequisites for issuing a complaint.

The authority may issue a complaint only if:

(a) The Attorney General (or designee) approves the reviewing official's referral of the allegations for adjudication; and

(b) In a case of submission of false claims, if the amount of money or the value of property or services that a false claim (or a group of related claims submitted at the same time) demanded or requested does not exceed $150,000.

### § 1174.7 Contents of a complaint.

(a) The complaint will state that the authority seeks to impose civil penalties, assessments, or both, against the defendant and will include:

(1) The allegations of liability against the defendant and the statutory basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) A statement that the defendant may request a hearing by filing an answer and may be represented by a representative;

(4) Instructions for filing such an answer; and

(5) A warning that failure to file an answer within thirty days of service of the complaint will result in an imposition of the maximum amount of penalties and assessments.

(b) The reviewing official must serve the complaint on the defendant and, if the defendant requests a hearing, provide a copy to the ALJ assigned to the case.

### § 1174.8 Service of a complaint.

(a) The reviewing official must serve the complaint on an individual

defendant directly, on a partnership through a general partner, and on a corporation or an unincorporated association through an executive officer or a director, except that the reviewing official may also make service on any person authorized by appointment or by law to receive process for the defendant.

(b) The reviewing official may serve the complaint either by:

(1) Registered or certified mail; or

(2) Personal delivery by anyone eighteen years of age or older.

(c) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(d) When the reviewing official serves the complaint, he or she should also serve the defendant with a copy of this part and 31 U.S.C. 3801–3812.

## Subpart C—Procedures Following Service of a Complaint

### § 1174.9 Answer to a complaint.

(a) A defendant may file an answer with the reviewing official within thirty days of service of the complaint. An answer will be considered a request for an oral hearing.

(b) In the answer, the defendant—

(1) Must admit or deny each allegation of liability contained in the complaint (a failure to deny an allegation is considered an admission);

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person the defendant authorized to act as the defendant's representative, if any.

(c) If the defendant is unable to file a timely answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability, requesting a hearing, and requesting an extension of time in which to file a complete answer. The defendant must file a general answer within thirty days of service of the complaint.

(d) If the defendant initially files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to thirty additional days within which to file an answer that meets the requirements of paragraph (b) of this section. The defendant must file such an answer with the ALJ and must serve a copy on the reviewing official.

### § 1174.10 Default upon failure to file an answer.

(a) If the defendant does not file any answer within thirty days after service of the complaint, the reviewing official may refer the complaint to the ALJ.

(b) Once the reviewing official refers the complaint, the ALJ will promptly serve on the defendant a notice that the ALJ will issue an initial decision.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the PFCRA.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments the ALJ may impose in the initial decision.

(e) The initial decision becomes final thirty days after the ALJ issues it.

(f) At any time before an initial decision becomes final, a defendant may file a motion with the ALJ asking that the ALJ reopen the case. An ALJ may only reopen a case if he or she determines that the defendant set forth in the motion extraordinary circumstances that prevented the defendant from filing a timely answer. The initial decision will be stayed until the ALJ decides on the motion. The reviewing official may respond to the motion.

(g) If the ALJ determines that a defendant has demonstrated extraordinary circumstances that excuse his or her failure to file a timely answer, the ALJ will withdraw the initial decision and grant the defendant an opportunity to answer the complaint.

(h) The ALJ's decision to deny a defendant's motion to reopen a case is not subject to reconsideration under § 1174.35.

(i) The defendant may appeal the ALJ's decision denying a motion to reopen by filing a notice of appeal with the authority head within fifteen days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(j) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(k) The authority head shall decide expeditiously, based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(l) If the authority head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(m) If the authority head decides that the circumstances do not excuse the defendant's failure to file a timely answer, the authority head shall reinstate the ALJ's initial decision, which shall become final and binding upon the parties thirty days after the authority head issues such a decision.

### § 1174.11 Referral of complaint and answer to the ALJ.

When the reviewing official receives an answer, he or she must simultaneously file the complaint, the answer, and a designation of the authority's representative with the ALJ.

## Subpart D—Hearing Procedures

### § 1174.12 Notice of hearing.

(a) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of hearing upon the defendant and the authority's representative in the same manner as the complaint. The ALJ must serve the notice of oral hearing within six years of the date on which the claim or statement was made.

(b) The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and dispute liability.

(c) The notice of hearing must include:

(1) The tentative date, time, and place of the hearing;

(2) The legal authority and jurisdiction under which the hearing is being held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for the authority; and

(6) Such other matters as the ALJ deems appropriate.

### § 1174.13 Location of the hearing.

(a) The ALJ shall hold the hearing:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which a claim or statement in issue was made; or

(3) In such other place as the parties and the ALJ may agree upon.

(b) Each party shall have the opportunity to present arguments with respect to the location of the hearing.

(c) The ALJ shall decide the time and the place of the hearing.

**§ 1174.14 Parties to the hearing and their rights.**

(a) The parties to the hearing shall be the defendant and the authority.

(b) Except where the authority head designates another representative, the NEH General Counsel (or designee) shall represent the authority.

(c) Each party has the right to:

(1) Be represented by a representative;

(2) Request a pre-hearing conference and participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law which will be made a part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

**§ 1174.15 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the authority head's review of the initial decision; or

(3) Make the collection of penalties and assessment.

(b) The ALJ must not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

**§ 1174.16 The ALJ's role and authority.**

(a) An ALJ serves as the presiding officer at all hearings. The Office of Personnel Management selects the ALJ.

(b) The ALJ must conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(c) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing, in whole or in part, for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring witness attendance and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment when there is no disputed issue of material fact;

(13) Conduct any conference, argument or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(d) The ALJ does not have the authority to find Federal statutes or regulations invalid.

**§ 1174.17 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon any party's motion, the reviewing official or ALJ may be disqualified as follows:

(1) The party must support the motion by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the party's discovery of such facts;

(2) The party must file the motion promptly after discovery of the grounds for disqualification or the objection will be deemed waived; and

(3) The party, or representative of record, must certify in writing that such party makes the motion in good faith.

(c) Once a party has filed a motion to disqualify, the ALJ will halt the proceedings until he or she resolves the disqualification matter. If the ALJ disqualifies the reviewing official, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the authority will promptly reassign the case to another ALJ.

**§ 1174.18 Parties' rights to review documents.**

(a) Once the ALJ issues a hearing notice pursuant to § 1174.12, and upon written request to the reviewing official, the defendant may:

(1) Review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the investigating official based his or her findings and conclusions, unless such documents are subject to a privilege under Federal law, and obtain copies of such documents upon payment of duplication fees; and

(2) Obtain a copy of all exculpatory information in the reviewing official's or investigating official's possession that relates to the allegations in the complaint, even if it appears in a document that would otherwise be privileged. If the document would otherwise be privileged, the other party only must disclose the portion containing exculpatory information.

(b) The notice that the reviewing official sends to the Attorney General, as described in § 1174.5(b), is not discoverable under any circumstances.

(c) If the reviewing official does not respond to the defendant's request within twenty days, the defendant may file with the ALJ a motion to compel disclosure of the documents, subject to the provisions of this section. The defendant may only file such a motion with the ALJ after filing an answer pursuant to § 1174.9.

**§ 1174.19 Discovery.**

(a) Parties may conduct the following types of discovery:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section, the term ''documents'' includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless the parties mutually agree to discovery, a party may conduct discovery only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Each party shall bear its own discovery costs.

**§ 1174.20 Discovery Motions.**

(a) Any party seeking discovery may file a motion with the ALJ together with a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(b) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 1174.24.

(c) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(1) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(2) Is not unduly costly or burdensome;

(3) Will not unduly delay the proceeding; and

(4) Does not seek privileged information.

(d) The burden of showing that the ALJ should allow discovery is on the party seeking discovery.

(e) The ALJ may grant discovery subject to a protective order under § 1174.24.

**§ 1174.21 Depositions.**

(a) If the ALJ grants a motion for deposition, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will take place.

(b) The party seeking to depose shall serve the subpoena in the manner prescribed by § 1174.8.

(c) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(d) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

**§ 1174.22 Exchange of witness lists, statements, and exhibits.**

(a) As ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that each party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party in advance, unless the ALJ finds good cause for the omission or concludes that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

**§ 1174.23 Subpoenas for attendance at the hearing.**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request no less than fifteen days before the hearing date unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced, designate the witness, and describe the witness' address and location with sufficient particularity to permit the witness to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the same manner prescribed in § 1174.8. The party seeking the subpoena may serve the subpoena on a party, or upon an individual under the control of a party, by first class mail.

(f) The party requesting a subpoena shall pay the subpoenaed witness' fees and mileage in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when it is served, except that when the authority issues a subpoena, a check for witness fees and mileage need not accompany the subpoena.

(g) A party, or the individual to whom the subpoena is directed, may file with the ALJ a motion to quash the subpoena within ten days after service, or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

**§ 1174.24 Protective orders.**

(a) A party, prospective witness, or deponent may file a motion for a protective order that seeks to limit the availability or disclosure of evidence with respect to discovery sought by an opposing party or with respect to the hearing.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the parties shall not have discovery;

(2) That the parties shall have discovery only on specified terms and conditions;

(3) That the parties shall have discovery only through a method of discovery other than requested;

(4) That the parties shall not inquire into certain matters, or that the parties shall limit the scope of discovery to certain matters;

(5) That the parties shall conduct discovery with no one present except persons designated by the ALJ;

(6) That the parties shall seal the contents of the discovery;

(7) That a sealed deposition shall be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation shall not be disclosed or shall be disclosed only in a designated way; or

(9) That the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as the ALJ directs.

**§ 1174.25 Filing and serving documents with the ALJ.**

(a) Documents filed with the ALJ must include an original and two copies. Every document filed in the proceeding must contain a title (*e.g.,* motion to quash subpoena), a caption setting forth the title of the action, and the case number assigned by the ALJ. Every document must be signed by the person on whose behalf the paper was filed, or by his or her representative.

(b) Documents are considered filed when they are mailed. The mailing date may be established by a certificate from the party or its representative, or by proof that the document was sent by certified or registered mail.

(c) A party filing a document with the ALJ must, at the time of filing, serve a copy of such document on every other party. When a party is represented by a representative, the party's representative must be served in lieu of the party.

(d) A certificate from the individual serving the document constitutes proof of service. The certificate must set forth the manner in which the document was served.

(e) Service upon any party of any document other than the complaint must be made by delivering a copy or by placing a copy in the United States mail, postage prepaid and addressed to the party's last known address.

(f) If a party consents in writing, documents may be sent electronically. In this instance, service is complete upon transmission unless the serving party receives electronic notification that transmission of the communication was not completed.

**§ 1174.26 Computation of time.**

(a) In computing any period of time under this part or in an order issued

under it, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday that is observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays that are observed by the Federal government are excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

**§ 1174.27 The hearing and the burden of proof.**

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the penalty and/or assessment.

(b) The hearing will be recorded and transcribed. The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding, constitute the record for the ALJ's and the authority head's decisions.

(c) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

(d) The authority must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(e) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

**§ 1174.28 Presentation of evidence.**

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence, but the ALJ may apply the Federal Rules of Evidence where he or she deems appropriate.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) The ALJ may exclude evidence, although relevant, if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) The ALJ shall exclude evidence, although relevant, if it is privileged under Federal law.

(f) Evidence concerning compromise or settlement offers shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence taken for the record must be open to examination by all parties unless the ALJ orders otherwise.

**§ 1174.29 Witness testimony.**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the ALJ's discretion, the ALJ may admit testimony in the form of a written statement or deposition. The party offering such a statement must provide it to all other parties along with the last known address of the witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing. The parties shall exchange deposition transcripts and prior written statements of witnesses proposed to testify at the hearing as provided in § 1174.22.

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) Upon any party's motion, the ALJ shall order witnesses excluded from the hearing room so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, the party's officer or employee appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence a party shows to be essential to the presentation of its case, including an individual employed by the Government or engaged in assisting the Government's representative.

**§ 1174.30 Ex parte communications.**

A party may not communicate with the ALJ *ex parte* unless the other party consents to such a communication taking place. This does not prohibit a party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 1174.31 Sanctions for misconduct.**

(a) The ALJ may sanction a person, including any party or representative, for failing to comply with an order, or for engaging in other misconduct that interferes with the speedy, orderly, and fair conduct of a hearing.

(b) Any such sanction shall reasonably relate to the severity and nature of the misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, producing evidence within the party's control, or responding to a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter for which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to, the information sought; and

(4) Strike any part of the pleadings or other submissions filed by the party failing to comply with such a request.

(d) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

(e) If a party fails to prosecute or defend an action under this part that is commenced by service of a hearing notice, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

**§ 1174.32 Post-hearing briefs.**

Any party may file a post-hearing brief. Such briefs are not required, however, unless ordered by the ALJ. The ALJ must fix the time for filing such briefs, not to exceed sixty days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

## Subpart E—Decisions and Appeals

**§ 1174.33 Initial decision.**

(a) The ALJ will issue an initial decision based only on the record. It will contain findings of fact, conclusions of law, and the amount of any penalties and assessments.

(b) The ALJ will serve the initial decision on all parties within ninety days after the hearing's close or, if the ALJ permitted the filing of post-hearing briefs, within ninety days after the final post-hearing brief was filed.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this part; and

(2) If the defendant is liable for penalties or assessments, the

appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) If the defendant is liable for a civil penalty or assessment, the initial decision shall describe the defendant's right to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head.

**§ 1174.34 Determining the amount of penalties and assessments.**

In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose.

**§ 1174.35 Reconsideration of the initial decision.**

(a) Any party may file a motion with the ALJ for reconsideration of the initial decision within twenty days of receipt of the initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the party received the initial decision five days from the date of mailing.

(b) A motion for reconsideration must be accompanied by a supporting brief and must describe specifically each allegedly erroneous decision.

(c) A party only may file a response to a motion for reconsideration upon the ALJ's request.

(d) The ALJ will dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon a party's motion, no party may file a further motion for reconsideration.

**§ 1174.36 Finalizing the initial decision.**

(a) Thirty days after issuance, the ALJ's initial decision shall become the authority's final decision and shall bind all parties, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false, fictitious, or fraudulent claim or statement timely appeals to the authority head, as set forth in § 1174.37.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration shall become the authority's final decision thirty days after the ALJ issues the order, unless a defendant that is adjudged to have submitted a false, fictitious, or fraudulent claim or statement timely appeals to the authority head, as set forth in § 1174.37.

**§ 1174.37 Procedures for appealing the ALJ's decision.**

(a) Any defendant who submits a timely answer and is found liable in an initial decision for a civil penalty or assessment may appeal the decision.

(b) The defendant may file a notice of appeal with the authority head within thirty days following issuance of the initial decision, serving a copy of the notice of appeal on all parties and the ALJ. The authority head may extend this deadline for up to an additional thirty days if the defendant files an extension request within the initial thirty day period and shows good cause.

(c) The authority head shall not consider a defendant's appeal until all timely motions for reconsideration have been resolved.

(d) If the ALJ denies a timely motion for reconsideration, the defendant may file a notice of appeal within thirty days following such denial or issuance of a revised initial decision, whichever applies.

(e) The defendant must support its notice of appeal with a written brief specifying why the authority head should reverse or modify the initial decision.

(f) The authority's representative may file a brief in opposition to the notice of appeal within thirty days of receiving the defendant's appeal and supporting brief.

(g) If a defendant timely files a notice of appeal, and the time for filing reconsideration motions has expired, the ALJ will forward the record of the proceeding to the authority head.

(h) An initial decision is automatically stayed pending disposition of a motion for reconsideration or of an appeal to the authority head.

(i) No administrative stay is available following the authority head's final decision.

**§ 1174.38 Appeal to the authority head.**

(a) A defendant has no right to appear personally, or through a representative, before the authority head.

(b) There is no right to appeal any interlocutory ruling.

(c) The authority head will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that extraordinary circumstances excuse the failure to object. If the defendant demonstrates to the authority head's satisfaction that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the authority head may remand the matter to the ALJ for consideration of the additional evidence.

(d) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment that the ALJ imposed in the initial decision or reconsideration decision.

(e) The authority head will promptly serve each party to the appeal and the ALJ with a copy of the decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

**§ 1174.39 Judicial review.**

31 U.S.C. 3805 authorizes the appropriate United States District Court to review any final decision imposing penalties or assessments, and specifies the procedures for such review. To obtain judicial review, a defendant must file a petition with the appropriate court in a timely manner.

**§ 1174.40 Collection of civil penalties and assessments.**

31 U.S.C. 3806 and 3808(b) authorize actions for collecting civil penalties and assessments imposed under this part and specify the procedures for such actions.

**§ 1174.41 Rights to administrative offset.**

The authority may make an administrative offset under 31 U.S.C. 3716 to collect the amount of any penalty or assessment which has become final, for which a judgment has been entered, or which the parties agree upon in a compromise or settlement. However, the authority may not make an administrative offset under this subsection against a Federal tax refund that the United States owes to the defendant then or at a later time.

**§ 1174.42 Deposit in Treasury of the United States.**

The authority shall deposit all amounts collected pursuant to this part as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 1174.43 Voluntary settlement of the administrative complaint.**

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle the case from the date on which the reviewing official is permitted to issue a complaint until the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle the case from the date of the ALJ's initial

decision until initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle the case while any judicial review or any action to recover penalties and assessments is pending.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate.

**§ 1174.44 Limitations regarding criminal misconduct.**

(a) Any investigating official may:

(1) Refer allegations of criminal misconduct or a violation of the False Claims Act directly to the Department of Justice for prosecution and/or civil action, as appropriate;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under any other statutory authority.

(b) Nothing in this part limits the requirement that the authority's employees must report suspected violations of criminal law to the NEH Office of the Inspector General or to the Attorney General.

Dated: June 16, 2021.

**Elizabeth Voyatzis,**

*Deputy General Counsel, National Endowment for the Humanities.*

[FR Doc. 2021–13085 Filed 6–24–21; 8:45 am]

BILLING CODE 7536–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MB Docket No. 21–254; RM–11911; DA 21–705; FR ID 34373]**

## Television Broadcasting Services Fredericksburg, Texas

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has before it a petition for rulemaking filed by Corridor Television, L.L.P. (Petitioner), the licensee of KCWX (MyNetwork), channel 5, Fredericksburg, Texas. The Petitioner requests the substitution of channel 8 for channel 5 at Fredericksburg in the DTV Table of Allotments.

**DATES:** Comments must be filed on or before July 26, 2021 and reply comments on or before August 9, 2021.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Jonathan Mark, Esq., Davis Wright Tremaine LLP, 1301 K Street NW, Suite 500 East, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, Media Bureau, at (202) 418–1647 or at *Joyce.Bernstein@fcc.gov* .

**SUPPLEMENTARY INFORMATION:** In support of its channel substitution request, the Petitioner states that since it converted to digital channel 5 operations in 2009 it has received numerous complaints from the public about poor reception. The Petitioner recounts the steps it has taken to improve reception on its low-VHF channel, but concludes that it has no option to resolve the Station's reception problems other than to move from its low-VHF channel 5 to high-VHF channel 8. In its Amended Engineering Statement, the Petitioner proposes to utilize a Distributed Transmission System (DTS) facility comprised of six single frequency network (SFN) nodes, and submitted documentation showing that the loss areas would continue to be well-served by at least five other television stations, except an area with only 14 people, a number the Commission considers *de minimis.*

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–254; RM–11911; DA 21–705, adopted June 16, 2021, and released June 16, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

*See* Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

### Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73 — Radio Broadcast Service

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

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622 in paragraph (i), amend the Post-Transition Table of DTV Allotments under Texas by revising the entry for Fredericksburg to read as follows:

**§ 73.622 Digital television table of allotments.**

* * * * *

(i) * * *

| Community | Channel No. |
|---|---|
| * * * * * | |
| **Texas** | |
| * * * * * | |
| Fredericksburg | 8 |
| * * * * * | |

[FR Doc. 2021–13562 Filed 6–24–21; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R2–ES–2020–0123; FXES11130200000–212–FF02ENEH00]**

**RIN 2018–BD61**

# Endangered and Threatened Wildlife and Plants; Revision of a Nonessential Experimental Population of Black-Footed Ferrets (Mustela nigripes) in the Southwest

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; announcement of a draft environmental assessment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service and USFWS), propose to revise the regulation for the nonessential experimental population of the black-footed ferret (*Mustela nigripes*) (ferret) in Arizona. We established the Aubrey Valley Experimental Population Area (AVEPA) in 1996 in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (ESA). This proposed rule would allow the reintroduction of ferrets across a larger landscape as part of a nonessential experimental population and include the AVEPA within a larger ''Southwest Experimental Population Area'' (SWEPA), which includes parts of Arizona and identified contiguous Tribal land in New Mexico and Utah. This proposed revision provides a framework for establishing and managing reintroduced populations of ferrets that will allow greater management flexibility and increased landowner cooperation. The best available data indicate that reintroduction of the ferret into suitable habitat in the proposed SWEPA is biologically feasible and will promote the conservation of the species. We are seeking comments on this proposal and on our draft environmental assessment (EA) that analyzes the potential environmental impacts associated with the proposed regulatory revisions.

**DATES:** We will accept comments received or postmarked on or before August 24, 2021. If you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

**ADDRESSES:** You may submit comments on the proposed rule and draft EA by one of the following methods:

*Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the Docket Number for this rulemaking: FWS–R2–ES–2020–0123. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

*By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2020–0123, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see ''Public Comments'' below for more information).

*Copies of Documents:* The proposed rule, draft EA, and supporting documents are available at the following website: *http://www.regulations.gov* in Docket No. FWS–R2–ES–2020–0123. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

**FOR FURTHER INFORMATION CONTACT:** Jeff Humphrey, Field Supervisor, Phone: 602–242–0210. Direct all questions or requests for additional information to: BLACK-FOOTED FERRET QUESTIONS, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 9828 North 31st Avenue, Suite C3, Phoenix, AZ 85051. Individuals who are hearing-impaired or speech-impaired may call the FRS at 1–800–877–8337 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

## Public Comments

We want to ensure that any final rule developed from this proposed revision to the 1996 rule is as effective as possible. Therefore, we invite Tribal and other governmental agencies, the scientific community, industry, and other interested parties to submit comments (including recommendations and information) concerning any aspect of this proposed revision. Your comments should be as specific as possible.

To issue a final rule implementing this revision, we will take into consideration all comments and information we receive. Such communications may lead to a final rule that differs from this proposed revision. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments concerning the proposed revision by one of the methods listed in **ADDRESSES**. You must submit comments to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hardcopy comments not postmarked by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

The comments we receive and any supporting documentation we used in preparing this proposal will be available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

We specifically seek comments on:

- The appropriateness of revising the current AVEPA, and establishing new boundaries for the nonessential experimental population area to encompass all potential ferret habitat within Arizona and identified Tribal lands in New Mexico and Utah, for reintroduced populations of black-footed ferrets;
- Threats to ferrets in the proposed nonessential experimental population area that we have not considered in this revision that might affect a reintroduced population;
- The suitability of the proposed boundaries for this nonessential experimental population;
- The effects of reintroducing ferrets on public, private, and Tribal lands and activities such as ranching, recreation, residential development, and other land uses; and
- The compatibility of this proposal with ongoing implementation of the programmatic ferret Safe Harbor Agreement (SHA) in cooperation with non-Federal landowners.

## Background

### *Statutory and Regulatory Framework*

The 1982 amendments to the ESA (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j) that allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Our implementing regulations for section 10(j) are in title 50 of the Code of Federal Regulations in part 17 (specifically at 50 CFR 17.81); hereafter,

we refer to species-specific rules under section 10(j) of the ESA as ''10(j) rules.'' These regulations state that the Service may designate a population of endangered or threatened species that we have released or will release into suitable natural habitat outside the species' current natural range, but within its probable historical range, as an experimental population.

Under 50 CFR 17.81(b), before authorizing the release as an experimental population of any population of an endangered or threatened species, the Service must find by regulation that such release will further the conservation of the species. In making such a finding, the Service shall use the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see ''*Possible Adverse Effects on Wild and Captive-Breeding Populations*'' below);

(2) the likelihood that any such experimental population will become established and survive in the foreseeable future (see ''*Likelihood of Population Establishment and Survival*'' below);

(3) the relative effects that establishment of an experimental population will have on the recovery of the species (see ''*Effects of the SWEPA on Recovery Efforts for the Species*'' below); and

(4) the extent to which the introduced population may be affected by existing or anticipated Federal, Tribal, or State actions or private activities within or adjacent to the experimental population area (see ''*Actions and Activities that May Affect the Introduced Population*'' below).

Furthermore, under 50 CFR 17.81(c), any regulation designating experimental populations under section 10(j) of the ESA shall provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s) (see ''*Identifying the Location and Boundaries of the SWEPA*'' below);

(2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see ''Is the Proposed Experimental Population Essential or Nonessential?'' below);

(3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations (see ''Management Restrictions, Protective Measures, and Other Special Management'' below); and

(4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see ''Review and Evaluation of the Success or Failure of the SWEPA'' below).

Under 50 CFR 17.81(d), the Service shall consult with appropriate State fish and wildlife agencies, local governmental entities [including Tribal governments], affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, 10(j) rules represent an agreement between the Service, affected Tribes, State and Federal agencies, and persons holding any interest in land that the establishment of an experimental population may affect.

Under 50 CFR 17.81(f), the Secretary may designate critical habitat as defined in section 3(5)(A) of the ESA for an essential experimental population. The Secretary will not designate critical habitat for nonessential populations. The term essential experimental population means an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. We classify all other experimental populations as nonessential (50 CFR 17.80).

Under 50 CFR 17.82, we treat any population determined by the Secretary to be an experimental population as if we had listed it as a threatened species for the purposes of establishing protective regulations with respect to that population. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population, allowing us discretion in devising management programs to provide for the conservation of the species.

Under 50 CFR 17.83(a), for the purposes of section 7 of the ESA, we treat nonessential experimental populations as threatened when located in a National Wildlife Refuge or unit of the National Park Service (NPS), and Federal agencies follow conservation and consultation requirements per subsections 7(a)(1) and 7(a)(2), respectively. We treat nonessential experimental populations outside of a National Wildlife Refuge or NPS unit as species proposed for listing, and agencies only follow subsections 7(a)(1) and 7(a)(4). In these cases, nonessential experimental population designation provides additional flexibility, because it does not require Federal agencies to consult under section 7(a)(2). Instead, section 7(a)(4) requires Federal agencies to confer (not consult) with the Service on actions that are likely to *jeopardize* the continued existence of a species proposed to be listed. A conference results in conservation recommendations, which are discretionary. Because the nonessential experimental population is, by definition, not essential to the continued existence of the species, the effects of proposed actions on the population will generally not rise to the level of ''jeopardy.'' As a result, Federal agencies will likely never request a formal conference for actions that may affect ferrets established in the proposed SWEPA. Nonetheless, some Federal agencies voluntarily confer with the Service on actions that may affect a proposed species.

*Legal Status*

We listed the black-footed ferret as an endangered species in 1967 under the Endangered Species Preservation Act of 1966 (32 FR 4001, March 11, 1967). We later codified this list in part 17 of title 50 in the U.S. Code of Federal Regulations (CFR) (35 FR 8491, October 13, 1970). With the passage of the ESA in 1973 (16 U.S.C. 1531 *et seq.*), we incorporated those species previously listed in the CFR into the Lists of Endangered and Threatened Wildlife and Plants under the ESA, found at 50 CFR 17.11 and 17.12 (39 FR 1175, January 4, 1974).

In 1996, we designated the population of black-footed ferrets established via reintroduction in Aubrey Valley as a nonessential experimental population (61 FR 11320, March 20, 1996). The Aubrey Valley Experimental Population Area (AVEPA) includes parts of Coconino, Mohave, and Yavapai Counties in northwestern Arizona. At the time of its designation, the AVEPA consisted of 22 percent State lands, 45 percent Tribal lands (Hualapai Reservation), and 33 percent deeded lands (owned by the Navajo Nation).

In 2013, the USFWS developed a range-wide programmatic Safe Harbor Agreement (SHA) to encourage non-Federal landowners to voluntarily undertake conservation activities on

their properties to benefit the ferret (USFWS 2013b, entire) (see ''*Historical Range*'' below). Through Certificates of Inclusion, we enroll willing landowners in our SHA section 10(a)(1)(A) Enhancement of Survival Permit. We treat ferrets as endangered outside of the AVEPA, and the provisions and exceptions of the experimental population designation do not apply; however, through the SHA, incidental take of ferrets by participating landowners and nonparticipating neighboring landowners is permissible. Also, through their certificates, we provide participating landowners assurances we will not require additional restrictions provided they follow provisions outlined in the SHA and detailed in a Reintroduction Plan developed by the landowner for the enrolled lands. The Service tailors conservation activities to each specific site under the SHA.

General provisions of Arizona Revised Statutes, Title 17, protect all of Arizona's native wildlife, including federally listed threatened and endangered species. Under Navajo Nation law, it is unlawful for any person to take ferrets. All wildlife on the Hopi Reservation is the property of the Hopi Tribe, and Tribal law provides for take (see ''Management Restrictions, Protective Measures, and Other Special Management'' below, for more information on State and Tribal legal status).

## Biological Information

### *Species Description*

The black-footed ferret (*Mustela nigripes*) is a medium-sized member of the weasel family (Mustelidae) weighing 1.4 to 2.5 pounds (645 to 1125 grams) and measuring 19 to 24 inches (480 to 600 millimeters) in total length. Its body color includes yellowish-buff, occasionally whitish, upper parts, and black feet, tail tip, and ''mask'' across the eyes (Hillman and Clark 1980, p. 30).

### *Ecology/Habitat Use/Movement*

Black-footed ferrets are carnivorous, extremely specialized predators highly dependent on prairie dogs (*Cynomys* spp.) (Hillman 1968, p. 438; Biggins 2006, p. 3). Ferrets prey predominantly on prairie dogs (Sheets *et al.* 1972, entire; Campbell *et al.* 1987, entire), occupy prairie dog burrows, and do not dig their own burrows (Forrest *et al.* 1988, p. 261). Ferrets select areas within prairie dog colonies that contain high burrow densities and thus high densities of prairie dogs (Biggins *et al.* 2006, p. 136; Eads *et al.* 2011, p. 763; Jachowski *et al.* 2011a, pp. 221–223; Livieri and Anderson 2012, pp. 201–202). Given their obligate tie to prairie dogs, ferret populations associated with larger, less fragmented prairie dog colonies are more likely to be resilient and less likely to be extirpated by stochastic events compared to those associated with smaller, fragmented colonies (Miller *et al.* 1994, p. 678; Jachowski *et al.* 2011b, entire). Resiliency is the ability of populations to tolerate natural, annual variation in their environment and to recover from periodic or random disturbances (USFWS 2019, p. 2). Such stochastic events include epizootics, such as sylvatic plague (plague), and extreme weather or climate, including drought.

The last naturally occurring wild ferret population, in Wyoming, averaged approximately 25 breeding adults throughout intensive demographic studies from 1982 to 1985 (USFWS 2019, p. 10). Based on this and population modeling, the Service considers 30 breeding adults a minimum for a population of ferrets to be self-sustaining (USFWS 2013a, p. 70). Ferrets require large, contiguous prairie dog colonies to meet their individual needs, with colonies no more than 4.35 miles (7 kilometers [km]) apart. A conservative estimate of habitat requirements to support one female ferret is 222 acres (ac) (90 hectares [ha]) of black-tailed prairie dog (*C. ludovicianus*) colonies, or 370 ac (150 ha) of Gunnison's prairie dog (*C. gunnisoni*) colonies (USFWS 2013a, p. 73). Assuming a two-to-one female-to-male sex ratio and overlapping male and female home ranges (Biggins *et al.* 1993, p. 76), a population of 30 breeding adult ferrets would require 4,450 ac (1,800 ha) of black-tailed prairie dog colonies, or 7,415 ac (3,000 ha) of Gunnison's prairie dog colonies.

Natal dispersal, defined as a permanent movement away from the birth area, occurs in the fall months among the young-of-the-year, although adults occasionally make permanent moves (Forrest *et al.* 1988, p. 268). Newly released captive-born ferrets have dispersed up to 30 miles (49 km) (Biggins *et al.* 1999, p. 125), and wild-born ferrets more than 12 miles (20 km) (USFWS 2019, p. 7). Males tend to move greater distances than females.

### *Historical Range*

The black-footed ferret is the only ferret species native to the Americas (Anderson *et al.* 1986, p. 24). Before European settlement, ferret occurrence coincided with the ranges of three prairie dog species (black-tailed, white-tailed [*C. leucurus*], and Gunnison's), which collectively covered about 100 million ac (40.5 million ha) of Great Plains, mountain basins, and semi-arid grasslands extending from Canada to Mexico (Anderson *et al.* 1986, pp. 25–50; Biggins *et al.* 1997, p. 420). This amount of habitat could have supported one-half to one million ferrets (Anderson *et al.* 1986, p. 58). We have records of ferret specimens from Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming in the United States (U.S.) and from Saskatchewan and Alberta in Canada (Anderson *et al.* 1986, pp. 25–50). A rancher discovered the last wild population of ferrets (from which all existing ferrets descend) near Meeteetse, Wyoming, in 1981, after we had presumed the species extinct (Clark *et al.* 1986, p. 8; Lockhart *et al.* 2006, p. 8). By 1987, the Service and partners removed all known surviving wild ferrets (18 individuals) from this area to initiate a captive-breeding program following disease outbreaks (Lockhart *et al.* 2006, p. 8). Since then, we have not located any wild populations, despite extensive and intensive rangewide searches; it is unlikely any undiscovered natural wild populations remain. For these reasons, the Service considers the ferret extirpated throughout its historical range, except for reintroduced populations (USFWS 2017, p. 2).

In the Southwest, ferrets occurred in Arizona, Colorado, New Mexico, and Utah, within the historical range of Gunnison's prairie dogs, and in New Mexico and likely southeastern Arizona and Mexico, within the historical range of black-tailed prairie dogs (Hillman and Clark 1980, entire). In Arizona, historical ferret collections (1929–1931) come from three locations in Coconino County (Belitsky *et al.* 1994, p. 29). In 1967, Federal Animal Damage Control personnel (now known as Wildlife Services) reported seeing ferret sign while poisoning prairie dogs (pers. com. 1993, as cited in Belitsky *et al.* 1994, p. 2). Anderson *et al.* (1986, p. 25) speculated that prairie dog populations of sufficient size to support ferrets may have existed in northeastern Arizona on lands of the Navajo Nation, a sovereign Indian tribe. However, the Navajo Nation has determined that the ferret no longer occurs on their lands (Navajo Nation 2020). Prairie dogs also occur in significant numbers on the lands of two other sovereign Indian tribes, the Hopi Tribe (Johnson *et al.* 2010, entire) and the Hualapai Tribe, the latter of which the AVEPA partially overlaps.

Dramatic historical declines in prairie dogs, coupled with prevalence of plague

throughout the ferret's historical range, and the failure to locate new wild ferrets, suggests the species is extirpated in Arizona, except where it has been reintroduced (USFWS 2017, p. 2). The date of ferret extirpation in the Southwest is unknown; in Arizona, we have no verified reports for ferrets from 1931 through 1995, after which we initiated reintroduction efforts in the AVEPA. We consider the historical range of the ferret to coincide with the historical ranges of the Gunnison's and black-tailed prairie dogs.

*Threats/Causes of Decline*

Black-footed ferret populations decreased historically for three main reasons. First, major conversion of native range to cropland, primarily in the eastern portion of the species' range, began in the late 1800s. Second, widespread poisoning of prairie dogs to reduce perceived competition with domestic livestock for forage began in the early 1900s. Third, in the 1930s, plague began to significantly adversely affect both prairie dogs and ferrets (Eskey and Hass 1940, p. 62). By the 1960s, prairie dog occupied habitat reached a low of about 1.4 million ac (570,000 ha) in the U.S. (Bureau of Sport Fisheries and Wildlife 1961, n.p.). For these reasons, ferret numbers declined to the point of perceived extinction. These threats resulted in a substantial loss of prairie dogs, which in turn led to an even greater decline in ferret populations due to the species' dependence on prairie dog colonies (Lockhart *et al.* 2006, p. 7). Such population bottlenecks can result in loss of genetic diversity and fitness and can manifest following even a temporary loss of habitat (USFWS 2013a, p. 23).

In Arizona, the combined effects of prairie dog poisoning and plague decreased the area occupied by Gunnison's prairie dogs from about 6.6 million ac (2.7 million ha) historically to about 445,000 ac (180,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961, n.p.; Oakes 2000, pp. 169–171). Estimates of historical black-tailed prairie dog habitat in Arizona range from 650,000 ac (263,000 ha) to 1,396,000 ac (565,000 ha) (Van Pelt 1999, p. 1; Black-footed Ferret Recovery Foundation 1999, p. 4). Extirpation of black-tailed prairie dogs in Arizona probably occurred prior to 1960. As with the rangewide effects, these prairie dog losses also resulted in the loss of ferrets; by the 1960's, we thought ferrets were extirpated in Arizona (Lockhart *et al.* 2006, pp. 7–8).

Cropland Conversion

Major conversion of native range to cropland eliminated millions of acres of ferret habitat in the eastern portion of the ferret's range, particularly black-tailed prairie dog colonies (USFWS 2013a, p. 23). Land conversion caused far less physical loss of Gunnison's prairie dog habitat because, outside of riparian corridors and proximate irrigated lands, much of the habitat occupied by this species is not suitable for crops (Lockhart *et al.,* 2006, p. 7). Knowles (2002, p. 12) noted displacement of prairie dogs from the more productive valley bottomlands in Colorado and New Mexico, but not in Arizona. Instead of converting native rangeland to irrigated crop and pasture lands, land- use of the range in Arizona was and continues to be primarily cattle grazing, with relatively minimal crop development. Cropland conversion in Arizona, while affecting ferrets locally, was not a major cause of decline in the State.

Prairie Dog Poisoning

Poisoning was a major cause of the historical declines of prairie dogs and subsequently black-footed ferrets (Forrest *et al.* 1985; Cully 1993, p. 38; Forrest and Luchsinger 2005, pp. 115–120). Similar to other threats limiting ferret recovery, poisoning affects ferrets through inadvertent secondary effects, poisoning caused by consumption of poisoned prairie dogs, or indirectly, through the loss of prairie dog prey base.

In Arizona, from 1916 to 1933, rodent control operations treated 4,365,749 ac (1,766,756 ha) of prairie dog colonies (Oakes 2000, p. 179). A 1961 Predator and Rodent Control Agency report showed a 92 percent decline in occupied prairie dog habitat in Arizona since 1921, with Gunnison's prairie dogs occupying 445,370 ac (180,235 ha). Only 9,956 ac (4,029 ha) of prairie dog colonies in the 1961 surveys were located on non-Tribal lands. The 1961 Predator and Rodent Control Agency report also documented the extirpation of black-tailed prairie dogs from Arizona. Historical prairie dog poisoning was a major cause of decline of ferrets in Arizona.

Plague

Sylvatic plague is the most significant challenge to ferret recovery (USFWS 2019, p. 21), with the USFWS classifying it as an imminent threat of high magnitude (USFWS 2020, p. 5). Plague is an exotic disease, caused by the bacterium *Yersinia pestis,* transmitted by fleas, that steamships inadvertently introduced to North America in 1900. Because it was foreign and unknown to their immune systems, both ferrets and prairie dogs were and continue to be extremely susceptible to mortality from plague (Barnes 1993, entire; Cully 1993, entire; Gage and Kosoy 2006, entire). Plague can be present in a prairie dog colony in an epizootic (swift, large-scale die-offs) or enzootic (persistent, low level of mortality) state. Most of the information we have about the effects of plague is from epizootic events. Although its effects are not as dramatic as an epizootic outbreak, enzootic plague may result in negative growth rates for prairie dog and ferret populations and hinder ferret recovery (USFWS 2013a, pp. 33, 100).

The first confirmation of plague in Gunnison's prairie dog in Arizona was in 1932, but we have limited historical data on the extent of its effects. In 2003, Wagner and Drickamer reported that in the previous 7 to 15 years, there had been a large reduction in the number of active Gunnison's prairie dog colonies in Arizona, primarily due to outbreaks of plague, which they said was the dominant negative effect on Arizona prairie dog populations. Prairie dogs in northern Arizona will likely continue to experience regular plague outbreaks (Wagner *et al.* 2006, p. 337).

Other Impediments to Recovery

To successfully recover black-footed ferrets we need purposeful management of prairie dog populations to provide habitat of sufficient quality and in a stable, spatial configuration suitable to support and maintain new populations of reintroduced ferrets. Unfortunately, current management efforts for the species are failing to meet these conservation objectives (USFWS 2013a, pp. 46, 58, Table 6; USFWS 2020 p. 5). The keys to correcting current management inadequacies are active plague management (discussed above), and ongoing, widespread partner involvement (USFWS 2013a, pp. 46–48) to facilitate establishment of new reintroduction sites and appropriately manage the quality and configuration of ferret habitat within the species range.

In addition, consideration of other factors that may act alone or in concert with threats are necessary when planning and implementing recovery efforts. For example, canine distemper, a disease endemic to the U.S., posed a challenge to early ferret reintroduction efforts (Wimsatt *et al.* 2006, pp. 249–250). Today, however, we have minimized the threat of catastrophic population losses from canine distemper by the use of commercial

vaccines deployed in captive and wild ferret populations (USFWS 2013a, pp. 29–30). As discussed in the Black-Footed Ferret Recovery Plan (USFWS 2013a, pp. 53–55), we anticipate that climate change will alter and reduce prairie dog habitat and influence plague outbreaks. We also discuss prairie dog hunting and Federal and non-Federal actions and activities in the ''*Actions and Activities that May Affect the Introduced Population*'' section below.

**Recovery, Captive Breeding, and Reintroduction Efforts to Date**

The goal of the Black-footed Ferret Recovery Plan (Recovery Plan) is to recover the ferret to the point at which it can be reclassified to threatened status (downlisted) and ultimately removed (delisted) from the List of Endangered and Threatened Wildlife (USFWS 2013a, pp. 5, 59). The strategy of the Recovery Plan is to involve many partners across the historical range of the species in order to establish multiple, widely spaced populations, within the range of all three prairie dog species. Such distribution will safeguard the species, as a whole, from the widespread chronic effects of plague as well as other periodic or random disturbances that may result in the loss of a population in one or more given areas. Partner involvement is critical for the development of new sites and their long-term management. Although ferret habitat is significantly less than historical times, a sufficient amount remains if we can appropriately manage its quality and configuration to support reintroductions (USFWS 2013a, p. 5). The Recovery Plan provides objective, measurable criteria to achieve downlisting and delisting of the ferret.

Recovery Plan downlisting and delisting criteria include managing a captive breeding population of at least 280 adults as the source population to establish and supplement free-ranging populations and repopulate sites in the event of local extirpations. Downlisting criteria include establishing at least 1,500 free-ranging breeding adults in 10 or more populations, in at least 6 of 12 States in the species' historical range, with no fewer than 30 breeding adult ferrets in any population, and at least 3 populations in colonies of Gunnison's and white-tailed prairie dogs. Delisting criteria include at least 3,000 free-ranging breeding adults in 30 or more populations, in at least 9 of 12 States in the species' historical range. There should be no fewer than 30 breeding adults in any population, and at least 10 populations with 100 or more breeding adults, and at least 5 populations in Gunnison's and white-tailed prairie dog colonies. We must meet these population objectives for at least 3 years prior to downlisting or delisting. Habitat criteria include maintaining 247,000 ac (100,000 ha) of prairie dog colonies at reintroduction sites for downlisting, and 494,000 ac (200,000 ha) for delisting (USFWS 2013a, pp. 61–62).

Additionally, for each State in the historical range of the species, the Recovery Plan suggests recovery guidelines proportional to the amount of prairie dog habitat historically present to equitably help support and achieve the recovery strategy and criteria (USFWS 2013a, p. 69). Guidelines for Arizona's contribution to downlisting are 74 free-ranging breeding adult ferrets on 17,000 ac (6,880 ha) of Gunnison's prairie dog- occupied habitat; delisting guidelines are 148 breeding adults on 34,000 ac (13,760 ha) (USFWS 2013a, Table 8). The guidelines for New Mexico and Utah are 220 and 25 breeding adult ferrets for downlisting, respectively, and 440 and 50 breeding adults for delisting; most of these guidelines are for black-tailed or white-tailed prairie dog habitat.

*Captive Breeding*

The Service and partners established the black-footed ferret captive-breeding program from 18 ferrets captured from the last known wild population at Meeteetse, Wyoming, in 1985 to 1987 (Lockhart *et al.* 2006, pp. 11–12). Of those 18 ferrets, 15 individuals, representing the genetic equivalent of seven distinct founders (original genetic contributor, or ancestor), produced a captive population that is the foundation of present recovery efforts (Garelle *et al.* 2006, p. 4). All extant ferrets, both captive and reintroduced, descended from those seven founders. The purpose of the captive-breeding program is to maintain a secure and stable ferret population with maximum genetic diversity, to provide a sustainable source of ferrets for reintroduction to achieve recovery of the species (USFWS 2013a, pp. 6, 81). The captive-breeding population of ferrets is the primary repository of genetic diversity for the species. There are currently six captive-breeding facilities maintained by the Service and its partners: The Service's National Black-footed Ferret Conservation Center near Wellington, Colorado; the Cheyenne Mountain Zoological Park, Colorado Springs, Colorado; the Louisville Zoological Garden, Louisville, Kentucky; the Smithsonian Biology Conservation Institute, Front Royal, Virginia; the Phoenix Zoo, Phoenix, Arizona; and the Toronto Zoo, Toronto, Ontario, Canada. The combined population of all 6 facilities is currently about 300 ferrets (USFWS 2020, p. 2).

We manage the demography and genetics of the captive population consistent with guidance from the Association of Zoos and Aquariums (AZA) Black-footed Ferret Species Survival Plan (SSP®). This includes maintaining a stable breeding population of at least 280 animals with a high level of genetic diversity and providing a sustainable source of ferrets for reintroduction. The captive-breeding facilities produce about 250 juvenile ferrets annually and have produced about 9,300 ferrets in total (Graves *et al.* 2018, p. 3; Santymire and Graves 2020, p. 12). The distribution of ferrets across six widespread facilities protects the species from catastrophic events. Currently, we retain about 80 juveniles annually in AZA SSP® facilities for continued captive-breeding purposes. We consider the remaining juveniles genetically redundant and excess to the AZA SSP®, and available for reintroductions (USFWS 2013a, p. 81).

Each year the Service solicits proposals for allocations of ferrets to establish new sites or augment existing sites, or for educational or scientific purposes (*e.g.,* plague vaccine research). The limited number of ferrets available for release each year requires that we efficiently allocate them to the highest priority sites first. The Service uses a ranking procedure for allocating ferrets to reintroduction sites (Jachowski and Lockhart 2009, pp. 59–60). Ranking criteria include project background and justification, involved agencies/parties, habitat conditions, ferret population information, predator management, disease monitoring and management, contingency plans, potential for pre-conditioning of released ferrets, veterinary and husbandry support, and research contributions. Members of the Black-footed Ferret Recovery Implementation Team review the proposals and the Service's rankings of the proposals (USFWS 2013a, pp. 87–88).

Each year, we allocate 150 to 220 ferrets for reintroduction into the wild from the captive-breeding population; as of 2020 we had allocated 5,544 ferrets rangewide (T. Tretten, USFWS, pers. comm. 12/10/20). The number of ferrets we allocate to a site depends on site size and prey density (USFWS 2016, pp. 1, 21). It also depends on purpose and needs; for example, whether the purpose is to initiate establishment of a population or augment a site, which may entail multiple releases in a year. A release can involve a single ferret, but for initial releases, in general, the

Service recommends releasing 20 to 30 individuals (P. Gober, USFWS, pers. comm., March 4, 2018).

*Rangewide Reintroduction Efforts to Date*

The Service and partners have reintroduced ferrets at 30 sites in the western U.S., Canada, and Mexico. In the United States, 12 ferret reintroductions have occurred through experimental population designations under section 10(j) of the ESA, 15 under SHA Enhancement of Survival permits under section 10(a)(1)(A), and one under section 7 of the ESA (John Hughes, USFWS, pers. comm., January 28, 2018). Additionally, there has been one reintroduction each in Chihuahua, Mexico, and in Saskatchewan, Canada. As of December 9, 2019, 13 of 29 reintroduction sites were active, with a total estimated wild population of about 325 individuals (USFWS 2020, p. 2), 254 of which are on only 4 sites (USFWS 2019, Table 3). The Service recently determined 2 reintroduction sites were in high condition (high resiliency), 8 were in moderate condition (moderate resiliency), 4 were in low condition (low resiliency), and 15 were extirpated, primarily due to the plague (USFWS 2019, p. ii). We did not include the most recent reintroduction site, the thirtieth, in our analysis. There are 240,173 ac (97,197 ha) of active prairie dog colonies on all sites combined (USFWS 2019, p. 45).

*Arizona-Specific Reintroduction Efforts to Date*

The Arizona Game and Fish Department (AGFD) and Service have carried out multiple ferret reintroductions and augmentations in northern Arizona. In 1996, we reintroduced ferrets to the AVEPA in cooperation with the Hualapai Tribe and the Navajo Nation (61 FR 11320, March 20, 1996). AVEPA was the fifth ferret reintroduction site in the U.S. and the first reintroduction site in a Gunnison's prairie dog population (USFWS 2013a, Figure 1). In 2011, AGFD personnel observed ferrets outside of the AVEPA, including on the adjacent Double O Ranch, presumably dispersing from the AVEPA. In 2012, the number of breeding adults in the AVEPA was 123, which exceeded the recommended State guidelines for downlisting (USFWS 2013a, Table 2, Table 8). Since then, AGFD has documented significantly fewer ferrets over several years (AGFD 2016, p. 3; USFWS 2019, p. 45). We suspect that enzootic plague may have caused this decline, but we do not know the long-term trend or whether it is cyclical. Despite lower numbers, we consider the AVEPA to be a persistent reintroduction site (P. Gober, USFWS, pers. comm, March 4, 2018).

In 2007, we established the Espee Ranch (a.k.a. Allotment) reintroduction site under a section 10(a)(1)(A) research and recovery permit. The status of the Espee population is currently unknown but likely extirpated due to plague (AGFD, unpub. data).

The Babbitt Ranches, LLC, for the Espee Allotment (the existing Espee Ranch reintroduction site), and Seibert Land Company LLC, for the Double O Ranch, enrolled in the programmatic SHA with the Service in 2014 and 2016, respectively. The figure at the end of this proposed rule identifies these SHA lands in the proposed SWEPA. The AVEPA and adjacent Double O Ranch contain the only known ferrets in the proposed SWEPA, and we consider them to be one population and reintroduction site.

*Plague Mitigation Efforts*

We continue making advances to address plague, even as it remains the most significant challenge to ferret recovery. Rocke *et al.* (2006, entire) developed a vaccine (F1–V) to prevent plague in ferrets, which we now use operationally, vaccinating all ferrets provided for reintroduction (Abbott and Rocke 2012, p. 54). Another vaccine under development is the sylvatic plague vaccine (SPV), which we deliver via treated baits to wild prairie dogs and may eventually protect ferrets from habitat reduction due to plague. SPV has been effective in a laboratory setting (Rocke *et al.* 2010, entire; Abbott and Rocke 2012, pp. 54–55), and a recent broad-scale experiment to test efficacy in the field found it prevented colony collapse where plague epizootics were documented (Rocke *et al.* 2017, p. 443). In addition, we have managed both enzootic and epizootic plague by application of the insecticide deltamethrin, in powder form, into prairie dog burrows to control fleas (Seery *et al.* 2003, p. 443; Seery 2006, entire, Matchett *et al.* 2010, pp. 31–33; USFWS 2013a, p. 101). However, the application of insecticidal dust is costly and labor-intensive, and there are concerns about the development of deltamethrin-resistance in fleas. Therefore, we continue working to improve the application and efficacy of the insecticide deltamethrin and are researching other pesticides, such as fipronil, a systemic pulicide (flea-specific insecticide) that is incorporated into grain baits for prairie dog consumption (Poché *et al.* 2017, entire; Eads *et al.* 2019, entire).

*Summary*

Ferret recovery will be a dynamic process, requiring long-term active management (*e.g.,* plague control) and involving reintroduced populations rangewide in various stages of suitability and sustainability—with some undergoing extirpation concurrently as others establish or reestablish after extirpation. The dynamic nature of ferret recovery and conservation is illustrated by the Service's experience with the AVEPA population, which at one point was self-sustaining with ferrets dispersing outside the experimental population area, but then experienced a significant population decline, presumably due to plague, in 2013. Therefore, future ferret recovery is dependent on establishment of multiple, spatially spread populations of reintroduced ferrets in Arizona to contribute to species recovery, which establishment of the SWEPA will help achieve.

**Proposed Experimental Population**

We propose to revise and replace the existing nonessential experimental population designation for black-footed ferrets in Arizona (the AVEPA) with the SWEPA, under section 10(j) of the ESA. We based the proposed boundaries of the 40,905,350-ac (16,554,170-ha) SWEPA on the historical range of Gunnison's and black-tailed prairie dogs, which coincides with the presumed historical range of black-footed ferret in Arizona. The only ferrets occurring within the proposed SWEPA are within the AVEPA and adjacent areas and constitute a single population. Therefore, the SWEPA, which will encompass the AVEPA, would be wholly geographically separate from other populations. Currently, scattered throughout the SWEPA there are approximately 358,000 ac (144,880 ha) of prairie dog colonies (H. Hicks, AGFD, pers. comm., January 26, 2018; Johnson *et al.,* 2010, p. iv) inhabiting about 0.875 percent of the area. Establishment of the SWEPA allows the Service to reintroduce ferrets as a nonessential experimental population within the SWEPA area that encompasses all potential ferret habitat within the boundaries of the State of Arizona, including the Hopi Reservation, the Hualapai Reservation, and the Navajo Nation in its entirety, which includes the Nation's contiguous areas in New Mexico and Utah (see the figure entitled ''Southwest Nonessential Experimental Population Area (SWEPA) for the black-footed ferret'' below). Land ownership within the SWEPA is Federal, private, State, and Tribal.

*Potential Release Sites*

The Service selects ferret reintroduction sites and conducts reintroductions based on the Black-Footed Ferret Field Operations Manual (Operations Manual) (USFWS 2016, entire), and other site-specific plans and procedures. We propose all suitable habitat, meeting the minimum acreage requirements to support a population of ferrets within the SWEPA, as possible experimental population reintroduction locations as we currently lack information about the distribution of habitat, to appropriately identify all prospective reintroduction sites. Some SWEPA areas may become suitable in the future with appropriate management, and ferrets may also disperse from successful reintroduction sites as observed previously with the AVEPA 10(j). By including all suitable habitat within the SWEPA, where ferrets may be reintroduced or disperse as potential reintroduction sites, this experimental population designation will extend regulatory flexibility to any adjacent non-participating landowners to alleviate potential concerns.

Currently, the Service anticipates reintroducing ferrets only into a small portion of the SWEPA that meets criteria for reintroductions. Six reintroduction areas have been identified by AGFD in their Management Plan for the Black-footed Ferret in Arizona (Management Plan) (AGFD 2016) based on prairie dog population estimates. Within the Management Plan, the areas are organized into Active Management Areas (MA), Suitable MAs, and Potential MAs. The AGFD currently manages Active MAs for ferrets. Suitable MAs have sustained minimum prairie dog-occupied acreage for 3 years and are ready to receive ferrets to establish new populations (see ''*Ferret Allocations*'' below). Potential MAs do not meet the minimum prairie dog-occupied acreage and need management to improve prairie dog populations (*e.g.,* translocations or plague control) (AGFD 2106, pp. 8–10). Two sites within the SWEPA currently are Active MAs: (1) AVEPA/Double O Ranch and (2) Espee Ranch, respectively. There are four Potential MAs. These areas are located in: (1) Kaibab National Forest, Williams/Tusayan Ranger Districts; (2) CO Bar Ranch; (3) Petrified Forest National Park; and (4) Lyman Lake (see ''*Identifying the Location and Boundaries of the SWEPA*'' below for more information on these sites).

*Ferret Allocations*

The Service allocates ferrets through an annual process (see ''*Captive Breeding*'' above). To qualify for the annual application and ranking process, AGFD, Tribes, and/or other land managers develop annual site-specific reintroduction plans and submit them to the Service by mid-March for consideration. The site manager of the proposed reintroduction site may be required to implement plague management at the site (*e.g.,* applying Delta Dust® [deltamethrin]), prior to and after ferret reintroduction.

Typically, the Service only considers ferret allocations to proposed reintroduction sites that contain enough prairie dog-occupied habitat to support at least 30 breeding adult ferrets. For Gunnison's prairie dogs this typically equates to 7,415 acres (3,000 ha), and for black-tailed prairie dogs, typically 4,450 acres (1,800 ha); however, these amounts vary depending on site conditions, such as the density of prairie dogs (USFWS 2019, p. 10). In addition, AGFD requires a minimum of 5,540 acres of Gunnison's prairie dog-occupied habitat for 3 years to consider it a ferret reintroduction site on AGFD lands (AGFD 2016, p. 15). For more information about allocations, see ''*Possible Adverse Effects on Wild and Captive-Breeding Populations*'' below.

*Release Procedures*

The Service and ferret reintroduction managers follow the Operations Manual, allowing for adjustments to the techniques according to Service-approved management plans (*e.g.,* AGFD 2016). All captive-reared ferrets receive adequate preconditioning in outdoor pens at the National Black-footed Ferret Conservation Center, or other Service-approved facility, prior to release. Ferrets exposed to preconditioning exhibit higher post-release survival rates than non-preconditioned ferrets (Biggins *et al.* 1998, pp. 651–652; Vargas *et al.* 1998, p. 77). We vaccinate ferrets for canine distemper and plague, and implant passive integrated transponder (PIT) tags for later identification, prior to release. The Service makes arrangements with reintroduction site managers for a release date from August to November, which is when young-of-the-year ferrets disperse (USFWS 2016, p. 16). Typically, the Service transports the ferrets to the site and releases them directly into suitable habitat without protection from predators, known as a ''hard release.''

*Reintroduction Site Management*

Field managers use the Operations Manual and Arizona's Management Plan to manage reintroduction sites on non-Tribal lands. Field managers use the Operations Manual and any appropriate Tribal ferret management plan and other site-specific plans and procedures for reintroductions on Tribal lands. The field manager conducting the reintroduction develops a site-specific management plan in conjunction with the landowner or manager and the Service. For most Federal, State, and private land sites, the field manager would be AGFD, and on Tribal lands, the field manager would be the appropriate Tribal wildlife authority. The Service is an active cooperator in the management of all sites. All involved parties follow all applicable laws regulating the protection of ferrets (see ''Management Restrictions, Protective Measures, and Other Special Management'' below). AGFD's Management Plan (AGFD 2016) outlines procedures for prairie dog and ferret population monitoring; health and disease monitoring and management; prairie dog translocation; seasonal hunting closures; and supplemental feeding; captive-bred ferret releases and captive breeding; and predator management. It also includes protocols for ferret monitoring, capture, and handling (AGFD 2016, Appendices G and H).

**How will the experimental population (SWEPA) further the conservation of the species?**

As cited above, under 50 CFR 17.81(b), before authorizing the release as an experimental population, the Service must find by regulation that such release will further the conservation of the species. We explain our rationale for making our finding below.

*Possible Adverse Effects on Wild and Captive-Breeding Populations*

Wild Populations

We know of no naturally occurring wild populations of black-footed ferrets throughout the historical range of the species (see ''*Historical Range*'' above). The Service considers the ferret extirpated in the wild except for reintroduced populations (*i.e.,* all ferrets in the wild are the result of reintroductions). We consider as surplus all ferrets used to establish populations at reintroduction sites that come from the captive-bred population or, occasionally, from self-sustaining reintroduced populations. If animals are translocated from other reintroduction

sites, only wild-born kits from self-sustaining reintroduced populations are considered for translocation into new or non-self-sustaining reintroduction sites (Lockhart, pers. comm., 2000–2007, as cited in USFWS 2013a, p. 26, S. Larson, USFWS, pers. comm. April 22, 2008).

Captive-Breeding Population

In order to understand the effects of the proposed SWEPA on the captive population of ferrets, it is important to understand how the Service manages the black-footed ferret captive-breeding program (see ''*Captive Breeding*'' above).

In Arizona, we initially released 40 ferrets at AVEPA in 1996, 45 at Espee Ranch in 2007 and six at Double O Ranch in 2016. As of 2019 we have released 466 ferrets at AVEPA, 99 at Espee, and 41 at Double O (AGFD 2016, p. 5; J. Cordova, AGFD, pers. comm., October 10, 2019).

We would use ferrets from the captive-bred population or a self-sustaining wild population to establish a population at reintroduction sites in the proposed SWEPA. In conformance with the Service's allocation process, we anticipate the release of 20 to 30 captive-raised or wild-translocated ferrets at any reintroduction site during the first year of the project. Subsequent annual supplemental releases are expected until the population becomes self-sustaining.

We anticipate no adverse effects on existing populations of ferrets, whether captive or wild, due to the removal of individuals from those populations for the purpose of reintroducing and establishing new populations in the proposed SWEPA. We base this conclusion on the purpose for and the management of the captive-bred population (see ''*Captive Breeding*'' above), the management of other sites to achieve and maintain self-sustaining status for recovery purposes, and the allocation process, which prioritizes the limited number of ferrets available for reintroduction.

*Likelihood of Population Establishment and Survival*

In this section we address the likelihood that populations introduced into the proposed SWEPA will become established and survive in the foreseeable future.

Addressing Causes of Extirpation Within the Experimental Population Area

Investigating the causes for the extirpation of black-footed ferrets is necessary to understand whether we are sufficiently addressing threats to the species in the proposed SWEPA so that reintroduction efforts are likely to be successful. Ferrets depend on prairie dog populations for food, shelter, and reproduction. Historical ferret declines resulted from: (1) Widespread prairie dog poisoning; (2) adverse effects of plague on prairie dogs and ferrets; and (3) major conversion of habitat (see ''*Threats/Causes of Decline*'' above).

Widespread Poisoning of Prairie Dogs

Poisoning of prairie dogs no longer occurs to the extent and intensity that it did historically; the current use of poison to control prairie dogs occurs in limited and selective ways. Although land-use and ownership patterns have not changed significantly since past poisoning campaigns, poisoning became less common in the 1970s because prairie dog populations had been reduced by over 90 percent and use of rodenticides became more closely regulated than it was historically (USFWS 2013a, pp. 49–51). State and Federal agencies have limited involvement in prairie dog control unless they pose a threat to human safety or health (*e.g.,* plague transmission in an urban setting). Attitudes about control have also shifted to nonlethal methods. Translocation as a method of prairie dog control is becoming more common, while lethal control seems to be declining (Seglund *et al.* 2006, p. 49). In addition, landowners and managers have expressed interest in managing prairie dogs, specifically for ferret reintroductions, as evidenced by the number of current and potential reintroduction sites (see ''*Identified Reintroduction Sites*'' below).

Landowners and managers have used zinc phosphide as a registered rodenticide for prairie dog control since the 1940s (Erickson and Urban 2004, p. 12). In the early 2000s, manufacturers started promoting use of the anticoagulant rodenticides chlorophacinone (Rozol®) and diphacinone (Kaput®). These chemicals pose a much greater risk than zinc phosphide of secondary poisoning to nontarget wildlife that prey upon prairie dogs, such as ferrets (Erickson and Urban 2004, p. 85). In 2009, the U.S. Environmental Protection Agency (EPA) authorized use of Rozol® throughout much of black-tailed prairie dog range via a Federal Insecticide, Fungicide, and Rodenticide Act Section 3 registration. EPA labeled Rozol® and Kaput-D® only for control of black-tailed prairie dogs, not Gunnison's, and the labels do not allow use in Arizona or the taking of ''endangered species.'' The EPA has also established additional restrictions through the Endangered Species Protection Bulletins that ban the use of Rozol® in ferret recovery sites. These bulletins are an extension of the pesticide label, and it is a violation of Federal and State law to use a pesticide in a manner inconsistent with the label.

In Arizona, poisoning may occur on State, Federal, and private lands without a specific State permit. However, products registered for prairie dog control by the EPA require a pesticide applicators license, which an applicator can obtain only through a formal process with the Arizona Department of Agriculture (Underwood 2007, pp. 23–24). Federal agencies and the State closely regulate and manage poisoning, and the extent of poisoning has been extremely limited in area compared to historical poisoning, usually in developed areas and confined to specific needs. For example, from 2013 through 2018, Animal and Plant Health Inspection Service's (APHIS) Wildlife Services treated prairie dogs with zinc phosphide at three private properties totaling 56 acres of colonies, for livestock and property protection on pasture and farmland near rural communities (C. Carrillo, pers. comm. APHIS, October, 23, 2019). None of these treatments was in or near current or proposed reintroduction areas. Given the limited use of prairie dog poisons in Arizona and the number of landowners and managers willing to manage prairie dogs for ferrets, poisoning should not affect the establishment or success of reintroduced populations of ferrets.

Adverse Effects of Plague

As previously noted, plague can adversely affect ferrets directly via infection and subsequent mortality, and indirectly by decimating prairie dogs, the ferret's prey. Management of plague has improved, including dusting prairie dog burrows with insecticide to control fleas and vaccinating ferrets, and the development of vaccines to prevent large-scale plague outbreaks in prairie dogs is underway. In Colorado, ferret survival significantly improved when researchers applied the insecticide deltamethrin as a prophylactic treatment to control fleas in prairie dog burrows (Seery *et al.* 2003, p. 443; Seery 2006, entire). Researchers are currently investigating the potential of vaccinating wild prairie dogs for plague via oral bait. This has the potential to limit plague cycles more effectively and economically than direct vaccination of ferrets, though we may need to employ both in some cases. Based on our experiences at various reintroduction sites, we think we can manage the threat from plague by monitoring, dusting, vaccinating, and maintaining more,

widely spaced reintroduction sites (USFWS 2013a, p. 78).

In Arizona, plague management includes best management practices and adaptive management to respond to changing conditions and incorporating new techniques as we develop them (AGFD 2016, p. 19, appendices E and F). In addition, AGFD, the Service, and the U.S. Geological Survey recently began planning an intensive plague study for the AVEPA to determine whether plague is present at an enzootic level that current plague surveillance is not detecting (Rachel Williams, USFWS, pers. comm., October 16, 2019). Plague will be an ongoing challenge to ferret recovery, but with current management tools, promising new treatments, and the benefit of being able to establish widely spaced populations across the SWEPA, we will be able to manage the ferret at a landscape level.

Conversion of Habitat

Currently, rangewide conversion of prairie dog habitat is not significant relative to historical levels, although it may affect some prairie dog populations locally (USFWS 2013a, pp. 24–25). We do not expect agricultural land conversion and urbanization to have a measurable effect on the current condition of ferrets at the species level (USFWS 2019, p. 56). In Arizona, agricultural development currently covers about 700,000 to 1.3 million ac (283,000 to 526,000 ha) or about one to two percent of the landscape (U of A Cooperative Extension 2010; American Farmland Trust 2020) predominantly in central and southern Arizona, outside the range of the Gunnison's prairie dog. Within the range of Gunnison's prairie dog in Arizona, agricultural development affects 31,449 ac (12,727 ha), and urban development affects 78,673 ac (31,838 ha), both of which, combined, is less than one percent of the range of the Gunnison's prairie dog (Seglund 2006, p. 15). There are about 26 million acres of agricultural activity in Arizona in the form of pastures and rangeland for livestock grazing (USDA 2019; U of A 2010). These non-cultivated agricultural lands may represent habitat for the prairie dog and ferret in the State (Ernst *et al.* 2006, p. 91). Routine livestock grazing and ranching activities are largely compatible with maintaining occupied prairie dog habitat capable of supporting ferrets (USFWS 2013a, p. 20).

Reintroduction Expertise

The Service and its partners have considerable experience establishing reintroduced black-footed ferret populations. Since 1991, we have initiated 30 ferret reintroduction projects, including 2 in Arizona (USFWS 2019, Table 3). While, these projects have had varying degrees of success, they have all contributed to our understanding of the species' needs and effective management toward establishing reintroduced populations. The Service and our partners continually apply adaptive management principles through monitoring and research to ensure that the best available scientific information is used to develop new tools (*e.g.,* SPV), update strategies and protocols, and identify new reintroduction sites, to progress towards recovery (AGFD 2016, p. 19).

Since reintroductions began, we have developed and refined techniques in several areas. These include management and oversight of the captive-breeding program, veterinary care and animal husbandry (USFWS 2016, entire), advances in the preconditioning program (Biggins *et al.* 1998, entire; USFWS 2016, pp. 34–37), release techniques, and disease and plague management, including ferret vaccination programs at individual reintroduction sites. With respect to disease management, vector control (*i.e.,* dusting and/or fipronil grain baits) and SPV use in concert with vigilant plague epizootic monitoring may be the most effective way to reduce the range-wide effects of plague (Abbott *et al.* 2012, pp. 54–55; Tripp *et al.* 2017, entire). However, plague remains an ongoing issue (Scott *et al.* 2010, entire; Rohlf *et al.* 2014, entire), and we need considerable management inputs to maintain both the captive and reintroduced populations (USFWS 2019, p. 65).

In Arizona specifically, we adapted our management and refined techniques to enhance reintroduction efforts. For example, when ferrets did not appear to be breeding at Aubrey Valley after 5 years of releases, AGFD modified their release strategies to incorporate pen breeding and springtime releases and documented wild-born kits the following year (AGFD 2016, p. 5). The Service also continually adapts and refines our plague monitoring and management. At Espee, for example, we learned plague was present only after we released ferrets despite AGFD's use of pre-release plague surveillance and management protocols. Subsequently, AGFD incorporated the latest disease monitoring protocols and adaptive management into its Management Plan (AGFD 2016, p. 19, appendices E and F). In addition, at Espee Ranch, AGFD is participating in trials of the experimental SPV, the results of which will contribute to both the national effort to deploy SPV in the field as well as our understanding of local plague conditions. Given the Service's 30 years of experience with reintroducing ferrets across their historical range and our 25 years in Arizona, development and refinement of management and reintroduction techniques, and ongoing adaptive management, we are likely to be successful in establishing and managing new populations of ferrets in the SWEPA.

Habitat Suitability

The likelihood of establishing ferret populations largely depends on adequate habitat. Although there was a significant decline of prairie dog occupied habitat on non-Tribal lands in Arizona historically, there has been a 10-fold increase of occupied habitat since 1961 (Seglund 2006, p. 16). Outside of Navajo and Hopi land, Arizona currently has more than 108,000 ac (43,707 ha) of occupied prairie dog habitat (H. Hicks, AGFD, pers. comm., January 26, 2018), a portion of which is located on lands of the Hualapai Tribe. Lands of the Navajo Nation and the Hopi Tribe collectively may contain about 250,000 ac (101,174 ha) of active prairie dog colonies (Johnson *et al.,* 2010, p. iv). With purposeful management, this amount and distribution of prairie dog occupied habitat would be able to support multiple ferret reintroduction sites.

In addition to the statewide amount of habitat, individual reintroduction sites need to be of sufficient size to support reintroduced ferrets. Two sites in Arizona currently meet or have met the State Gunnison's prairie dog-occupied acreage criterion (5,540 acres) to reintroduce ferrets, the AVEPA/Double O Ranch and Espee Allotment (AGFD 2016, p. 6). AGFD classifies both as Active MAs, where the State can release, manage, and monitor ferrets (AGFD 2016, p. 8). In 2018, the AVEPA/Double O Ranch contained about 65,500 ac (26,500 ha) of active prairie dog colonies and 264,000 ac (106,850 ha) of potential acreage (USFWS 2019, Table 3). This is enough acreage for Arizona to meet the habitat portion of the State guidelines for delisting. However, as explained below, we need multiple sites to guard against stochastic or catastrophic events at any given site. In addition to the two Active MAs, the AGFD has identified four Potential MAs. Arizona has a plan to provide appropriate management for the ferret and its habitat (AGFD 2016, entire). In addition, Arizona has a management plan to conserve and maintain viable prairie dog populations and the ecosystems they inhabit (Underwood

2007, entire). The acreage area criteria, along with implementation of management plans for viable prairie dog populations and ferrets and their habitats, will ensure that any sites selected for reintroduction have sufficient quantity and quality of habitat to support establishment of ferret populations.

Increased Prey Stability

Prairie dog populations in Arizona have increased from historical lows in the 1960's, and the State is managing them for long-term viability. The potential for continued expansion of prairie dogs across Arizona through prairie dog conservation and disease management, coupled with past success of ferret reintroductions in Arizona and across the species' range, suggests that ferret-occupied areas can expand through additional reintroductions and dispersal. Reintroduction of ferrets in the larger proposed SWEPA would allow us to meet Arizona's ferret recovery goals and contribute to ferret recovery across their range.

Summary

The Service and our partners have considerable experience reintroducing ferrets range-wide and in Arizona. We have criteria for selecting suitable reintroduction sites and developed protocols and plans to manage those sites. In Arizona, we have the quantity, quality, and distribution of habitat to support reintroductions. Additionally, the causes of extirpation of ferrets in Arizona have been or are being addressed; the wide-spread poisoning of prairie dogs is no longer occurring, the Service and partners continue to develop plague management techniques, and the conversion of habitat into cropland is not occurring at a significant scale. Lastly, the demonstrated success of existing reintroduced ferret populations in Arizona indicate that additional reintroduction efforts in the SWEPA will be successful in establishing and sustaining additional black-footed ferret populations, required for species recovery.

*Effects of the SWEPA on Recovery Efforts for the Species*

The Service's recovery strategy for the black-footed ferret requires establishment of numerous, spatially disperse populations of ferrets within the range of all three prairie dog species to reduce the risk of stochastic events affecting multiple populations (*e.g.,* plague), increase management options, and maintain genetic diversity (USFWS 2013a, Table 7) (see ''Recovery, Captive Breeding and Reintroduction Efforts to Date'' above). Delisting criteria for the species include 30 populations in 9 of 12 States within the species' historical range and distributed among the ranges of 3 prairie dog species (USFWS 2013a, p. 6). To implement this recovery strategy and achieve recovery criteria, additional successful reintroductions of ferrets are necessary (USFWS 2013a, p. 7), which establishment of the proposed SWEPA will facilitate.

Participation by numerous partners across the ferret's former range is critical to achieve the ferret's delisting criteria of multiple spatially dispersed populations and maximize species redundancy, representation, and resiliency. To achieve this strategy, for each State in the historical range of the species, the Recovery Plan suggests recovery guidelines for the number of ferrets and prairie dog habitat acreages (proportional to the historical amount of prairie dog habitat) to contribute to meeting recovery criteria (USFWS 2013a, p. 69). We intend the recovery guidelines by State to improve risk management and ensure equity of recovery responsibilities across State boundaries (USFWS 2013a, Table 8). Arizona has led ferret recovery efforts, providing one of the early ferret reintroduction sites and the first in a Gunnison's prairie dog population. Tribes have also played an important role in ferret recovery in several areas of the species' historical range by providing land for about 24 percent of the reintroduction sites rangewide (USFWS 2013a, p. 44; USFWS 2019, Table 3).

The recovery plan's State guidelines for Arizona to contribute to ferret downlisting and delisting criteria are 74 free-ranging breeding adult ferrets on 17,000 ac (6,880 ha) of Gunnison's prairie dog-occupied habitat, and 148 breeding adults on 34,000 ac (13,760 ha). The guidelines for New Mexico and Utah are 220 and 25 breeding adult ferrets for downlisting, respectively, and 440 and 50 breeding adults for delisting (USFWS 2013a, Table 8). Delisting criteria for the entire range include five ferret populations in colonies of both Gunnison's and white-tailed prairie dogs (USFWS 2013a, p. 6). About 27 percent of the Gunnison's prairie dog range occurs in Arizona (Seglund *et al.* 2006, p. 70), so establishing additional ferret populations in Gunnison's prairie dog habitat within the SWEPA would contribute to meeting this criterion.

Currently, there is only one population of ferrets in Arizona. As of 2013, we considered the AVEPA one of the four most successful reintroduced populations throughout the species' range; it had a population that exceeded the recommended downlisting criteria for Arizona and we considered it self-sustaining (USFWS 2013a, pp. 5, 22, 77). However, the population declined significantly, for which we suspect that plague may be a cause. The proposed SWEPA will include all potential ferret habitat in Arizona and on participating Tribal lands, including Hualapai Tribal lands, a portion of Hopi Tribal lands, and Navajo Nation lands in Arizona, New Mexico, and Utah (see ''Proposed Experimental Population'' above). Establishing additional populations within the proposed SWEPA will reduce the vulnerability of extirpation of the species. Additionally, AGFD's proposed widely spaced reintroduction sites, and the potential for other reintroduction sites (*e.g.,* on the Navajo Nation) will reduce the effects of localized or stochastic events on overall recovery efforts, by reducing the likelihood that all individuals or all populations would be affected by the same event. Reintroducing viable ferret populations on the Navajo Nation in the New Mexico and Utah portions of the Navajo Nation would not only aid in recovery of the species but also in meeting the recovery guidelines for those States.

The significant threat of plague to ferret populations emphasizes the need for several spatially dispersed reintroduction sites across the widest possible distribution of the species' historical range (USFWS 2013a, p. 70), supporting the value of a statewide approach to reintroductions. Establishing the proposed SWEPA will facilitate ferret reintroduction across a large geographic area and will likely result in establishment of several populations that will persist over time, thus contributing to recovery of the species.

*Actions and Activities That May Affect the Introduced Population*

Classes of Federal, State, Tribal, and private actions and activities that may currently affect black-footed ferret viability, directly or indirectly, across its range are urbanization, energy development, agricultural land conversion, range management, and recreational shooting and poisoning of prairie dogs (USFWS 2019, p. 13). Actions and activities that affect prairie dogs may also indirectly affect ferrets given the ferret's dependency on prairie dogs as a food source and their burrows for shelter.

In Arizona, land ownership within the range of Gunnison's prairie dog is approximately as follows: Tribal–49.05 percent; private–21.62 percent; Federal–16.80 percent; State–12.53 percent; city/

county–0.01 percent (Seglund 2006, Table 3). Although urbanization may adversely affect local prairie dog colonies, effects across the range of the species in Arizona are not significant due to the small amount of urban land, and the distance of urban areas from ferret MAs. Similarly, the amount of oil and gas and other types of mineral exploration and extraction development covers less than one percent of the prairie dog range in Arizona (Underwood 2007, p. 10), and this development is not associated with ferret MAs. Solar and wind energy development has expanded in recent years but also comprises a very small part of the landscape. In Arizona, all solar power facilities are located in the southern and far western part of the State, outside the range of Gunnison's prairie dog (U.S. Energy Information Administration 2020). To date, there have been a number of wind projects in the range of Gunnison's prairie dog, but none are currently constructed within ferret MAs, and the existing infrastructure of wind projects occupies less than 0.005 percent of the ferret's potential range (USFWS 2019, p. 40). As discussed above, agricultural development affects less than one third of one percent of the range of Gunnison's prairie dog (Seglund 2006, p. 16). We do not expect agricultural land conversion to have a measurable effect on the future condition of the ferret in Arizona based on a 20-year analysis (USFWS 2019, p. 56).

There are about 26 million acres of rangeland, used predominantly for grazing, in Arizona across Tribal, private, Federal, and State land (USDA, 2019), and these lands represent potential habitat for both the prairie dog and ferret (Ernst *et al.* 2006, p. 91). Overgrazing in arid areas can alter ecosystem structure, which can affect prairie dogs by decreasing availability of forage and causing an increase in woody shrubs. Conversely, well-managed grazing can benefit prairie dog and other rodent populations by creating increases in shortgrass species (Norris 1950, p. 4; Smith 1958, p. 21; Koford 1958, pp. 66–67). Routine livestock grazing and ranching activities are largely compatible with maintaining occupied prairie dog habitat capable of supporting ferrets (USFWS 2013a, p. 20).

Depending on intensity, recreational shooting of prairie dogs can negatively affect local prairie dog populations through direct mortality of individuals (Vosburgh and Irby 1998, entire; Keffer *et al.* 2001, entire; Knowles 2002, pp. 14–15), with the resulting decrease in prey base negatively affecting ferrets, and it is likely this activity could occur on ferret reintroduction sites (Reeve and Vosburgh 2006, entire). Recreational shooting reduces the number of prairie dogs in a colony, thereby decreasing prairie dog density (Knowles 1988, p. 54), occupied acreage (Knowles and Vosburgh 2001, p. 12), and reproduction (Stockrahm and Seabloom 1979, entire). Recreational shooting also causes direct mortality to prairie dog-associated species such as ferrets (Knowles and Vosburgh 2001, p. 14; Reese and Vosburgh 2006, pp. 120–121). Although incidental take of ferrets by prairie dog shooters is not documented to date, direct ferret mortality due to accidental shooting is possible. Lastly, recreational shooting of prairie dogs also contributes to the environmental issue of lead accumulation in wildlife food chains (Knowles and Vosburgh 2001, p. 15; Pauli and Buskirk 2007, entire). Killing large numbers of animals with lead bullets and not removing carcasses from the field may present potentially dangerous amounts of lead to scavengers and predators of prairie dogs, such as ferrets. Luckily, we have not documented ferret ingestion of lead to date (USFWS 2013a, p. 28). To address these recreational shooting conservation issues, AGFD implements prairie dog shooting closures on public lands from April 1 to June 30 to reduce potential effects on prairie dog reproduction (USFWS 2019, p. 29). In addition, in the event of prairie dog population declines in an active ferret MA for any reason, the AGFD Commission may close prairie dog hunting until the population recovers (AGFD 2016, p. 13).

Poisoning of prairie dogs has the potential to occur within both Gunnison's and black-tailed prairie dog habitat and can affect ferrets through loss of prey, and inadvertent secondary poisoning for some poisons. In recent years, the extent of prairie dog poisoning has been closely regulated, limited in area, and confined to specific needs compared to historical poisoning. From 2013 through 2018 in Arizona, APHIS treated prairie dogs with zinc phosphide at three private properties, totaling 56 acres of colonies, for livestock and property protection on pasture and farmland near rural communities (C. Carrillo, pers. comm. APHIS, October 23, 2019). None of these treatments were in or near current or proposed ferret reintroduction areas.

Certain activities associated with all of the aforementioned activities (prairie dog recreational shooting and poisoning) have the potential to result in incidental ferret fatality. For example, use and establishment of roads within prairie dog and ferret habitat may result in ferret road kills and increase human access for prairie dog shooting (Gordon *et al.* 2003, p. 12). However, we have no information to suggest that incidental fatalities have a significant effect on ferret population viability.

When the Service originally established AVEPA, we determined existing and foreseeable land use practices within the AVEPA to be compatible with sustaining ferret viability (61 FR 11320, March 20, 1996). These practices include: Grazing and related activities (including prairie dog control), big game hunting, prairie dog shooting, and the trapping of furbearers and predators. Other land uses include transportation and rights-of-way (*e.g.,* for utilities). Our success reintroducing ferrets in the AVEPA over 25 years supports that finding. Similarly, in the Service's establishment of the statewide nonessential experimental population of ferrets in Wyoming, we found that land use activities currently occurring across that State, primarily livestock grazing and associated ranch management practices, recreation, residential development, and mineral and energy development, are compatible with ferret recovery and that there is no information to suggest that similar future activities would be incompatible with ferret recovery (80 FR 66821, October 30, 2015). Based on our previous success with other experimental populations in areas influenced by similar land use activities and actions, including the AVEPA within the proposed SWEPA, we conclude that the effects of Federal, State, and private actions and activities will not pose a substantial threat to ferret establishment and persistence within the SWEPA and that SWEPA establishment will benefit the conservation of black-footed ferrets.

## Experimental Population Regulation Requirements

Our regulations at 50 CFR 17.81(c) include a list of what we should provide in regulations designating experimental populations under section 10(j) of the ESA. We explain what our proposed regulations include and provide our rationale for those regulations below.

### *Means To Identify the Experimental Population*

Our regulations require that we provide appropriate means to identify the experimental population, which may include geographic locations, number of individuals to be released, anticipated movements, and other information or criteria.

Identifying the Location and Boundaries of the SWEPA

The 40,905,350-ac SWEPA is located in the three States of Arizona, New Mexico, and Utah (see ''Proposed Experimental Population'' above), and we delineate the boundaries below in the figure titled ''Southwest Nonessential Experimental Population Area (SWEPA) for the black-footed ferret.'' These boundaries are based on various grasslands and parts of biotic communities in which grasslands are interspersed, with which prairie dogs are associated, including Plains and Great Basin Grassland, Great Basin Conifer Woodland, Great Basin Desertscrub, and Petrane Montane Conifer Forest biotic communities (AGFD 2016, pp. 8–10) (Brown *et al.* 1979, entire) and represent a 184 fold increase in area from the AVEPA (USFWS 2021, p. 7 Figure 2). Within the SWEPA are the sovereign Indian lands of the Hopi Tribe, Hualapai Tribe, and the Navajo Nation. State political subdivisions include portions of Apache, Cochise, Coconino, Gila, Graham, Mohave, Navajo, Pima, Pinal, Santa Cruz, and Yavapai Counties of Arizona; Cibola, McKinley, Rio Arriba, Sandoval, and San Juan Counties of New Mexico; and San Juan County, Utah.

The proposed SWEPA consists of two separate areas: (1) Northeast and northcentral Arizona, the southeast corner of Utah, and northwest New Mexico on the Navajo Nation, and (2) southeastern Arizona.

The proposed SWEPA will encompass and replace the AVEPA. In addition, two areas enrolled in the programmatic SHA under certificates of inclusion, the Espee Allotment and Double O Ranch, would be within the SWEPA. Although this proposed experimental population designation can overlay SHAs, we contacted enrollees to assess interest in replacing their certificates of inclusion with this 10(j) rule. If we finalize this revised experimental population designation, we propose phasing out the SHA certificates of inclusion following finalization of the rule to allow for a transition for interested landowners. As a result, the Service proposes to conduct all future reintroductions of ferrets within the SWEPA under the proposed experimental population designation regulation.

Number of Anticipated Ferret Releases

The number of ferrets we will release at a given reintroduction site depends on multiple variables and can vary significantly between sites. In the AVEPA, for example, AGFD released ferrets for 5 years before documenting wild reproduction, which is necessary for a site to become self-sustaining. We continued releasing ferrets until the population appeared to be self-sustaining, but then began to release ferrets again after 4 years when the population appeared to be faltering. In total, over a span of 24 years starting in 1996, the Service released 466 ferrets in the AVEPA. In addition, we released 99 ferrets at Espee in a span of 3 years (2007 2009), and 41 at the Double O Ranch over 4 years starting in 2016. The Service anticipates initially releasing 20 to 30 ferrets at new reintroduction sites in the SWEPA, with the number of ferrets released subsequently similar to other sites in Arizona.

Actual or Anticipated Movements

Understanding ferret movement patterns and distances will ensure accurate identification of ferrets associated with the SWEPA. Researchers have documented newly released captive-born ferrets dispersing up to 30 miles (49 km) (Biggins *et al.* 1999, p. 125), and wild-born ferrets more than 12 miles (20 km) (USFWS 2019, p. 7). AGFD first documented ferrets outside the AVEPA in 2011, 15 years after initial releases. In the years between the 2011 sightings and 2016, when the Service released ferrets onto the Double O Ranch, there were about 10 sightings outside of the AVEPA, with the farthest being about 15 miles outside the AVEPA. These sightings were by AGFD personnel during surveys of selected areas and incidentally by area residents. While dispersal of ferrets will depend on variables such as competition within a given population and the availability of adjacent habitat, we would expect a pattern of ferret dispersal from new reintroduction sites in the SWEPA to be similar to those observed in the AVEPA. Outside of the proposed SWEPA, the closest current reintroduced population of ferrets is Coyote Basin, Utah, which is about 200 mi (320 km) away, substantially greater than documented ferret dispersal distances. Therefore, we would consider any black-footed ferret found in the wild within the boundaries of the SWEPA part of the nonessential experimental population.

Identified Reintroduction Sites

In the area of the proposed SWEPA under Arizona State jurisdiction, the current goal is to reintroduce ferrets into suitable habitat within three to five AGFD designated MAs (AGFD 2016, p. 6). We may consider additional locations if landowners are willing to host ferrets where suitable prairie dog occupied acreage exists, including on Tribal lands. If the Navajo Nation were to request to reintroduce ferrets on their lands, potential reintroduction sites could include the New Mexico or Utah portions of the Navajo Nation.

Two sites in Arizona currently meet or have met the minimum Gunnison's prairie dog-occupied acreage requirement for a population of ferrets (AVEPA/Double O Ranch and Espee Ranch). Arizona's Federal and State public lands and Tribal and private lands currently support a large amount of grasslands with varying sizes of Gunnison's prairie dog colonies (AGFD 2016, Figure 1). Within the ferret's historical range in Arizona, the AGFD and Service have identified four additional potential reintroduction sites or Potential MAs, introduced in the prior ''Proposed Experimental Population'' section and discussed further below.

Existing Reintroduction Sites (Active MAs) Within the SWEPA

(1) AVEPA/Double O Ranch—The AVEPA encompasses 221,894 ac (89,800 ha) of private, Tribal, State, and Bureau of Land Management (BLM) managed lands and is located about 5 miles northwest of Seligman in Coconino, Yavapai, and Mohave Counties. The adjacent Double O Ranch encompasses 236,792 ac (95,828 ha) of private, State, and Forest Service (FS) managed lands south of the AVEPA. Together, these sites contain 264,016 ac (106,846 ha) of grasslands. AGFD mapped an average of 52,455 ac (21,228 ha) of Gunnison's prairie dog colonies in the AVEPA between 2007 and 2016 (AGFD 2016, p. 8) (H. Hicks, AGFD, pers. comm., January 26, 2018). In 2014 and 2016, respectively, Gunnison's prairie dogs occupied 7,074 and 6,313 known ac (2,863 and 2,555 ha) on Double O Ranch (AGFD 2016, p. 7; H. Hicks, AGFD, pers. comm., January 26, 2018). Plague is likely present in the AVEPA.

(2) Espee Ranch—The Espee Allotment encompasses 145,644 ac (58,941 ha) of private and State lands about 17 miles northeast of Seligman, in Coconino County, Arizona. There are 139,255 ac (56,356 ha) of grasslands, of which Gunnison's prairie dogs occupied 3,228 known ac (1,306 ha) in 2014 (AGFD 2016, pp. 8 9). Plague is present on Espee Ranch and is the suspected reason for the lack of ferret observations despite multiple releases.

Future Potential Reintroduction Sites (Potential MAs) Within the SWEPA

The remaining four areas described below do not currently meet the minimum necessary Gunnison's prairie

dog-occupied acreage to support ferrets. We would need active management, such as translocations of prairie dogs, dusting for plague, or administration of a plague vaccine (*e.g.,* SPV), along with annual monitoring of prairie dog populations, to potentially meet the minimum acreage of occupied prairie dog habitat (AGFD 2016, p. 9).

(1) Kaibab National Forest, Williams/Tusayan Ranger Districts—These areas cover over 613,000 ac (248,078 ha) of National Forest System (NFS), military, private, and State managed lands surrounding the city of Williams in Coconino and Yavapai Counties. There were 96,954 ac (39,237 ha) of grasslands with 4,984 ac (2,017 ha) of known Gunnison's prairie dog-occupied area in 2015 (AGFD 2016, p. 9).

(2) CO Bar Ranch—This ranch encompasses 263,758 ac (106,741 ha) of private, State, BLM, and Tribal lands and is located about 24 miles north of Flagstaff in Coconino County. There were 184,815 ac (74,794 ha) of grasslands with 870 ac (352 ha) of known Gunnison's prairie dog-occupied area in 2015 (AGFD 2016, p. 9).

(3) Petrified Forest National Park—This area encompasses 223,027 ac (90,258 ha) of NPS, State, Tribal, BLM, and privately managed lands east of Holbrook in Navajo and Apache Counties. There were 214,135 ac (86,659 ha) of grasslands with 87 ac (35 ha) of known Gunnison's prairie dog-occupied area in 2015 (AGFD 2016, p. 10).

(4) Lyman Lake—This area encompasses 316,958 ac (128,271 ha) of private, State, AGFD, BLM, and NFS lands south of St. Johns in Apache County. There were 273,227 ac (110,573 ha) of grasslands with 2,045 ac (828 ha) of known Gunnison's prairie dog-occupied area in 2015 (AGFD 2016, p. 10).

Tribal Lands

Forty-nine percent of the land within the range of Gunnison's prairie dog in Arizona is under Tribal ownership (Seglund *et al.* 2006, Table 3). The Navajo Nation is the largest owner of Gunnison's prairie dog habitat (Johnson *et al.* 2010, p. 6). Working with the Hopi Tribe, Hualapai Tribe, and Navajo Nation, we may be able to identify other potential sites for ferret reintroduction on their Tribal sovereign lands. All three Tribes have expressed interest in working with the Service and AGFD in ferret recovery (Hopi Tribe 2017, entire; Navajo Nation 2017, entire; Hualapai Tribe 2018, entire). The Hualapai and Hopi reservations and Hopi-owned ranches coincide entirely with Arizona, (*i.e.,* their lands are wholly within the borders of the State), whereas the Navajo Nation also includes parts of the States of New Mexico and Utah, within which the Navajo Nation has sovereign authority to manage wildlife.

We would need surveys of prairie dog populations on Tribal lands, in addition to other information such as incidence of plague, prior to considering these lands for ferret reintroduction. The Navajo Nation and Hopi Tribe, in collaboration with Natural Heritage New Mexico, conducted a remote survey of Gunnison's prairie dogs on the lands of both Tribes in 2010. This technique, using standard photo-interpretive techniques to identify disturbance in suitable habitat on digital orthophoto quarter quads, estimated the area of active Gunnison's prairie dog towns on the Navajo Nation and Reservation of the Hopi Tribe at 253,562 ac (102,615 ha) (Johnson *et al.* 2010, pp. iv, 18). As mentioned previously, we originally included some lands of the Hualapai Tribe when we designated the AVEPA, and the Tribe has worked cooperatively with AGFD on ferret recovery. The Hopi Tribe, while expressing interest in ferret recovery activities on some of their lands (*e.g.,* ranches and part of their Reservation) requested excluding District 6 of their Reservation, pending review of this proposal by members of the Hopi Villages within District 6. If the Hopi Tribe, in consultation with the Hopi Villages, decides to include District 6 within the proposed SWEPA, then we will revise the final rule accordingly.

Southeastern Arizona

Black-tailed prairie dog habitat exists in southeastern Arizona (Cockrum 1960, p. 76). In 2008, the AGFD reintroduced this species into a small portion of its historical range via translocations from wild populations in New Mexico (Van Pelt 2009, p. 41, Figure 1). This new population occurs on the BLM-administered Las Cienegas National Conservation Area. Surveys in 2017 estimated a minimum of 135 black-tailed prairie dogs occupied 19 ac (7.7 ha) (H. Hicks, AGFD, pers. comm., October 3, 2017). It would likely take many years to reach enough black-tailed prairie dog-occupied acreage with a stable population to support a reintroduction of ferrets. However, efforts to expand black- tailed prairie dog colony acreage would offer opportunities to re-create habitat for ferrets (USFWS 2013a, p. 51).

**Is the proposed experimental population essential or nonessential?**

Essential experimental populations are those ''whose loss would be likely to appreciably reduce the likelihood of survival of the species in the wild'' (50 CFR 17.80(b)). The Service defines ''survival'' as the condition in which a species continues to exist in the future while retaining the potential for recovery (USFWS and NMFS 1998). Inherent in the definition of ''essential'' is the effect the potential loss of the experimental population would have on the species (49 FR 33893, August 27, 1984).

The ESA states that, prior to any release ''the Secretary must find by regulation that such release will further the conservation of the species'' (49 FR 33893, August 27, 1984). Reintroductions are, by their nature, experiments, the fate of which is uncertain. However, it is always our goal for reintroductions to be successful and contribute to recovery. The importance of reintroductions to recovery does not necessarily mean these populations are ''essential'' under section 10(j) of the ESA. In fact, Congress' expectation was that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835 supra at 34; 49 FR 33888, August 27, 1984). The preamble to our 1984 publication of implementing regulations reflect this understanding, stating that an essential population will be a special case and not the general rule (49 FR 33888, August 27, 1984).

In our final rule establishing the nonessential experimental population in Aubrey Valley, the Service found the AVEPA to be ''nonessential'' because the captive-breeding population is both the secure source for all reintroductions, and the primary repository of genetic diversity for the species (61 FR 11320, March 20, 1996). We considered all reintroduced ferrets to be in excess to the captive population, and we could replace any reintroduced animals lost through captive breeding (61 FR 11323, March 20, 1996).

The Service did not anticipate changing the nonessential designation for the AVEPA unless the experiment failed or until the ferret recovered (61 FR 11323, March 20, 1996). However, because we are proposing to replace the AVEPA through incorporation into the proposed SWEPA 10(j), an evaluation as to whether the new SWEPA experimental population is essential to the continued existence of the species in the wild is appropriate.

As discussed above, we expect the proposed SWEPA to further the conservation of the species by contributing to the establishment of multiple, widespread populations that will persist over time, which contribute to achieving recovery goals for the species. However, we consider the

SWEPA nonessential because there are now a number of reintroduced ferret populations in the wild, across the range of the species, that provide redundancy in case of local extirpations. There are 14 active reintroduction sites across the historical range, with a minimum average of 340 breeding adult ferrets, and a minimum of 254 at the 4 most successful reintroduction sites (Rocky Mountain Arsenal National Wildlife Refuge, Colorado; Conata Basin/Badlands, South Dakota; and Shirley Basin and Meeteetse, Wyoming) (USFWS 2019, Table 3). Additionally, captive-breeding efforts continue to support the establishment of more populations throughout the species' range. Loss of the SWEPA would not affect these remaining populations of ferrets in the wild.

The ferret population in Arizona, while contributing incrementally to conservation in concert with other sites, is a relatively small portion of the total number and distribution of ferret populations needed for species recovery. The Recovery Plan's delisting criteria for ferrets calls for 30 or more populations, with at least 1 population in each of at least 9 of 12 States within the historical range of the species, and at least 5 populations within colonies of Gunnison's and white-tailed prairie dogs. About 27 percent of Gunnison's prairie dog range occurs in Arizona. This is about 9 to 14 percent of all prairie dog occupied habitat (*i.e.,* the range of all 3 prairie dog species) (USFWS 2013a, p. 24). Arizona's relative recommended contribution of habitat to ferret delisting is about seven percent (USFWS 2013a, Table 8, p. 77).

The proposed SWEPA will further the recovery of the ferret by opening all suitable habitat in the defined SWEPA area to the establishment of multiple wild populations within the species' historical range. However, we conclude loss of reintroduced ferrets within the proposed area is not likely to appreciably reduce the likelihood of survival of the species in the wild. This is due to maintenance of the captive population, the number of reintroduction sites and established populations in the wild rangewide, and the expected incremental contribution of Arizona to the recovery of the ferret given Arizona has seven percent of the total range of all three prairie dog species. Therefore, as required by 50 CFR 17.81(c)(2), we determine the proposed SWEPA experimental population is not essential to the continued existence of the species in the wild, and we propose to designate the SWEPA experimental population as nonessential.

**Management Restrictions, Protective Measures, and Other Special Management**

We prefer applying the experimental population designation and regulations to the entire proposed SWEPA, because a single set of statutes and regulations and a single management framework would then apply to all lands, non-Federal and Federal, containing suitable ferret habitat within the designated SWEPA boundary. This approach would also extend regulatory assurances to all areas where ferrets could potentially establish, including the current properties covered by the SHA. There would be no significant differences between the terms and conditions of the SHA and 10(j) regulations in terms of how landowners operate their ranches with respect to ferret recovery.

The Service will undertake SWEPA reintroductions in cooperation with AGFD, the Navajo Nation, Hopi Tribe, Hualapai Tribe, and other landowners. Existing management plans or those that wildlife managers develop in cooperation with us and other partners and stakeholders will guide management of ferret populations in the SWEPA (*e.g.,* AGFD 2016).

As discussed in the ''*Actions and Activities that May Affect the Introduced Population*'' section, Federal, State, Tribal, and private actions will not pose a substantial threat to ferret establishment and persistence in the proposed SWEPA. This is because land management activities, such as agricultural land conversion, recreational shooting of prairie dogs, poisoning of prairie dogs, urbanization, and energy development currently occurring or anticipated to occur at prospective reintroduction sites in Arizona are very limited in scope. In addition, as discussed in *Addressing Causes of Extirpation within the Experimental Population Area* above, we do not anticipate any change in prairie dog control efforts that would reduce prairie dog-occupied habitat to the extent that they would compromise the viability of any potential ferret population due to the low demand for poisoning and regulatory restrictions. We also base this conclusion on our experience with ferret reintroduction sites in Arizona over the past 25 years and elsewhere throughout the species' range. The best available information indicates that future range and ranching activities will remain compatible with ferret recovery because they do not limit essential behavior such as feeding, breeding, or sheltering. We base this assessment on our ferret reintroduction efforts at the AVEPA and Espee and Double O ranches, and other reintroduction sites throughout the range of the species (80 FR 66826, October 30, 2015).

The AGFD, BLM, FS, NPS, Tribes, and private landowners manage sites with high potential for ferret establishment, and these areas receive protection through the following legal mechanisms:

*Legal Mechanisms*

(1) Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA)—The BLM's mission is set forth under the FLPMA, which mandates that BLM manage public land resources for a variety of uses, such as energy development, livestock grazing, recreation, and timber harvesting, while protecting the natural, cultural, and historical resources on those lands. The BLM manages listed and sensitive species under guidance provided in the BLM Manual Section 6840—Special Status Species Management. The Manual directs BLM to conserve listed species and the ecosystems upon which they depend, ensure that all actions authorized or carried out by BLM comply with the ESA, and cooperate with the recovery planning and recovery of listed species. The BLM has experience in managing the ferret at four reintroduction sites in four States that occur at least in part on its lands. Therefore, we anticipate appropriate management by the BLM on any future ferret reintroduction sites that include BLM lands.

(2) National Forest Management Act of 1976, as amended (16 U.S.C. 1600 *et seq.*)—This law instructs the FS to strive to provide for a diversity of plant and animal communities when managing NFS lands. The FS identifies species listed as endangered or threatened under the ESA, including the ferret, as Category 1 species at risk based on rangewide and national imperilment. The FS has experience managing the ferret on one reintroduction site that occurs at least in part on NFS lands. Therefore, we anticipate appropriate management by the FS on any future ferret reintroduction sites that include NFS lands.

(3) Organic Act of 1916, as amended (16 U.S.C. 1 4)—This law requires the NPS to conserve National Park resources, consistent with the established values and purposes for each park. In addition, the Organic Act instructs NPS ''to conserve the scenery and the natural and historical objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of

future generations.'' NPS management policies require them to conserve listed species and to prevent detrimental effects on these species. The NPS has experience managing the ferret at two parks in South Dakota, where the NPS protects ferrets and their habitats from large-scale loss or degradation, per their mandate. Management of these reintroduction sites would need to continue regardless of the species' listing status. Therefore, we anticipate appropriate management by the NPS on any future ferret reintroduction sites that include NPS lands.

(4) Navajo Nation law—Navajo Nation Code (NNC), Title 17, Chapter 3, Subchapter 21, provides protections for black-footed ferrets. Title 17 NNC section 507 makes it unlawful for any person to take wildlife on either of the following lists, as quoted from the code:

(a) ''The list of wildlife indigenous to the Navajo Nation that they determine to be endangered by regulation of the Resources Committee of the Navajo Nation Council.'' Pursuant to Resources Committee Resolution RCF 014–91, they added the black-footed ferret to the list.

(b) The U.S. lists of endangered native and foreign fish and wildlife, as set forth in section 4 of the Endangered Species Act of 1973 as endangered or threatened species, to the extent that the Resources Committee adopts these lists.''

Navajo Nation Code (17 NNC section 504) also makes it unlawful for any person to take or possess a fur-bearing animal, which includes ferrets by definition (17 NNC section 500), except as permitted by the Director, Navajo Nation Department of Fish and Wildlife.

(5) Hopi Tribal Law—Tribal Ordinance 48 (Wildlife) documents the Tribe's exclusive jurisdiction to regulate and adjudicate all matters pertaining to wildlife found on the Hopi Reservation. All wildlife found on the Reservation, whether resident or migratory, native or introduced, is the property of the Hopi Tribe, and Tribal Law provides the times and manner of allowable take.

(6) Arizona State Law—General provisions of Arizona Revised Statutes, title 17, protects all of Arizona's native wildlife, including federally listed threatened and endangered species.

(7) Endangered Species Act—The ESA would continue to provide protection to ferrets through section 10 by requiring certain management entities to obtain an enhancement of survival permit from the Service under section 10(a)(1)(A) for any intentional taking of a ferret that is prohibited by section 9 of the ESA and not exempted through this rule. The authorities of section 6 of the ESA, 50 CFR 17.21, 50 CFR 17.31, and 50 CFR 17.84(g) cover AGFD's management activities. Section 7(a)(1) of the ESA also requires all Federal agencies to use their authorities to further the purposes of the ESA.

*Other Protections & Management Restrictions*

Other protections and management restrictions and measures in the proposed SWEPA would include:

(1) Incidental take: Experimental population special rules contain specific prohibitions and exceptions regarding take of individual animals. These special rules are compatible with most routine human activities in the expected reestablishment area. Section 3(19) of the ESA defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Under 50 CFR 17.3, ''harass'' means an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns that include, but are not limited to, breeding, feeding, or sheltering. And ''harm'' means an act that actually kills or injures wildlife, including significant habitat modification that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. The regulations further define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. If we adopt the nonessential experimental population designation rule as proposed, it will allow most incidental take of ferrets in the experimental population area, provided the take is unintentional and not due to negligent conduct. However, if there were evidence of intentional take, we would refer the matter to the appropriate law enforcement entities for investigation. This is consistent with regulations for areas currently enrolled in the SHA and in the AVEPA where we do not allow intentional take.

(2) Special handling: In accordance with 50 CFR 17.21(c)(3), any employee or agent of the Service or of a State wildlife agency may in the course of their official duties, handle ferrets to aid sick or injured ferrets, salvage dead ferrets, and conduct other activities consistent with 50 CFR 17.84(g), their section 6 work plan, and 50 CFR 17.31. Employees or agents of other agencies would need to acquire the necessary permits from the Service for these activities.

(3) Arizona promulgation of regulations and other management for the conservation of the ferret as well as other species that, in turn, would benefit ferret recovery: For example, the AGFD includes the ferret on the Species of Greatest Conservation Need Tier 1A (AGFD 2012, p. 216). The list provides policy guidance on management priorities only, not legal or regulatory protection. The State also implements prairie dog shooting closures on public lands from April 1 to June 30.

(3) Coordination with landowners and land managers: We discussed this proposed rule with potentially affected State and Federal agencies, Tribes, local governments, private landowners, and other stakeholders in the expected SWEPA. These agencies, landowners, and land managers have indicated either support for, or no opposition to, the proposed revision to the AVEPA. In advance of our developing the original rule for AVEPA, the AGFD determined that designation of a nonessential experimental population was necessary to achieve landowner support to make a ferret reintroduction project viable (AGFD 2106, p. 2; 61 FR 11325, March 20, 1996). To receive the same public support for their Management Plan, the AGFD proposed a statewide nonessential experimental designation for the ferret (AGFD 2016, p. 2).

(5) Public awareness and cooperation: We will inform the public of the importance of the SWEPA for the recovery of the ferret through this proposed rule and associated public meetings, if requested. The replacement of the AVEPA to establish the SWEPA under section 10(j) of the ESA as a nonessential experimental population would increase reintroduction opportunities and provide greater flexibility in the management of the reintroduced ferret. The nonessential experimental population designation will facilitate cooperation of the State, Tribes, landowners, and other interests in the affected area.

(6) Potential effects to other species listed under the ESA: There are four federally listed species with distributions that overlap the proposed SWEPA and with habitat requirements that could overlap the grassland habitats that support prairie dogs (Table 1). However, we have not documented any of these species in current or potential ferret reintroduction sites and/or these species are unlikely to occur or compete for resources. We do not expect ferret reintroduction efforts to result in adverse effects to these species.

TABLE 1—FEDERALLY LISTED SPECIES IN THE PROPOSED SWEPA

| Species | Current status in Arizona under the ESA |
|---|---|
| Mexican wolf (*Canis lupus baileyi*). | Nonessential experimental. |
| California condor (*Gymnogyps californianus*). | Nonessential experimental, Endangered. |
| Northern aplomado falcon (*Falco femoralis septentrionalis*). | Nonessential experimental. |
| Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*). | Endangered. |

Measures To Isolate or Contain the Experimental Population From Natural Populations

There are no naturally occurring wild populations of black-footed ferrets. The ferret is extirpated throughout its historical range, including in Arizona, New Mexico, and Utah, with the exception of reintroduced populations (USFWS 2017, entire) (see ''*Historical Range*'' above). Therefore, we do not need any measures to isolate or contain reintroduced ferrets in the SWEPA from natural populations.

**Review and Evaluation of the Success or Failure of the SWEPA**

Monitoring is a required element of all ferret reintroduction projects. Reintroduction projects will conduct the three following types of monitoring:

*(1) Reintroduction Effectiveness Monitoring:* Reintroduction partners will monitor ferret population demographics and potential sources of fatality, including plague, annually for 5 years following the last release using spotlight surveys, snow tracking, other visual survey techniques, or possibly radio-telemetry of some individuals following AGFD's management plan (2016) or similar procedures identified in a management plan developed for a specific reintroduction site. Thereafter, partners will complete demographic surveys periodically to track population status. Surveys will incorporate methods to monitor breeding success and long-term survival rates, as appropriate. The Service anticipates that AGFD and/or other participating partners will conduct monitoring, and they will include monitoring results in their annual reports.

*(2) Donor Population Monitoring:* We will acquire ferrets from the captive-breeding population, or partners may translocate ferrets from another viable reintroduction site. The Service and our partners manage ferrets in the captive-breeding population in accordance with the AZA SSP® (Graves *et al.* 2018, entire). The AZA SSP® Husbandry Manual provides up-to-date protocols for the care, propagation, preconditioning, and transportation of captive ferrets, and all participating captive- breeding facilities use it.

The Service may also translocate ferrets from other reintroduction sites, provided their removal will not negatively affect the extant population and appropriate permits are issued in accordance with current regulations (50 CFR 17.22) prior to their removal. Partners will conduct population monitoring following any removals for translocation under guidance of the Service-approved management plan for the donor site.

*(3) Monitoring Effects to Other Listed Species and Critical Habitat:* We do not expect adverse effects to other federally listed species or critical habitat (see ''*Other Protections and Management Restrictions*'' number 6, above).

**Findings**

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing ferrets into the proposed SWEPA will further the conservation of the species and that these reintroduced populations are not essential to the continued existence of the species.

**Peer Review**

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' (59 FR 34270, July 1, 1994), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed revision. We will send copies of this proposed revision to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure we based our decisions on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

**Required Determinations**

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 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. 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. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 et seq.*

Under these acts, whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule or revision to a rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the action on small entities (small businesses, small organizations, and small government jurisdictions). However, these acts require no regulatory flexibility analysis if the head of an agency certifies that the action will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action will not have a significant economic impact on a substantial number of small entities. We are certifying that this revision will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The affected area includes release sites in Arizona, lands of the Navajo Nation in Arizona, New Mexico, and Utah, and adjacent areas into which ferrets may disperse, which over time could include significant portions of the proposed SWEPA. Because of the regulatory flexibility for Federal agency actions provided by the nonessential experimental designation and the exemption for incidental take in the special rule, this revision is not expected to have significant effects on any activities on Federal, State, Tribal, or private lands in the revised area. Concerning section 7(a)(2), we treat the

population as proposed for listing, and do not require Federal action agencies to consult with us on their activities. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed for listing. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, we will likely never require a conference for the ferret populations in the SWEPA. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands in the revised area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions in the SWEPA may occur to benefit the ferret, but we do not expect implementing of these regulations to halt or substantially modify proposed projects.

This revision would include the same authorization provided in the AVEPA for incidental take of the ferret but over a larger landscape, the SWEPA. The regulations implementing the ESA define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. The proposed rule would not authorize intentional take for purposes other than authorized data collection or recovery purposes. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the ESA.

The principal activities on private property in or near the revised nonessential experimental population area are livestock grazing and associated ranch management practices (*e.g.,* fencing, weed treatments, water developments, and maintenance). Ferret presence would not affect these land uses because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of the ferret, and Federal agencies would only have to comply with sections 7(a)(1) and 7(a)(4) of the ESA in these areas. Therefore, we do not expect this rulemaking to have any significant adverse impacts to activities on private lands in the proposed SWEPA.

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

In accordance with this act:

(1) This proposed revision will not ''significantly or uniquely'' affect small governments because they would not place additional requirements on any city, county, or other local municipalities. The Service determined and certifies under this act, that it will not impose a cost of $100 million or more in any given year on local or State governments or private entities. Therefore, this act does not require a Small Government Agency Plan.

(2) This proposed rule is not a ''significant regulatory action'' under this act; it will not produce a Federal mandate of $100 million or more in any year. The revised nonessential experimental population area for the ferret would not impose any additional management or protection requirements on the States or other entities.

*Takings (E.O. 12630)*

In accordance with E.O. 12630, the proposed revision does not have significant takings implications. It would allow for the take, as defined in the ESA, of reintroduced ferrets when such take is incidental to an otherwise legal activity, such as livestock grazing, agriculture, recreation (*e.g.,* off-highway vehicle use), and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, the revision of the AVEPA to encompass a larger area, the proposed SWEPA, would not conflict with existing or proposed human activities or hinder public land use.

This order does not require a takings implication assessment because this proposed rule: (1) Will not effectively compel a property owner to suffer a physical invasion of property, and (2) will not deny economically beneficial or productive use of the land. The revision would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to reasonable and expected beneficial use of private property.

*Federalism (E.O. 13132)*

In accordance with E.O. 13132, we have considered whether this proposed revision has significant federalism effects and determined we do not need to conduct a federalism assessment. It would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed revision with the affected resource agencies. Achieving the recovery goals for this species would contribute to its eventual delisting and its return to State management. We do not expect any intrusion on State administration or policy, change in roles or responsibilities of Federal or State governments, or substantial direct effect on fiscal capacity. The special rule operates to maintain the existing relationship between the State and the Federal Government, and we will implement it in coordination with the State of Arizona. Therefore, this proposed rule does not have significant federalism effects or implications to warrant preparation of a Federalism Assessment under the provisions of E.O. 13132.

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

In accordance with E.O. 12988, the Office of the Solicitor has determined that this revision would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

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

This rule does not contain any new collection of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095 (expires 09/30/2023). We may not collect, or sponsor, and may not require you to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.)*

In compliance with all provisions of the NEPA, the Service has analyzed the impact of this proposed rule. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there are any significant impacts or effects caused by this rule. In cooperation with the AGFD, the Hopi Tribe, Hualapai Tribe, and the Navajo Nation, we have prepared a draft environmental assessment on this proposed action and have made it available for public inspection online at

<*http://www.regulations.gov*> or <*http://www.fws.gov/southwest/es/arizona/*>. We solicit comments on the draft EA as set forth above in **DATES** and **ADDRESSES**.

*Government-to-Government Relationships With Tribes*

In accordance with the Executive Memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951, May 4, 1994), E.O. 13175 (65 FR 67249, November 9, 2000), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects of the proposed revision on federally recognized Indian Tribes. We determined that the proposed SWEPA overlaps or is adjacent to Tribal lands. Potential reintroduction sites identified in this revision, the CO Bar Ranch and Petrified Forest National Park, are near or adjacent to Tribal lands, as is the existing AVEPA where a reintroduced ferret population exists. We offered government-to-government consultation to nine Tribes: The Havasupai, Hopi, Hualapai, San Carlos Apache, San Juan-Southern Paiute, White Mountain Apache, and Yavapai-Prescott Tribes, Navajo Nation, and the Pueblo of Zuni. We met with the Hualapai, Hopi, and White Mountain Apache Tribes and the Navajo Nation about the proposed revision. Participation in ferret recovery is voluntary. If suitable habitat for ferret recovery is available on their lands, Tribes may choose either not to participate, or to participate through authorities under section 10(j), section 10(a)(1)(A), or the SHA (USFWS 2013b, entire). If we introduce ferrets on non-Tribal lands adjacent to Tribal lands and they disperse onto Tribal lands, the aforementioned authorities will provide a more relaxed, flexible regulatory situation under the ESA through allowances for incidental take.

*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)*

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this proposed rule to have a significant effect on energy supplies, distribution, and use. Because this action is not a significant energy action, this order does not require a Statement of Energy Effects.

*Clarity of This Regulation*

E.O. 12866, E.O. 12988, and Presidential Memorandum of June 1, 1998, require the Service to write all actions in plain language. This means that each rule we publish must:

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. Your comments about this proposed revision to the 1996 final rule should be as specific as possible. For example, you should identify the numbers of the sections and paragraphs that are not clear, the sections or sentences that are too long, or the sections where you feel lists and tables would be useful.

**References Cited**

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2020–0123, or upon request from the Arizona Ecological Services Field Office (see **ADDRESSES**).

**Authors**

The primary authors of this proposed rule are staff members of the Service's Arizona Ecological Services Field Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

**Signing Authority**

The Director, U.S. Fish and Wildlife Service, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Principal Deputy Director Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service, approved this document on June 14, 2021, for publication.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for ''Ferret, black-footed'' under ''MAMMALS'' in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| **Mammals** | | | | |
| * | * * | * * | * | * |
| Ferret, black-footed | *Mustela nigripes* | Wherever found | E | 32 FR 4001, 3/11/1967; 35 FR 8491, 6/2/1970. |
| Ferret, black-footed | *Mustela nigripes* | U.S.A. (parts of WY (Shirley Basin/Medicine Bow Management Area); see § 17.84(g)(9)(i)). | XN | 56 FR 41473, 8/21/1991; 50 CFR 17.84(g).[10j] |
| Ferret, black-footed | *Mustela nigripes* | U.S.A. (parts of SD (Conata Basin/Badlands Reintroduction Area); see § 17.84(g)(9)(ii)). | XN | 59 FR 42682, 8/18/1994; 50 CFR 17.84(g).[10j] |
| Ferret, black-footed | *Mustela nigripes* | U.S.A. (parts of MT (Northcentral Montana Reintroduction Area); see § 17.84(g)(9)(iii)). | XN | 59 FR 42696 8/18/1994; 50 CFR 17.84(g).[10j] |

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| Ferret, black-footed | *Mustela nigripes* | U.S.A. (parts of AZ, NM, UT (Southwest Experimental Population Area), see § 17.84(g)(9)(iv)). | XN | 61 FR 11320, 3/20/1996; [**Federal Register** CITATION OF FINAL RULE]; 50 CFR 17.84(g).[10j] |
| Ferret, black-footed | *Mustela nigripes* | U.S.A. (parts of CO, UT (Northwestern Colorado/Northeastern Utah Experimental Population Area), see § 17.84(g)(9)(v)). | XN | 63 FR 52824, 10/1/1998; 50 CFR 17.84(g).[10j] |
| Ferret, black-footed | *Mustela nigripes* | U.S.A. (parts of SD (Cheyenne River Sioux Tribe Reintroduction Area), see § 17.84(g)(9)(vi)). | XN | 65 FR 60879, 10/13/2000; 50 CFR 17.84(g).[10j] |
| Ferret, black-footed | *Mustela nigripes* | U.S.A. (parts of SD (Rosebud Sioux Reservation Experimental Population Area), see § 17.84(g)(9)(vii)). | XN | 68 FR 26498, 5/16/2003; 50 CFR 17.84(g).[10j] |
| Ferret, black-footed | *Mustela nigripes* | U.S.A. (most of WY (Wyoming Experimental Population Area), see § 17.84(g)(9)(viii)). | XN | 80 FR 66821, 10/30/2015; 50 CFR 17.84(g).[10j] |
| * | * | * | * | * |

■ 3. Amend § 17.84(g) by revising paragraphs (g)(1), (g)(6)(iv), and (g)(9)(iv) to read as set forth below and removing the fourth map (depicting the Aubrey Valley Experimental Population Area) and adding in its place the map shown below:

**§ 17.84 Special rules—vertebrates.**

* * * * *

(g) * * *

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through (viii) of this section are nonessential experimental populations. We will manage each of these populations, and each reintroduction site in the Southwest and Wyoming nonessential experimental populations, in accordance with their respective management plans.

* * * * *

(6) * * *

(iv) Report such taking in the Southwest Experimental Population Area (SWEPA) to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Phoenix, Arizona (telephone: 602–242–0210).

* * * * *

(9) * * *

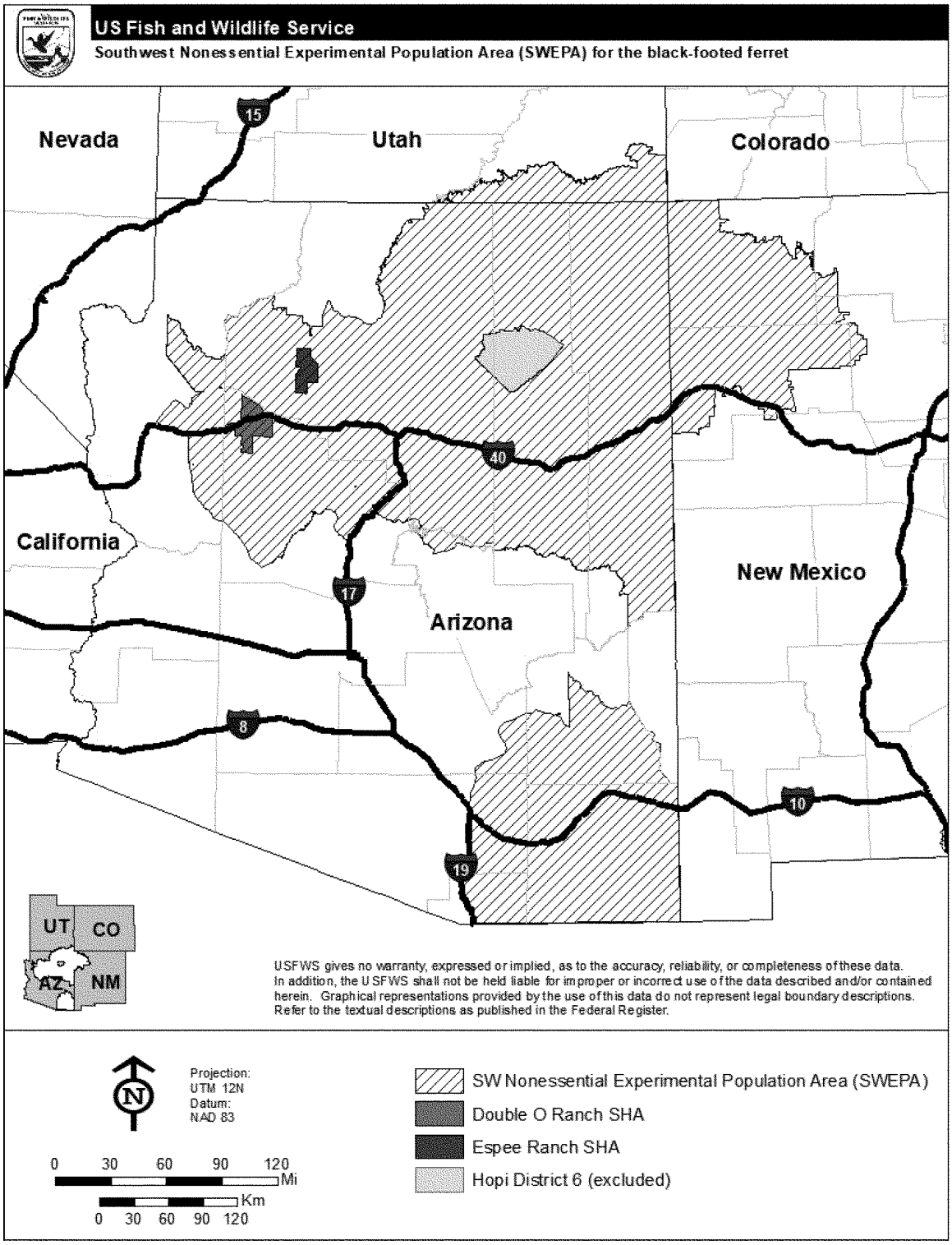
(iv) We consider the Southwest Experimental Population Area (SWEPA) to be the area shown on a map following paragraph (g)(12) of this section. The SWEPA includes the core recovery areas for this species in Arizona. The boundary of the northern section of the SWEPA is those parts of Apache, Coconino, Gila, Mohave, Navajo, and Yavapai Counties, Arizona, that include the northern area as delineated on the map, excluding Hopi District 6. The northern section also includes portions of Cibola, McKinley, Rio Arriba, Sandoval, and San Juan Counties, New Mexico; and San Juan County, Utah. The boundary of the southern section of the SWEPA is those parts of Cochise, Pima, Pinal, Graham, and Santa Cruz Counties, Arizona, that include the southern area as delineated on the map. After the first breeding season following the first year of black-footed ferret release, we will consider any black-footed ferret found in the SWEPA as part of the nonessential experimental population. We would not consider a black-footed ferret occurring outside of the Arizona, New Mexico, and Utah portions of the SWEPA a member of the nonessential experimental population, and we may capture it for genetic testing. We may dispose of the captured animal in the following ways:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive- breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan.

* * * * *

BILLING CODE 4333–15–P




* * * * *

**Madonna Baucum,**

*Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.*

[FR Doc. 2021–12991 Filed 6–24–21; 8:45 am]

**BILLING CODE 4333–15–C**

# Notices

Federal Register
Vol. 86, No. 120
Friday, June 25, 2021

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–SC–21–0001; SC21–996–1]**

### Request for Peanut Standards Board Nominations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; request for nominations.

**SUMMARY:** The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) requires the Secretary of Agriculture (Secretary) to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The U.S. Department of Agriculture (USDA) is seeking nominations for individuals to be considered for selection as Board members for a term of office ending June 30, 2024. Meetings are held virtually or in a hybrid style with participants having a choice whether to attend in person or virtually.

**DATES:** Written nominations must be received on or before August 9, 2021.

**ADDRESSES:** Nominations should be sent to Steven W. Kauffman of the Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 1st Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375; Fax: (863) 291–8614; Email: *Steven.Kauffman@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 1308 of the 2002 Farm Bill requires the Secretary establish and consult with the Board for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States.

The 2002 Farm Bill, as amended by § 12502 of the Agriculture Improvement Act of 2018, provides the Board's makeup will include three producers and three peanut industry representatives from States specified in each of the following producing regions: Southeast (Alabama, Georgia, and Florida); Southwest (Texas, Oklahoma, and New Mexico); and Virginia/Carolina (Virginia, North Carolina, and South Carolina). The Board consists of 18 members with representation equally divided between peanut producers and industry representatives. Each term of office is for a period of three years. The terms of office are staggered in order to replace one third of the Board each year.

The term ''peanut industry representatives'' includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The 2002 Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act.

USDA invites individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. All qualified nominees are forwarded for consideration as the Farm Bill does not provide for any voting. Appointees sought by this action will fill two positions in the Southeast region, two positions in the Southwest region, and two positions in the Virginia/Carolina region.

Nominees should complete an Advisory Committee or Research and Promotion Background Information form (AD–755) and submit it to Steven W. Kauffman at the address provided in the **ADDRESSES** section above. Copies of this form may be obtained at the internet site *http://www.ams.usda.gov/about-ams/facas-advisory-councils/peanut-board,* or from the Southeast Marketing Field Office. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure the recommendations of the Board have considered the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

**Authority:** 7 U.S.C. 7958.

**Erin Morris,**
*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–13584 Filed 6–24–21; 8:45 am]
BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–FGIS–21–0018]**

### Solicitation of Nominations for Members of the USDA Grain Inspection Advisory Committee

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice to solicit nominees.

**SUMMARY:** The Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is seeking nominations for individuals to serve on the USDA Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets no less than once annually to advise AMS on the programs and services it delivers under the U.S. Grain Standards Act (USGSA). Meetings are held virtually or in a hybrid style with participants having a choice whether to attend in person or virtually. Recommendations by the Advisory Committee help AMS better meet the needs of its customers who operate in a dynamic and changing marketplace.

**DATES:** AMS will consider nominations received by August 9, 2021.

**ADDRESSES:** Submit nominations for the Advisory Committee by completing Form AD–755 and sending it by email to: *Kendra.C.Kline@usda.gov.*

Form AD–755 may be obtained via USDA's website: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.*

**FOR FURTHER INFORMATION CONTACT:** Kendra Kline, Telephone: (202) 690–2410 or email: *Kendra.C.Kline@usda.gov.*

**SUPPLEMENTARY INFORMATION:** As required by section 21 of the USGSA (7 U.S.C. 87j), as amended, the Secretary of Agriculture (Secretary) established the Advisory Committee on September 29, 1981, to provide advice to the AMS Administrator on implementation of the USGSA. As specified in the USGSA, no

member may serve successively for more than 2 terms.

The Advisory Committee consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists with expertise in research related to the policies in section 2 of the USGSA (7 U.S.C. 74). While members of the Advisory Committee serve without compensation, USDA reimburses them for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service (see 5 U.S.C. 5703).

A list of current Advisory Committee members and other relevant information are available on the USDA website at: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.*

The grain industry that utilizes Official Inspection and Weighing services for barley, canola, corn, flaxseed, oats, rye, soybeans, sorghum, sunflower seed, triticale, wheat, and mixed grain is diverse. AMS is seeking nominations for the Advisory Committee that will reflect the diversity of the grain industry, including, but not limited to, grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists. Therefore, when making recommendations for appointments, the industry must consider the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population.

Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that recommendations of the Advisory Committee take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Final selection of Advisory Committee members is made by the Secretary.

Dated: June 16, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021–13504 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2018–0101]**

### Importation of Plants in Approved Growing Media Into the United States; Availability of a Final Environmental Assessment and Finding of No Significant Impact

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that a final environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service for the importation of plants in approved growing media. The environmental assessment documents our review and analysis of the environmental impacts associated with, and alternatives to, the importation of plants in approved growing media. Based on its finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lydia E. Colón, Senior Regulatory Policy Specialist, Plant Health Programs, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, 4700 River Road Unit 133, Riverdale, MD 20737–1237; *Lydia.E.Colon@usda.gov;* (301) 851–2302.

**SUPPLEMENTARY INFORMATION:**

## Background

The requirements for importing plants in growing media (PIGM) consist of overlapping phytosanitary risk mitigation measures that together comprise a ''systems approach.'' The systems approach is designed to protect imported PIGM against pests and diseases during all stages of international trade from the greenhouse to final product delivery. The goal of the systems approach is to minimize the likelihood that any quarantine pest species enter the United States on the commodity proposed for import.

The pest mitigation measures the Animal and Plant Health Inspection Service (APHIS) proposes for most PIGM import requests are markedly similar from one request to the next, and for this reason we determined that a single programmatic environmental assessment (EA) would reduce the need for repetitive documentation of comparable risks for the majority of PIGM import requests we receive.

On April 10, 2019, we published in the **Federal Register** (84 FR 14340, Docket No. APHIS–2018–0101) for public comment a notice of availability [1] of a draft programmatic EA for the importation of plants in approved growing media, which considers the potential environmental effects of a standardized set of pest risk mitigations for routine market requests to import plants in approved growing media. Comments on the notice were required to be received on or before May 10, 2019, but we reopened the comment period for an additional 45 days to June 24, 2019, to ensure that all interested persons had an opportunity to comment.

During the public comment period APHIS received six comments. They were from producer organizations and private citizens. After reviewing the comments, we revised the EA to address issues raised by commenters, but also determined that none of the comments received necessitated changes to either the approach or the conclusions of the draft EA. The final programmatic EA addresses the issues raised in the public comments.

Accordingly, we are advising the public that we have adopted the draft EA as a final programmatic EA entitled ''Importation of Plants in Approved Growing Media (PIGM) into the United States'' (January 2020) and have prepared a finding of no significant impact (FONSI) regarding the conclusions of the EA.

The final EA and FONSI may be viewed on the *Regulations.gov* website [2] or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming. You may request paper copies of the final EA and FONSI by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the final EA when requesting copies.

The final EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA

[1] The notice, programmatic EA, public comments, and FONSI can be viewed at *www.regulations.gov.* Enter APHIS–2018–0101 in the Search field.

[2] See footnote 1.

(7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 16th day of June 2021.

**Mark Davidson,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2021–13497 Filed 6–24–21; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2021–0007]**

### Concurrence With OIE Risk Designation for Bovine Spongiform Encephalopathy

**AGENCY:** Animal and Plant Health Inspection Service, Agriculture (USDA).

**ACTION:** Notice.

**SUMMARY:** We are advising the public of our preliminary concurrence with the World Organization for Animal Health's (OIE) bovine spongiform encephalopathy (BSE) risk designation for Bolivia and the United Kingdom's zone of Jersey. The OIE recognizes this country and this zone as being of negligible risk for BSE. We are taking this action based on our review of information supporting the OIE's risk designation for Bolivia and the United Kingdom's zone of Jersey.

**DATES:** We will consider all comments that we receive on or before August 24, 2021.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0007 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0007, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Mr. Javier Vargas, Senior Staff Officer, Regionalization Evaluation Services, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 851–3316; email: *AskRegionalization@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR part 92 subpart B, ''Importation of Animals and Animal Products; Procedures for Requesting BSE Risk Status Classification With Regard To Bovines'' (referred to below as the regulations), set forth the process by which the Animal and Plant Health Inspection Service (APHIS) classifies regions for bovine spongiform encephalopathy (BSE) risk. Section 92.5 of the regulations provides that all countries of the world are considered by APHIS to be in one of three BSE risk categories: Negligible risk, controlled risk, or undetermined risk. These risk categories are defined in § 92.1. Any region that is not classified by APHIS as presenting either negligible risk or controlled risk for BSE is considered to present an undetermined risk. The list of those regions classified by APHIS as having either negligible risk or controlled risk can be accessed on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.* The list can also be obtained by writing to APHIS at Regionalization Evaluation Services, 4700 River Road, Unit 38, Riverdale, MD 20737–1238.

Under the regulations, APHIS may classify a region for BSE in one of two ways. One way is for regions that have not received a risk classification from the World Organization for Animal Health (OIE) to request classification by APHIS. The other way is for APHIS to concur with the classification given to a country or region by the OIE.

If the OIE has classified a region as either BSE negligible risk or BSE controlled risk, APHIS will seek information to support concurrence with the OIE classification. This information may be publicly available information, or APHIS may request that regions supply the same information given to the OIE. APHIS will announce in the **Federal Register**, subject to public comment, its intent to concur with an OIE classification.

In accordance with this process, we are giving notice in this document that APHIS intends to concur with the OIE risk classification of the country of Bolivia and the United Kingdom's zone of Jersey as regions of negligible risk for BSE.

The OIE recommendation regarding Bolivia and the United Kingdom's zone of Jersey can be viewed at *https://www.oie.int/en/disease/bovine-spongiform-encephalopathy/.* The conclusions of the OIE scientific commission for Bolivia and the United Kingdom's zone of Jersey can be viewed at *https://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2020.pdf* (pages 53 for Bolivia and 56 for the United Kingdom's zone of Jersey).

After reviewing any comments that we receive, we will announce our final determination regarding the BSE classification of Bolivia and the United Kingdom's zone of Jersey in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters. If APHIS recognizes Bolivia and the United Kingdom's zone of Jersey as negligible risk for BSE, the Agency will include this country and zone on the list of regions of negligible risk for BSE that is available to the public on the Agency's website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.*

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 21st day of June 2021.

**Jack Shere,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2021–13552 Filed 6–24–21; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Shasta County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Shasta County Resource Advisory Committee (RAC) will meet virtually via Microsoft Teams. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees.*

**DATES:** The meetings will be held on:

• Wednesday, July 14, 2021, at 10:00 a.m., Pacific Daylight Time; and

• Wednesday, July 28, 2021, at 10:00 a.m., Pacific Daylight Time.

All RAC meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** The meetings will be held virtually via Microsoft Teams.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Shasta Lake Ranger Station. Please call ahead at 530–275–1587 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lejon Hamann, RAC Coordinator, by phone at 530–410–1935 or via email at *lejon.hamann@usda.gov.*

Individuals who use telecommunication devices for the hearing-imparied (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Allow for any public comments;
2. Present RAC orientation information to committee members;
3. Discuss, recommend, and approve a committee chair;
4. Discuss, recommend, and approve a mission statement;
5. Discuss, recommend, and approve meeting rules of operation;
6. Discuss, recommend, and approve third party facilitation; and
7. Discuss Alternative committee members.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by the Friday before each of the scheduled meetings to be scheduled on the agenda for that particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002; or by email to *lejon.hamann@usda.gov.*

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Dated: June 21, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021–13537 Filed 6–24–21; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Southwest Idaho Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Idaho Resource Advisory Committee (RAC) will hold two virtual meetings. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/boise/workingtogether/advisorycommittees.*

**DATES:** The meetings will be held on:

• Thursday, July 15, 2021 beginning at 9:00 a.m., Mountain Daylight Time, and

• Thursday, July 29, 2021 beginning at 9:00 a.m., Mountain Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** The meeting will be held with virtual attendance only. For virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the McCall, Idaho Office for the Payette National Forest. Please call ahead at to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Brian Harris, RAC Designated Federal Offical, by phone at 208–634–6945 or via email at *brian.d.harris@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Present project proposals, and
2. Discuss, recommend, and approve new Title II projects.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement at any of the meetings should request in writing by Wednesday, June 30, 2021, to be scheduled on the agenda for that particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Brian Harris, RAC Designated Federal Official, 500 N Mission Street, McCall, Idaho 83638; by email to *brian.d.harris@usda.gov.*

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Dated: June 21, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021–13627 Filed 6–24–21; 8:45 am]

**BILLING CODE 3411–15–P**

## COMMISSION ON CIVIL RIGHTS

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

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the

Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Monday, August 9, 2021 at 12:00pm Eastern time. The Committee will discuss civil rights concerns in the state.

**DATES:** The meeting will take place on Monday, August 9, 2021, at 12:00 p.m. Eastern time.

*Online Regisration (Audio/Visual): https://bit.ly/3iNrKrS.*

*Telephone (Audio Only):* Dial 800–360–9505 USA Toll Free; Access code: 199 353 0043.

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to these discussions. Committee meetings are available to the public through the above call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

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

**Agenda**

Welcome and Roll Call
Discussion: Civil Rights in Pennsylvania
Future Plans and Actions
Public Comment
Adjournment

Dated: June 22, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021–13570 Filed 6–24–21; 8:45 am]

BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

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

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Georgia Advisory Committee (Committee) will hold a meeting via web conference on Wednesday, August 18, 2021, at 3:00 p.m. Eastern Time for reviewing testimony regarding civil asset forfeiture and preparing for additional hearing(s).

**DATES:** The meeting will be held on Wednesday, August 18, 2021, at 3:00 p.m. Eastern Time.

*Public Access Information*

*Register online (audio/visual): https://bit.ly/3gu4HPU*

*Join by phone (audio only):*

- 800–360–9505 USA Toll Free
- Access code: 199 458 9175

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov* in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkxAAA* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

**Agenda**

Welcome and Roll Call
Discussion: Civil Rights in Georgia (Civil Asset Forfeiture)
Public Comment
Adjournment

Dated: June 22, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021–13576 Filed 6–24–21; 8:45 am]

BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Connecticut Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a meeting via web conference or phone call on Wednesday, July 7, 2021, at 12:00 p.m. The purpose of the meeting is for review and vote on project proposals on algorithms and voting rights and review an advisory memorandum to update the Commission on the Committee's nursing

homes project. The committee will also have a presentation on voting rights in the territories.

**DATES:** July 7, 2021, Wednesday, at 12:00 p.m. (ET):

- To join by web conference, use WebEx link: *https://bit.ly/3d0fFMa;* password, if needed: CT-USCCR.
- To join by phone only, dial 1–800–360–9505; Access code: 199 953 0307.

**FOR FURTHER INFORMATION CONTACT:** Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for this meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Barbara de La Viez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

**Agenda: Wednesday, July 7, 2021, at 12:00 p.m. (ET)**

I. Welcome and Roll Call
II. Review Nursing Homes Update Advisory Memorandum
III. Review and Vote on Voting Rights Project
IV. Review and Vote on Working Group Proposals
V. Presentation by Neil Weare, President and Founder of Equally American
VI. Other Business
VII. Public Comment
VIII. Next Steps
IX. Adjournment

Dated: June 22, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021–13571 Filed 6–24–21; 8:45 am]

BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Connecticut Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a meeting via web conference or phone call on Wednesday, July 7, 2021, at 12:00 p.m. The purpose of the meeting is for review and vote on project proposals on algorithms and voting rights and review an advisory memorandum to update the Commission on the Committee's nursing homes project. The committee may also have a speaker discussion.

**DATES:** July 7, 2021, Wednesday, at 12:00 p.m. (ET):

- *To join by web conference, use WebEx link: https://bit.ly/3d0fFMa*; password, if needed: CT-USCCR
- *To join by phone only, dial 1–800–360–9505; Access code:* 199 953 0307

**FOR FURTHER INFORMATION CONTACT:** Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for this meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Barbara de La Viez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

**Agenda**

*Wednesday, July 7, 2021, at 12:00 p.m. (ET)*

I. Welcome and Roll Call
II. Review Nursing Homes Update Advisory Memorandum
III. Review and Vote on Voting Rights Project
IV. Review and Vote on Algorithms Project Proposal
V. Speaker Discussion
VI. Other Business
VII. Public Comment
VIII. Next Steps
IX. Adjournment

Dated: June 21, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021–13485 Filed 6–24–21; 8:45 am]

BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

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

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Georgia Advisory Committee (Committee) will continue a series of web-based meetings to hear testimony regarding Civil Asset Forfeiture and its impact on communities of color in Georgia.

**DATES:**

*Public Access Information*

- *Panel III:* Monday, August 2, 2021, at 2:00 p.m. Eastern Time
  - *Register online (audio/visual): https://bit.ly/3xlGTED*
  - *Telephone (audio only):* Dial: 800–360–9505; Access code: 199 979 8534
- *Panel IV:* Wednesday August 4, 2021, at 2:00 p.m. Eastern Time
  - *Register online (audio/visual):*

*https://bit.ly/3iOL4Vk*

○ *Telephone (audio only):* Dial: 800–360–9505; Access code: 199 014 4101

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free number or online registration link. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captions will be provided. Individuals who are deaf, deafblind, or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number. Please contact the Commission 10 days prior to the meeting to request other accommodations.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov* in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkxAAA* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

## Agenda

Welcome and Roll Call
Discussion: Civil Rights in Georgia (Civil Asset Forfeiture)
Public Comment
Adjournment

Dated: June 22, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021–13572 Filed 6–24–21; 8:45 am]

BILLING CODE P

---

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–13–2021]**

### Foreign-Trade Zone (FTZ) 72—Indianapolis, Indiana; Authorization of Production Activity; XPO Logistics (Wearable Electronic Communication/Data Device Kitting); Clayton, Indiana

On February 18, 2021, XPO Logistics submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 72, in Clayton, Indiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 11921, March 1, 2021). On June 21, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 21, 2021.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2021–13548 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–874]**

### Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Preliminary Results of Countervailing Duty Administrative Review; 2019

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to Goodluck India Limited (Goodluck) and Tube Investments of India Ltd. (TII), producers and exporters of certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India during the period of review, January 1, 2019, through December 31, 2019. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Eliza Siordia or Eric Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878 or (202) 482–1988, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On April 8, 2020, Commerce published a notice of initiation of an administrative review of the countervailing duty order on cold-drawn mechanical tubing from India.[1] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[3] On January 11, 2021, Commerce extended the deadline for issuing the preliminary results of this review.[4] The revised deadline for these preliminary results is now June 18, 2021.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included at the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730 (April 8, 2020).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Extension of Deadline for Preliminary Results of 2019 Countervailing Duty Administrative Review,'' dated January 11, 2021.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India; 2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

**Scope of the Order**

The merchandise covered by the order is cold-drawn mechanical tubing from India. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution that gives rise to a benefit to the recipient, and the subsidy is specific.[6] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

**Preliminary Results of Review**

For the period January 1, 2019, through December 31, 2019, we preliminarily find that the following net subsidy rates exist:

| Company | Subsidy rate (percent ad valorem) |
|---|---|
| Goodluck India Limited[7] ..... | 5.32 |
| Tube Investments of India Ltd[8] ..... | 7.70 |

**Assessment Rate**

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Rate**

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. These cash deposit instructions, when imposed, shall remain in effect until further notice.

**Disclosure and Public Comment**

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[9] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[10] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] Case and rebuttal briefs should be filed using ACCESS[12] and must be served on interested parties.[13] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.[15] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[16] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

**Final Results of Review**

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

**Notification to Interested Parties**

This administrative review and notice are in issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: June 17, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Period of Review
V. Subsidies Valuation Information
VI. Benchmarks and Interest Rates
VII. Analysis of Programs
VIII. Recommendation

[FR Doc. 2021–13549 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–073]**

### Common Alloy Aluminum Sheet From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Recission of Antidumping Administrative Review, Preliminary Determination of No Shipments, and Preliminary Successor-In-Interest Determination; 2018–2020

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that certain companies under review

[6] *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.

[7] This rate applies to the following entities: Goodluck India Limited (formerly Good Luck Steel Tubes Limited); Good Luck Steel Tubes Limited Good Luck House; and Good Luck Industries.

[8] Tube Investments of India Ltd. is also known as Tube Investments of India Limited.

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *See generally* 19 CFR 351.303.

[13] *See* 19 CFR 351.303(f).

[14] *See Temporary Rule.*

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.310.

sold subject merchandise at less than normal value during the period of review (POR), June 22, 2018, through January 31, 2020, and that certain other companies under review did not ship subject merchandise to the United States during the POR. Additionally, Commerce is rescinding this review with respect to multiple companies. We are also making a preliminary successor-in-interest determination. Interested parties are invited to comment on these preliminary results of this review.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Frank Schmitt or Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880 or (202) 482–2924, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On April 8, 2020, in response to review requests from multiple parties, Commerce initiated an administrative review of the antidumping duty order on common alloy aluminum sheet (CAAS) from the People's Republic of China (China).[1] The POR is June 22, 2018, through January 31, 2020. On April 24 and July 21, 2020, Commerce tolled all deadlines in administrative reviews by 50 days and 60 days respectively.[2] On January 27 and June 2, 2021, Commerce extended the time limit for completing the preliminary results of this review, until June 18, 2021.[3]

On June 10, 2020, Commerce selected two exporters and/or producers for individual examination as mandatory respondents, Henan Mingtai Aluminum Industrial/Zhengzhou Mingtai Industry Co., Ltd. (collectively, Mingtai), and Jiangyin New Alumax Composite Material (Jiangyin New Alumax).[4] By the deadline for section A questionnaire responses, July 21, 2020, neither mandatory respondent had submitted a section A questionnaire response. By the deadline for section C–E questionnaire responses, August 6, 2020, neither mandatory respondent had submitted a section C–E questionnaire response. Additionally, on August 18, 2020, Mingtai filed a notice of its intent not to participate in this administrative review.[5]

Because neither Mingtai nor Jiangyin New Alumax responded to Commerce's antidumping questionnaire, on September 28, 2020, Commerce selected Jiangsu Alcha Aluminum Co., Ltd. (Jiangsu Alcha) as an additional mandatory respondent.[6] During the course of this review, Jiangsu Alcha filed responses to Commerce's questionnaires and supplemental questionnaires, and the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members[7] (the petitioner) commented on those responses. Additionally, multiple companies for which Commerce initiated the review filed either no-shipment claims or applications for separate rate status. For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[8] A list of topics discussed in the Preliminary Decision Memorandum is included as an Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *https://enforcement.trade.gov/frn/.*

## Scope of the Order

The merchandise covered by the order is common alloy aluminum sheet from China. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

## Preliminary Determination of No Shipments

We found no evidence calling into question the no shipment claims by Teknik Aluminyum Sanayi A.S. and Companhia Brasileira de Aluminio; therefore, we preliminarily find that these companies had no shipments of subject merchandise to the United States during the POR. For additional information regarding these preliminary determinations, *see* the Preliminary Decision Memorandum.

## Partial Recission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested a review withdraw their requests within 90 days of the publication date of the notice of initiation of the requested review. All parties timely withdrew their requests for administrative review of the following companies: (1) Multipanel UK Ltd., (2) Alumax Composite Material (Jiangyin) Co., Ltd., (3) Chalco Ruimin Co., (4) Granges Aluminum (Shanghai) Co., Ltd., (5) Henan Founder Beyond Industry Co., Ltd., (6) Henan Jinyang Luyue Co., Ltd., (7) Henan Xintai Aluminum Industry Co., Ltd., (8) Henan Zhongyuan Aluminum Co., Ltd., (9) Huafon Nikkei Aluminum Corporation, (10) Jiangsu Lidao New Material Co., Ltd., (11) Jiangsu Zhong He Aluminum Co., Ltd., (12) Jiangyin Litai Ornamental Materials Co., Ltd., (13) Luoyang Xinlong Aluminum Co., Ltd., (14) Shandong Fuhai Industrial Co., Ltd., (15) Shandong Nanshan Aluminum Co.,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730 (April 8, 2020).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020; *see also* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Common Alloy Aluminum Sheet from China, 2018–2020: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 27, 2021; *see also* Memorandum, ''Common Alloy Aluminum Sheet from China, 2018–2020: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated June 2, 2021. However, on June 17, 2021, the President signed into law the Juneteenth National Independence Day Act, making June 19 a Federal holiday. *See* Juneteenth National Independence Day Act, S. 475, Public Law 117–17 (2021). Because the Federal holiday fell on a Saturday, it was observed on Friday, June 18, 2021. Where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for these preliminary results is on June 21, 2021.

[4] *See* Memorandum, ''Antidumping Duty Administrative Review of Common Alloy Aluminum Sheet from the People's Republic of China: Respondent Selection,'' dated June 10, 2020.

[5] *See* Mingtai's Letter, ''Common Alloy Aluminum Sheet from the People's Republic of China: Mingtai Notice of Intent Not to Participate,'' dated August 18, 2020.

[6] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Common Alloy Aluminum Sheet from the People's Republic of China: Selection of Additional Respondent for Individual Examination,'' dated September 28, 2020.

[7] The individual members of the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group are: Arconic Corporation, Commonwealth Rolled Products, Inc., Constellium Rolled Products Ravenswood, LLC, Jupiter Aluminum Corporation, JW Aluminum Company, and Novelis Corporation.

[8] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2018–2020 Antidumping Duty Administrative Review of Common Alloy Aluminum Sheet from the People's Republic of China,'' issued concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

Ltd., (16) Shanghai Dongshuo Metal Trade Co., Ltd., (17) Tianjin Zhongwang Aluminum Co., Ltd., (18) Xiamen Xiashun Aluminum Foil Co., Ltd., (19) Yantai Jintai International Trade Co., Ltd., and (20) Zhengzhou Silverstone Limited. Accordingly, Commerce is rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1). For additional information regarding the rescission of Commerce's administrative reviews, *see* the Preliminary Decision Memorandum.

**Preliminary Affiliation and Single Entity Determination**

We have determined that Jiangsu Alcha, Alcha International, and Baotou Alcha Aluminum Co., Ltd. (Baotou Alcha) are affiliated entities pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (the Act). We have also determined that Jiangsu Alcha and Baotou Alcha Aluminum Co., Ltd. (Baotou Alcha) should be treated as a single entity pursuant to 19 CFR 351.401(f)(1)–(2). For additional information, *see* the Affiliation Memorandum.[9]

**Separate Rates**

We have preliminarily determined that the information placed on the record by Jiangsu Alcha, Alcha International (collectively, Alcha Group), and Yinbang Clad Material Co., Ltd. (Yinbang Clad) demonstrates that these companies are eligible for a separate rate. We have also preliminarily determined that Choil Aluminum Co., Ltd.; Jiangyin New Alumax; Mingtai; PMS Metal Profil Aluminyum San. Ve Tic. A.S. Demirtas Organize Sanayi Bolgesi; and United Metal Coating LLC have not demonstrated their eligibility for a separate rate because they did not file separate rate applications or certifications with Commerce. Therefore, we are treating these companies as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate (*i.e.,* 59.72 percent) is not subject to change.[10]

For additional information regarding Commerce's preliminary separate rates determinations, *see* the Preliminary Decision Memorandum.

**Dumping Margins for Separate Rate Companies**

The statute and Commerce's regulations do not address what rate to apply to respondents 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 calculating the rate for non-selected respondents that are not examined individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Where the rates for the individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate. In this review, we calculated a rate for Alcha Group that is not zero, *de minimis,* or based entirely on facts available. Therefore, we have assigned this rate to the companies not selected for individual examination but that are eligible for a separate rate.

**Methodology**

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Act. Commerce calculated export and constructed export prices in accordance with section 772 of the Act. Because Commerce has determined that China is a nonmarket economy country,[11] within the meaning of section 771(18) of the Act, Commerce calculated normal value in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum.

**Preliminary Results of Review**

We are preliminarily assigning the following dumping margins to the firms listed below for the period June 22, 2018, through January 31, 2020:

| Exporter | Weighted-average dumping margin (percent) |
|---|---|
| Jiangsu Alcha Aluminum Co., Ltd./Alcha International Holdings Limited | 143.30 |
| Yinbang Clad Material Co., Ltd | 143.30 |
| China-Wide Entity[12] | 59.72 |

**Disclosure and Public Comment**

Commerce intends to disclose to parties to the proceeding the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[13] Rebuttal briefs may be filed no later than seven days after case briefs are due and may respond only to arguments raised in the case briefs.[14] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[15]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**.[16] Requests should contain the party's name, address, and telephone number, the number of individuals from the requesting party's firm that will attend the hearing, and a list of the issues the party intends to discuss at the hearing. Oral arguments at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[17] Parties should confirm by telephone the

[9] *See* Memorandum, ''Preliminary Affiliation and Collapsing Memorandum: Common Alloy Aluminum Sheet from China,'' dated concurrently with this notice (Affiliation Memorandum).

[10] *See Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order,* 84 FR 2813 (February 8, 2019).

[11] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, ''China's Status as a Non-Market Economy,'' dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[12] As noted above, the China-Wide Entity is not subject to this review. However, in this review we have preliminarily determined that the following companies under review are now part of the China-Wide Entity: (1) Choil Aluminum Co., Ltd.; (2) Henan Mingtai Al Industrial Co., Ltd.; (3) Jiangyin New Alumax Composite Material Co., Ltd.; (4) PMS Metal Profil Aluminyum San. Ve Tic. A.S. Demirtas Organize Sanayi Bolgesi; (5) United Metal Coating LLC; and (6) Zhengzhou Mingtai Industry Co., Ltd.

[13] *See* 19 CFR 351.309(c)(ii).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(c)(2), (d)(2).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310(d).

date and time of the hearing two days before the scheduled date of the hearing.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[18] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date.[19] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[20] Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuance of the final results of this review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[21] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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).

For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer/customer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[22] Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer/customer and dividing this amount by the total entered value of the merchandise sold to the importer/customer.[23] Where the respondent did not report entered values, Commerce will calculate importer/customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[24] Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer/customer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[25]

For the respondents that were not selected for individual examination in this administrative review, but which qualified for a separate rate, the assessment rate will be based on the weighted-average dumping margin(s) assigned to the respondent(s), as appropriate, in the final results of this review.[26]

Pursuant to Commerce's refinement to its practice, for sales that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, Commerce will instruct CBP to liquidate the entry of such merchandise at the dumping margin for the China-wide entity.[27] Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR will be liquidated at the dumping margin for the China-wide entity.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated antidumping duties, where applicable.

**Cash Deposit Requirements**

Commerce will instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which the normal value exceeds U.S. price. The following cash deposit requirements will be effective for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed in the table above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review for the exporter (except, if the dumping margin is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed Chinese and non-Chinese exporters that are not listed in the table above but that have separate rates, the cash deposit rate will continue to be the exporter-specific rate established in the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 59.72 percent)[28] and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

[18] *See* generally 19 CFR 351.303.

[19] *See* 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[20] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[21] *See* 19 CFR 351.212(b)(1).

[22] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[23] *See* 19 CFR 351.212(b)(1).

[24] *Id.*

[25] *See Final Modification,* 77 FR at 8103.

[26] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016), and accompanying IDM at 10–11, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

[27] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

[28] *See Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order,* 84 FR 2813 (February 8, 2019).

antidumping duties and/or countervailing 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 duties and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

### Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: June 21, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

### Appendix—List of Sections in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Partial Rescission of Administrative Review
V. Preliminary Determination of No Shipments
VI. Preliminary Successor-In-Interest Determination
VII. Affiliation
VIII. Discussion of Methodology
IX. Adjustment Under Section 777A of the Act
X. Currency Conversion
XI. Recommendation

[FR Doc. 2021–13546 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–570–041]**

## Truck and Bus Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2019

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of truck and bus tires from the People's Republic of China (China). The period of review (POR) is February 15, 2019, through December 31, 2019. In addition, we are rescinding the review with respect to several companies. Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dusten Hom or Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–5075 or 202–482–2631, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 15, 2019, Commerce published in the **Federal Register** the countervailing duty (CVD) order on truck and bus tires from the China.[1] On April 8, 2020, Commerce published in the **Federal Register** an initiation notice for an administrative review of the *Order* on 46 producers/exporters for the POR.[2] For events that occurred since the *Initiation Notice, see* the Preliminary Decision Memorandum.[3] On June 17, 2021, the President signed into law the Juneteenth National Independence Day Act, making June 19 a Federal holiday.[4] Because the Federal holiday fell on a Saturday, it was observed on Friday, June 18, 2021. Where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day.[5] Accordingly, the deadline for these preliminary results is on June 21, 2021.

### Scope of the Order

The products covered by the *Order* are truck and bus tires from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

### Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. On April 14, 2020, Sailun[6] withdrew its request for review of Sailun Group Co., Ltd.; Sailun (Shenyang) Tire Co., Ltd.; Sailun Group (Hong Kong) Co., Limited (previously known as Sailun Jinyu Group (Hong Kong) Co., Limited) and requested Commerce rescind the administrative review with respect to these companies. In the Respondent Selection Memorandum,[7] we stated our intent to rescind the review of these Sailun companies because the withdrawal of review was timely filed and no other party requested a review of these companies. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to Sailun companies noted above.

### Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

[1] *See Truck and Bus Tires from the People's Republic of China: Amended Final Determination and Countervailing Duty Order,* 84 FR 4434 (February 15, 2019) (the *Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730 (April 8, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of 2019 Countervailing Duty Administrative Review: Truck and Bus Tires from the People's Republic of China and Rescission of Administrative Review, in Part,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* Juneteenth National Independence Day Act, S. 475, Public Law 117–17 (2021).

[5] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[6] Sailun Group Co., Ltd.; Sailun (Shenyang) Tire Co., Ltd.; Sailun Group (Hong Kong) Co., Limited (previously known as Sailun Jinyu Group (Hong Kong) Co., Limited) (collectively, Sailun).

[7] *See* Memorandum, ''Countervailing Duty Administrative Review of Truck and Bus Tires from the People's Republic of China: Respondent Selection,'' dated June 30, 2020 (Respondent Selection Memorandum).

[8] *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.

## Preliminary Rate for Non-Selected Companies Under Review

There are 41 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. For these companies, because the rates calculated for the mandatory respondents, Qingdao Ge Rui Da Rubber Co., Ltd. (GRT) and Prinx Chengshan (Shandong) Tire Co., Ltd. (PCT), were above *de minimis* and not based entirely on facts available, we are applying to the non-selected companies the average of the net subsidy rates calculated for GRT and PCT, which we calculated using the publicly ranged sales data submitted by GRT and PCT.[9] This methodology to establish the all-others subsidy rate is consistent with our practice and section 705(c)(5)(A) of the Act. For further information on the calculation of the non-selected respondent rate, refer to the section in the Preliminary Decision Memorandum entitled ''Non-Selected Companies Under Review.'' For a list of non-selected companies, *see* Appendix II.

## Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a countervailable subsidy rate for each of the mandatory respondents, GRT and PCT, which includes their cross-owned affiliates, where applicable.

We preliminarily find the countervailable subsidy rates for the mandatory and non-selected respondents under review to be as follows:

| Producer/exporter | Subsidy rate (percent) |
|---|---|
| Prinx Chengshan (Shandong) Tire Co., Ltd.[10] | 17.04 |
| Qingdao Ge Rui Da Rubber Co., Ltd.[11] | 16.62 |
| **Review-Specific Average Rate Applicable to the Following Companies** | |
| Other Respondents[12] | 16.76 |

## Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[13] Rebuttals to case briefs may be filed no later than seven days after the case briefs are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[14] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[15]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be determined.

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

## Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producer/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period February 15, 2019, through December 31, 2019, in accordance with 19 CFR 351.212(c)(l)(i). For the companies remaining in the review, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

## Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respondents listed above 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. For all non-reviewed firms, CBP will continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

[9] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[10] Cross-owned affiliates are Chengshan Group Co., Ltd., Shanghai Chengzhan Information and Technology Center, Prinx Chengshan (Qingdao) Industrial Research & Design Co., Ltd., and Shandong Prinx Chengshan Tire Technology Research Co., Ltd.

[11] Cross-owned affiliates are Cooper Tire (China) Investment Co. Ltd., Cooper (Kunshan) Tire Co., Ltd., and Qingdao Yiyuan Investment Co., Ltd.

[12] *See* Appendix II.

[13] *See* 19 CFR 351.309(c).

[14] *See* 19 CFR 351.309(d).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Dated: June 21, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix I

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Non-Selected Companies Under Review
V. Diversification of China's Economy
VI. Partial Rescission of the Administrative Review
VII. Use of Facts Otherwise Available and Application of Adverse Inferences
VIII. Subsidies Valuation
IX. Interest Rate Benchmarks, Discount Rates, Inputs, Electricity, and Land Benchmarks
X. Analysis of Programs
XI. Recommendation

## Appendix II

**List of Companies Not Individually Examined**

1. Aeolus Tyre Co., Ltd.
2. Chaoyang Long March Tyre Co., Ltd.
3. Doublestar International Trading (Hongkong) Co., Limited
4. Giti Radial Tire (Anhui) Company
5. Giti Tire (Fujian) Company Ltd.
6. Giti Tire Global Trading Pte Ltd.
7. Guangrao Kaichi Trading Co., Ltd.
8. Guizhou Tyre Co., Ltd.
9. Guizhou Tyre Import and Export Co., Ltd.
10. Hefei Wanli Tire Co., Ltd.
11. Hongtyre Group Co.
12. Jiangsu General Science Technology Co., Ltd.
13. Koryo International Industrial Limited
14. Maxon Int'l Co., Limited
15. Megalith Industrial Group Co., Limited
16. Qingdao Awesome International Trade Co., Ltd
17. Qingdao Doublestar Overseas Trading Co., Ltd.
18. Qingdao Doublestar Tire Industrial Co., Ltd.
19. Qingdao Fullrun Tyre Corp. Ltd
20. Qingdao Jinhaoyang International Co., Ltd.
21. Qingdao Keter International Co., Limited
22. Qingdao Lakesea Tyre Co., Ltd
23. Qingdao Powerich Tyre Co., Ltd.
24. Qingdao Shinego Tire Tech Co., Limited (also known as Qingdao Shinego Tyre Tech Co., Ltd.)
25. Qingdao Sunfulcess Tyre Co., Ltd.
26. Shandong Habilead Rubber Co., Ltd.
27. Shandong Haohua Tire Co., Ltd.
28. Shandong Huasheng Rubber Co., Ltd
29. Shandong Hugerubber Co., Ltd.
30. Shandong Kaixuan Rubber Co., Ltd
31. Shandong Province Sanli Tire Manufactured Co., Ltd
32. Shandong Qilun Rubber Co., Ltd.
33. Shandong Transtone Tyre Co., Ltd
34. Shandong Wanda Boto Tyre Co., Ltd.
35. Shandong Yongsheng Rubber Group Co., Ltd.
36. Shanghai Huayi Group Corporation Limited
37. Shengtai Tyre Co., Ltd.
38. Sichuan Kalevei Technology Co., Ltd.
39. Tongli Tyre Co., Ltd.
40. Triangle Tyre Co., Ltd.
41. Weifang Shunfuchang Rubber and Plastic Products Co., Ltd.

[FR Doc. 2021–13586 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–201–836]**

## Light-Walled Rectangular Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2018–2019

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

**SUMMARY:** The Department of Commerce (Commerce) determines that light-walled rectangular pipe and tube from Mexico was sold in the United States at less than normal value during the period of review (POR) August 1, 2018, through July 31, 2019.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kyle Clahane or John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–5449 or (202) 482–1009, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 23, 2020, Commerce published the *Preliminary Results.*[1] On March 31, 2021, Commerce extended the deadline for these final results.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

### Scope of the Order

The products covered by this order are light-walled rectangular pipe and tube from Mexico. For a full description of the scope, *see* the Issues and Decision Memorandum.[4]

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

### Changes Since the Preliminary Results

Based on the comments received, we made changes for these final results which are explained in the Issues and Decision Memorandum.[5]

### Final Results of the Review

As a result of this review, Commerce determines the following weighted-average dumping margins exist for the mandatory respondents, Maquilacero S.A. de C.V. (Maquilacero) and Regiomontana de Perfiles y Tubos S. de R.L. de C.V. (Regiopytsa), for the period August 1, 2018, through July 31, 2019. In accordance with section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), Commerce calculated a weighted-average dumping margin for the firms not selected for individual examination using the weighted-average dumping margins calculated for the mandatory respondents, which are not zero, *de minimis,* or determined entirely on the basis of facts available.[6]

---

[1] *See Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 83886 (December 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Light-Walled Rectangular Pipe and Tube from Mexico: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2018–2019,'' dated March 31, 2021.

[3] *See* Memorandum, ''Issues and Decision Memorandum for Light-Walled Rectangular Pipe and Tube from Mexico: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *Id.*

[5] *Id.*

[6] In the case of two mandatory respondents, our practice is to calculate: (A) A weighted average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly ranged values for the merchandise under consideration. We compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014–2016,* 82 FR 31555, 31556 (July 7, 2017). We have applied that practice here. *See* Memorandum, ''Antidumping Duty Administrative Review of

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Maquilacero S.A. de C.V. and Tecnicas de Fluidos S.A. de C.V | 4.23 |
| Regiomontana de Perfiles y Tubos S. de R.L. de C.V. (formerly Regiomontana de Perfiles y Tubos S.A. de C.V.) [7] | 5.44 |
| Aceros Cuatro Caminos S.A. de C.V | 4.92 |
| Fabricaciones y Servicios de Mexico | 4.92 |
| Grupo Estructuras y Perfiles | 4.92 |
| Perfiles LM, S.A. de C.V | 4.92 |
| Productos Laminados de Monterrey S.A. de C.V | 4.92 |

## Disclosure of Calculations

We intend to disclose the calculations performed in connection with these final results to parties in this proceeding within five days after the date of publication of this notice, in accordance with 19 CFR 351.224(b).

## Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For each individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).

For each company which was not individually examined whose weighted-average dumping margin is not zero or *de minimis,* we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to each company's weighted-average dumping margin noted above. Where a non-examined company's weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.76 percent, the all-others rate established in the LTFV investigation.[8] 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 the Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

## Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective orders (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/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

## Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h).

Dated: June 21, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Successor-in-Interest
V. Analysis of Comments
Comment 1: Whether Commerce Should Revise the Model Match Criteria

Light-Walled Rectangular Pipe and Tube from Mexico: Calculation of Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

[7] In the *Preliminary Results,* we preliminarily determined that Regiomontana de Perfiles y Tubos S. de R.L. de C.V. to be successor-in-interest to Regiomontana de Perfiles y Tubos S.A. de C.V. We did not receive comments from interested parties on this finding. Accordingly, we continue to determine that it is the successor-in-interest. For additional information on Commerce's analysis regarding the successor-in-interest finding. *See Preliminary Results* PDM at 6.

[8] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008).

Comment 2: Whether Commerce Should Adjust Maquilacero's Costs for Non-Prime Products
Comment 3: Whether Commerce Should Use Average Net Price to Value Maquilacero's Non-Prime Product
Comment 4: Whether Commerce Should Adjust the Selling, General, and Administrative (SG&A) Cost Calculation Maquilacero Provided for Tecnicas de Fluidos S.A. de C.V. (TEFLU)
Comment 5: Whether Commerce Should Revise Its Adjustment to Maquilacero's Costs for Coil Obtained From Affiliated Parties
Comment 6: Whether Commerce Should Recalculate the Adjustment to Maquilacero's Scrap Offset
Comment 7: Whether Commerce Should Adjust TEFLU's Further Processing Costs
Comment 8: Whether Maquilacero's and TEFLU's Sales Were Made at the Same Level of Trade
Comment 9: Whether Commerce Should Collapse Maquilacero and TEFLU
Comment 10: Whether Commerce Should Make Certain Changes to Maquilacero's SAS Programs
Comment 11: Whether Commerce Should Assign Perfiles the Weighted-Average Dumping Margin It Received as a Mandatory Respondent in the 2013–2014 Administrative Review
VI. Recommendation

[FR Doc. 2021–13550 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–138]**

### Pentafluoroethane (R–125) From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of pentafluoroethane (R–125) from the People's Republic of China (China). The period of investigation is January 1, 2020, through December 31, 2020. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joshua Tucker or Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2044 or (202) 482–6172, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on February 8, 2021.[1] On March 16, 2021, Commerce postponed the preliminary determination of this investigation to June 11, 2021.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

#### Scope of the Investigation

The product covered by this investigation is R–125 from China. For a complete description of the scope of this investigation, *see* Appendix I.

#### Scope Comments

In accordance with the preamble to Commerce's regulations, the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*[5]

Commerce intends to issue its preliminary decision regarding comments concerning the scope of the antidumping (AD) and countervailing duty (CVD) investigations in the preliminary determination of the companion AD investigation.

#### Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[7] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

#### Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of R–125 from China based on a request made by the petitioner.[8] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than October 25, 2021, unless postponed.

#### All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated

[1] *See Pentafluoroethane (R–125) from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 86 FR 8589 (February 8, 2021) (*Initiation Notice*).

[2] *See Pentafluoroethane (R–125) from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 86 FR 14406 (March 16, 2021).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Pentafluoroethane (R–125) from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *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.

[7] *See* sections 776(a) and (b) of the Act.

[8] *See* Petitioner's Letter, ''Request to Align Final Countervailing Duty Determination with Final Antidumping Duty Determination,'' dated May 21, 2021.

countervailable subsidy rates for Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd. (Juxin) and Zhejiang Sanmei Chemical Ind. Co., Ltd. (Sanmei) that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly ranged values for the value of their exports of subject merchandise to the United States.[9]

**Preliminary Determination**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate (percent) |
|---|---|
| Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd | 291.26 |
| Daikin Fluorochemicals (China) Co., Ltd | 291.26 |
| Hongkong Richmax Ltd | 291.26 |
| Weitron International Refrigeration Equipment (Kunshan) Co., Ltd | 291.26 |
| Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd.[10] | 3.23 |
| Zhejiang Sanmei Chemical Ind. Co., Ltd.[11] | 2.31 |
| All-Others | 3.12 |

**Suspension of Liquidation**

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID–19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

**Public Comment**

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[12] The deadlines for submitting case and rebuttal briefs on scope issues will be established as part of the preliminary determination in the companion AD investigation. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[13]

**International Trade Commission Notification**

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: June 11, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigation**

The merchandise covered by this investigation is pentafluoroethane (R–125), or its chemical equivalent, regardless of form,

[9] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's proprietary U.S. sale quantities for the merchandise under consideration; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[10] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Juxin: Juhua Group Corporation; Zhejiang Juhua Co., Ltd.; Ningbo Juhua Chemical & Science Co., Ltd.; Zhejiang Quzhou Fluoxin Chemicals Co., Ltd.; and Zhejiang Juhua Chemical Mining Co., Ltd.

[11] As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Sanmei: Fujian Qingliu Dongying Chemical Ind. Co. Ltd.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See* 19 CFR 351.310(d).

type or purity level. R–125 has the Chemical Abstracts Service (CAS) registry number of 354–33–6 and the chemical formula $C_2$ $HF_5$. R–125 is also referred to as Pentafluoroethane, Genetron HFC 125, Khladon 125, Suva 125, Freon 125, and Fc-125. Subject merchandise includes R–125, whether or not incorporated into a blend. When R–125 is blended with other products, only the R–125 component of the mixture is covered by the scope of this investigation. Subject merchandise also includes R–125 and unpurified R–125 that is processed in a third country or otherwise outside the customs territory of the United States, including, but not limited to, purifying, blending, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope R–125. The scope also includes R–125 that is commingled with R–125 from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the current scope is merchandise covered by the scope of the antidumping order on hydrofluorocarbon blends from the People's Republic of China. *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016).

R–125 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.39.2035. Merchandise subject to the scope may also be entered under HTSUS subheadings 2903.39.2045 and 3824.78.0020. The HTSUS subheadings and CAS registry number are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Injury Test
V. Diversification of China's Economy
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Subsidies Valuation
VIII. Benchmarks and Interest Rates
IX. Analysis of Programs
X. Conclusion

[FR Doc. 2021–13582 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–074]**

## Common Alloy Aluminum Sheet From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent To Rescind, in Part; 2018–2019

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet) from the People's Republic of China (China). The period of review (POR) is April 23, 2018, through December 31, 2019.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** John McGowan or Natasia Harrison, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3019 or (202) 482–1240, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 8, 2020, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order [1] on aluminum sheet from China.[2] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[3] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[4] On January 25, 2021, Commerce extended the deadline for the preliminary results of this review until June 18, 2021.[5]

Based on timely withdrawal of requests for administrative review, Commerce intends to partially rescind the administrative review of two entities.[6] Therefore, concurrently with these preliminary results, we are rescinding the review with respect to these companies.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[7] A list of topics discussed in the Preliminary Decision Memorandum is included at Appendix I of this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

### Scope of the Order

The merchandise covered by the *Order* is aluminum sheet form China. For a complete description of the scope of the *Order, see* Appendix II.

### Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraw the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all requests for administrative review were timely withdrawn for certain companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to: Luoyang Longding Aluminium Industries Co., Ltd. and Multipanel UK Ltd.

### Intent To Rescind Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(3), we intend to rescind this review following

[1] *See Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order,* 84 FR 2157 (February 6, 2019) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730 (April 8, 2020).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[5] *See* Memorandum, ''Common Alloy Aluminum Sheet from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 4/23/2018–12/31/2019,'' dated January 25, 2021.

[6] *See* Texarkana Aluminum, Inc.'s Letter, ''Common Alloy Aluminum Sheet (CAAS) from China, Antidumping (AD) & Countervailing Duty (CVD) Administrative Reviews,'' dated April 9, 2020; and Domestic Industry's Letter, ''1st Administrative Review of the Countervailing Duty Order on Common Alloy Aluminum Sheet from the People's Republic of China—Domestic Industry's Withdrawal of Certain Requests for Administrative Reviews,'' dated August 19, 2020.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review of Common Alloy Aluminum Sheet from the People's Republic of China; 2018–2019,'' dated concurrently, and hereby adopted by, this notice (Preliminary Decision Memorandum).

the publication of the final results on the basis of no reviewable suspended entries of subject merchandise, according to the U.S. Customs and Border Protection (CBP) data, with respect to Teknik Aluminyum Sanayi A.S. and Companhia Brasileira De Aluminio, which filed no shipment letters,[8] and with respect three additional companies (*i.e.,* Choil Aluminum Co., Ltd; PMS Metal Profil Aluminyum San. Ve Tic. A.S. Demirtas Organize Sanayi Bolgesi; and United Metal Coating LLC). *See* the Preliminary Decision Memorandum for a full discussion.

## Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.,* a financial contribution from an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[9] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available (AFA) pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that the Government of China did not act to the best of its ability to respond to Commerce's request for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available. For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

## Preliminary Rate for Non-Selected Companies Under Review

There is one company for which a review was requested, that had reviewable entries, and that was not selected for individual examination as a mandatory respondent or found to be cross-owned with a mandatory respondent. Because the rate calculated for the mandatory respondent, Jiangsu Alcha Aluminum Co., Ltd. (Jiangsu Alcha),[10] is above *de minimis* and is not based entirely on facts available, we applied the subsidy rate calculated for Jiangsu Alcha to this non-selected company. This methodology to establish the subsidy rate for the non-selected company is consistent with our practice and with section 705(c)(5)(A) of the Act.[11]

## Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a countervailable subsidy rate for the mandatory respondent Jiangsu Alcha. We determined the countervailable subsidy rate for Mingtai Industrial Co., Ltd./Zhengzhou Mingtai Industry Co. and Yong Jie New Material Co., Ltd. based entirely on AFA, in accordance with section 776 of the Act. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Jiangsu Alcha. Consequently, as discussed above, we are assigning to all other producers and exporters subject to this review but not selected for individual examination (*i.e.,* non-selected companies) the rate calculated for Jiangsu Alcha.

Commerce preliminarily determines that, during the POR, the following countervailable subsidy rates exist:

| Company | Subsidy rate—2018 (percent *ad valorem*) | Subsidy rate—2019 (percent *ad valorem*) |
|---|---|---|
| Mingtai Industrial Co., Ltd./Zhengzhou Mingtai Industry Co.[12] | * 275.98 | * 275.98 |
| Jiangsu Alcha Aluminum Co., Ltd.[13] | 36.76 | 30.64 |
| Yong Jie New Material Co., Ltd.[14] | * 275.98 | * 275.98 |
| Yinbang Clad Material Co., Ltd.[15] | 36.76 | 30.64 |

* Rate based on AFA.

## Assessment Rate

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. 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).

For the two companies for which this review is rescinded with these preliminary results, Commerce will

[8] *See* Memorandum, ''Common Alloy Aluminum Sheet from the People's Republic of China: Release of U.S. Customs and Border Protection Data,'' dated April 16, 2020; *see also* Memorandum, ''Common Alloy Aluminum Sheet from the People's Republic of China; No Shipment Inquiry for Teknik Aluminyum Sanayi A.S. and Companhia Brasileira de Aluminio during the period 04/23/2018 through 12/31/2019,'' dated June 11, 2021.

[9] *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(5)(A) of the Act regarding specificity.

[10] Jiangsu Alcha and its cross owned companies include Alcha International Holdings Limited; Baotou Alcha Aluminum Co., Ltd.; and Jiangsu Alcha New Energy Materials Co., Ltd.

[11] The petitioners initially requested a review and did not subsequently withdraw its request for review of one company: Yinbang Clad Material Co., Ltd.

[12] This rate applies to Mingtai Industrial Co., Ltd./Zhengzhou Mingtai Industry Co. and their cross-owned company: Henan Gongdian Thermal Co., Ltd. In the CVD investigation of aluminum sheet from China, we made this cross-ownership finding. *See Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Alignment of Final CVD Determination With Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances,* 83 FR 17651 (April 23, 2018), and accompanying Preliminary Decision Memorandum, unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination,* 83 FR 57427 (November 15, 2018), and accompanying Issues and Decision Memorandum (collectively, *Aluminum Sheet from China Investigation*). Accordingly, the subject merchandise that was produced/exported by these companies entered under a single CBP case number during the period of review.

[13] This rate applies to Jiangsu Alcha and its cross-owned companies.

[14] This rate applies to Yong Jie New Material Co., Ltd. and its cross-owned companies: Nanjie Resources Co., Ltd.; Shejiang Nanjie Industry Co., Ltd, Zhejiang Yongjie Aluminum Co., Ltd. also known as Zhejiang Yong Jie Aluminum Co., Ltd., and Zhejiang Yongjie Holding Co., Ltd. In the *Aluminum Sheet from China Investigation,* we made this cross-ownership finding. Accordingly, the subject merchandise that was produced/exported by these companies entered under a single CBP case number during the POR.

[15] Yinbang Clad Material Co., Ltd. was not individually examined during the POR and, therefore, has received the non-selected company rate.

instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period April 23, 2018, through December 31, 2018, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP no later than 35 days after publication of this notice in the **Federal Register**.

## Cash Deposit Rate

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above for 2019 with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

## Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[16] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within seven days after the time limit for filing case briefs.[17] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[18] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information.[19]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.[20] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the scheduled date of the hearing.[21] Issues addressed during the hearing will be limited to those raised in the briefs.[22] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5 p.m. Eastern Time on the due date.

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

## Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: June 17, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Rescission of Administrative Review, In Part
IV. Intent To Rescind Review, In Part
V. Non-Selected Companies Under Review
VI. Scope of the Order
VII. Diversification of China's Economy
VIII. Subsidies Valuation
IX. Unequityworthiness
X. Interest Rates, Discount Rates, and Benchmarks
XI. Use of Facts Otherwise Available and Adverse Inferences
XII. Analysis of Programs
XIII. Recommendation

## Appendix II—Scope of the Order

The merchandise covered by the *Order* is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of the *Order* includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209–14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of the *Order* is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Further, merchandise that falls within the scope of these investigations may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3030, 7606.91.3060, 7606.91.6040, 7606.92.3060, 7606.92.6040, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

[FR Doc. 2021–13551 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–DS–P

[16] *See* 19 CFR 224(b).

[17] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[18] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[19] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[20] *See* 19 CFR 351.310(c).

[21] *See* 19 CFR 351.310.

[22] *See* 19 CFR 351.310(c).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–836]**

### Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily finds that Hyundai Steel Company (Hyundai Steel) and three non-examined companies made sales of subject merchandise at less than normal value during the period of review (POR) February 1, 2019, through January 31, 2020. Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–0198.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 8, 2020, Commerce initiated the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea).[1]

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby tolling the deadline for the preliminary results of review.[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days, thereby tolling the deadline for the preliminary results of review until February 18, 2020.[3] On January 26, 2021, Commerce extended the time limit for issuing the preliminary results of this review by 120 days, to no later than June 18, 2021.[4] For a complete description of the events between the initiation of this review and these preliminary results, *see* the Preliminary Decision Memorandum.[5]

### Scope of the Order

The products covered by the antidumping duty order are certain CTL plate from Korea. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[6]

### Methodology

Commerce is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, the signed Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

### Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for 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 a market economy investigation, for guidance when calculating the rate 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 any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have preliminarily calculated a weighted-average dumping margin for Hyundai Steel Company (Hyundai Steel) that is not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to the companies not individually examined, BDP International, Dongkuk Steel Mill Co., Ltd., and Sung Jin Steel Co., Ltd.,[7] a margin of 0.68 percent based on Hyundai Steel's calculated weighted-average dumping margin.

### Preliminary Results of the Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period February 1, 2019, through January 31, 2020:

| Producer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| Dongkuk Steel Mill Co., Ltd | 0.68 |
| Hyundai Steel Company | 0.68 |
| BDP International | 0.68 |
| Sung Jin Steel Co., Ltd | 0.68 |

### Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[8] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730, 189735 (April 8, 2020) (*Initiation Notice*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *See* Memorandum, ''Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Deadline for Preliminary Results of the Antidumping Duty Administrative Review; 2019–2020,'' dated January 26, 2021.

[5] *See* Memorandum, ''Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Preliminary Decision Memorandum at ''Scope of the *Order.*''

[7] *See Initiation Notice,* 85 FR at 19735.

[8] *See* 19 CFR 351.309(d).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

(2) a brief summary of the argument, and (3) a table of authorities.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date, time, and location of the hearing two days before the scheduled date. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[11]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuing the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[12] If a respondent's weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[13] If the respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*.[14] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.

For entries of subject merchandise during the POR produced by Hyundai Steel for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates listed above.

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**

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of CTL plate from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 0.98 percent,[15] the all-others rate established in the LTFV investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(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 duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Orders**

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

**Notification to Interested Parties**

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: June 15, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Rates for Non-Examined Companies
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2021–13621 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.212(b)(1).

[13] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[14] *See Final Modification for Reviews,* 77 FR 8103; *see also* 19 CFR 351.106(c)(2).

[15] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32629, 32630 (July 13, 2018).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–501]**

### Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Notice of Court Decision Not in Harmony With the Results of the 2017–2018 Antidumping Duty Administrative Review; Notice of Amended Final Results

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

**SUMMARY:** On June 16, 2021, the U.S. Court of International Trade (CIT or Court) issued its final judgment in the 2017–2018 antidumping duty administrative review of circular welded carbon steel standard pipe and tube products from Turkey, Court no. 20–00015, sustaining the Department of Commerce (Commerce) first remand results pertaining to the administrative review of the antidumping duty (AD) order on circular welded carbon steel standard pipe and tube products from Turkey covering the period of review (POR), May 1, 2017, through April 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Borusan Istikbal Ticaret T.A.S. and Borusan Mannesmann Boru Sanayi ve Ticaret A.S.

**DATES:** Applicable June 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4162.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 22, 2020, Commerce published its *Final Results* in the 2017–2018 AD administrative review of circular welded carbon steel standard pipe and tube products from Turkey. Commerce calculated a weighted-average dumping margin of 9.99 percent for Borusan Istikbal Ticaret T.A.S. and Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (collectively, Borusan).[1]

After correcting ministerial errors contained in the *Final Results,* on March 5, 2020, Commerce published the *Amended Final Results,* with an amended weighted-average dumping margin of 8.48 percent.[2]

Borusan appealed Commerce's *Amended Final Results.* On February 17, 2021, the CIT remanded the *Amended Final Results* to Commerce, ordering Commerce to ''eliminate any adjustment to {cost of production} based on a {particular market situation (PMS)} in the sales-below-cost test.'' [3] Also, while the CIT in *Borusan* sustained Commerce's decision that the constructed export price (CEP) and export price (EP) may be reduced by section 232 duties paid,[4] the CIT ordered Commerce to reweigh all of the evidence, including any relevant sales data, with respect to the reduction of CEP by section 232 duties paid, ''applying normal decision-making tools without an adverse inference.'' [5]

In its final remand redetermination, issued in April 2021, Commerce stated that it continues to find that a PMS existed in Turkey during the POR that distorted the price of hot-rolled coil, the principle material input for the production of the subject merchandise and significant component of the cost of production of the subject merchandise. Nevertheless, because the CIT has directed Commerce not to make an adjustment to Borusan's cost of production for purposes of the sales-below-cost test, under respectful protest, we recalculated Borusan's weighted-average dumping margin with no PMS adjustment to Borusan's cost of production for purposes of the sales-below-cost test.[6]

Moreover, pursuant to the CIT order that Commerce reweigh all of the evidence, including any relevant sales data, with respect to the reduction of CEP by section 232 duties paid, without applying an adverse inference, we re-examined the information on the record. Based on record evidence, we determined that section 232 duties should not be deducted from CEP sales, because the CEP shipment on which section 232 duties were paid, shortly before the end of the POR, did not include products that Borusan sold between the shipment entry date and the end of the POR.[7] On June 16, 2021, the CIT sustained Commerce's final redetermination with regards to both issues.[8]

## Timken Notice

In its decision in *Timken,*[9] as clarified by *Diamond Sawblades,*[10] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's June 16, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

## Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* and *Amended Final Results* with respect to Borusan as follows:

[1] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018,* 85 FR 3616 (January 22, 2020) (*Final Results*).

[2] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Amended Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 12,893 (March 5, 2020) (*Amended Final Results*).

[3] *See Borusan Mannesmann Boru Sanayi Ve Ticaret A.Ş. and Borusan Mannesmann Pipe U.S. Inc.,* v. *United States,* Court No. 20–00015, Slip Op. 21–18 (CIT February 17, 2021) (*Borusan*) at 19.

[4] *See Borusan* at 17.

[5] *Id.* at 17–19.

[6] *See* Commerce's Final Results of Redetermination Pursuant to Court Order, *Borusan Mannesmann Boru Sanayi Ve Ticaret A.Ş. and Borusan Mannesmann Pipe U.S. Inc.* v. *United States,* Court No. 20–00015, Slip Op. 21–18, dated April 18, 2021.

[7] *Id.*

[8] *See Borusan Mannesmann Boru Sanayi Ve Ticaret A.S.* v. *United States,* Court No. 20–00015, Slip Op. 21–75 (CIT June 16, 2021) (*Borusan Mannesmann*).

[9] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[10] See *Diamond Sawblades Manufacturers Coalition* v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond*Sawblades).

| Exporter or producer | Final results of review weighted-average dumping margin [11] | Final results of remand redetermination weighted-average dumping margin [12] |
|---|---|---|
| Borusan Mannesmann Boru Sanayi Ve Ticaret A.S./Borusan Mannesmann Pipe U.S. Inc ..... | 8.48 | 4.06 |

## Cash Deposit Requirements

Because Borusan has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

## Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: Were produced and/or exported by Borusan and were entered, or withdrawn from warehouse, for consumption during the period May 1, 2017, through April 30, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and exported by Borusan in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[13] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

## Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: June 21, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021–13591 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–DS–P**

[11] *See* Memorandum, ''Analysis for the Amended Final Results of the Antidumping Duty Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Borusan Istikbal Ticaret T.A.S. and Borusan Mannesmann Boru Sanayi ve Ticaret A.S.,'' dated February 28, 2020.

[12] *See* Borusan's Final Remand Results Analysis Memorandum.

[13] *See* 19 CFR 351.106(c)(2).

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–469–823]**

## Utility Scale Wind Towers From Spain: Final Determination of Sales at Less Than Fair Value

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

**SUMMARY:** The Department of Commerce (Commerce) determines that imports of utility scale wind towers (wind towers) from Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2019, through June 30, 2020.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Benito Ballesteros or Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425 or (202) 482–0413, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On April 2, 2021, Commerce published in the **Federal Register** its affirmative preliminary determination in the LTFV investigation of wind towers from Spain.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

[1] *See Utility Scale Wind Towers from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 17354 (April 2, 2021) (*Preliminary Determination*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Spain,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

## Scope of the Investigation

The products covered by this investigation are wind towers from Spain. For a full description of the scope of this investigation, *see* Appendix I of this notice.

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. 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 *http://enforcement.trade.gov/frn/.*

## Verification

As stated in the *Preliminary Determination,* after being selected as the mandatory respondent, Vestas Eolica S.A.U. (Vestas) discontinued its participation in this investigation. Accordingly, Commerce based the *Preliminary Determination* entirely on the application of facts available with adverse inferences (AFA), and did not conduct verification under section 782(i) of the Tariff Act of 1930, as amended (the Act).

## Use of Adverse Facts Available

In the *Preliminary Determination,* Commerce found that Vestas failed to participate to the best of its ability in this investigation. We also found six other companies did not cooperate in this investigation by failing to provide a timely response to Commerce's quantity and value (Q&V) questionnaires. These companies are: Acciona Windpower S.A.; Gamesa Energy Transmission; Haizea Wind Group; Kuzar Systems, S.L.; Proyecto Integrales y Logisticos S.A.A. (Proinlosa); and Windar Revonables. Therefore, in the *Preliminary Determination,* pursuant to sections 776(a) and (b) of the Act, we assigned these companies dumping margins based on total AFA. In applying

total AFA, we assigned an estimated weighted-average dumping margin of 73.00 percent, the sole dumping margin alleged in the Petition,[3] which is the only dumping margin information on the record of this investigation, and which Commerce corroborated to the extent practicable within the meaning of section 776(c) of the Act.

With respect to Proinlosa, in light of information provided following the *Preliminary Determination,* we determine that Proinlosa attempted to contact Commerce in a timely manner regarding the Q&V questionnaire in an effort to timely submit its Q&V questionnaire response. Accordingly, having considered the facts and circumstances surrounding Proinlosa's Q&V response, we no longer find that application of total AFA is appropriate with respect to Proinlosa. For further discussion of our decision concerning Proinlosa, *see* the Issues and Decision Memorandum. For all other companies, *i.e.,* Vestas and the five companies that failed to respond to Commerce's Q&V questionnaire, we continue to find the application of total AFA, pursuant to sections 776(a) and (b) of the Act, is warranted.

## Changes Since the Preliminary Determination

Based on our analysis of comments received, we have modified our treatment of Proinlosa.

## All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the estimated weighted-average dumping margin for all other producers and exporters on the only dumping margin alleged in the Petition, pursuant to section 735(c)(5)(B) of the Act. We made no changes to this rate for this final determination.

## Final Determination

The final estimated weighted-average dumping margins are as follows:

| Exporter/producer | Dumping margin (percent) |
|---|---|
| Vestas Eolica S.A.U | 73.00 |
| Acciona Windpower S.A | 73.00 |
| Gamesa Energy Transmission | 73.00 |
| Haizea Wind Group | 73.00 |
| Kuzar Systems, S.L | 73.00 |
| Windar Renovables | 73.00 |
| All Others | 73.00 |

[3] *See* Petitioner's Letter, ''Utility Scale Wind Towers from India, Malaysia and Spain: Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated September 30, 2020 (Petition).

## Disclosure

The estimated weighted-average dumping margins assigned to the mandatory respondent and non-responsive companies in this investigation are based on total AFA. These rates are based on information from the Petition, and are unchanged from the *Preliminary Determination.* Accordingly, there are no calculations to disclose for this final determination.

## Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of wind towers from Spain, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after April 2, 2021, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the companies listed in the table above will be equal to the company-specific estimated weighted-average dumping margin identified for that company; (2) if the exporter is not a company identified above, but the producer is, then the cash deposit rate will be equal to the estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

These suspension of liquidation instructions will remain in effect until further notice.

## International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wind towers from Spain no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

## Notification Regarding Administrative Protective Orders

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

## Notification to Interested Parties

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: June 14, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not

they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Changes Since the *Preliminary Determination*
V. Discussion of the Issues
  Comment 1: Whether Commerce Should Have Selected Siemens Gamesa Renewable Energy (SGRE) as a Mandatory Respondent
  Comment 2: Whether Commerce Should List All Non-Responsive Companies in the **Federal Register** Notice
VI. Recommendation

[FR Doc. 2021–13547 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–840]**

## Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that certain frozen warmwater shrimp (shrimp) from India is being, or is likely to be, sold in the United States at less than normal value during the period of review (POR) February 1, 2019, through January 31, 2020.

**DATES:** Effective June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Adam Simons or Ajay Menon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172 or (202) 482–1992, respectively.

### Background

Commerce is conducting an administrative review of the antidumping duty order on shrimp from India. The review covers 155 producers and/or exporters of the subject merchandise. Commerce selected two mandatory respondents for individual examination: RSA Marines and HN Indigos. The POR is February 1, 2019, through January 31, 2020. On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[1] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[2] In January 2021, we extended these preliminary results of this review to no later than June 18, 2021.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

### Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[5] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

### Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

### Preliminary Results of the Review

As a result of this review, we preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2019, through January 31, 2020, as follows:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| RSA Marines | 4.73 |
| HN Indigos | 11.36 |
| Companies Not Selected for Individual Review[6] | 7.57 |

### Review-Specific Average Rate for Companies Not Selected for Individual Review

The exporters or producers not selected for individual review are listed in Appendix II.

[1] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated January 26, 2021. However, on June 17, 2021, the President signed into law the Juneteenth National Independence Day Act, making June 19 a Federal holiday. *See* Juneteenth National Independence Day Act, S. 475, Public Law 117–17 (2021). Because the Federal holiday fell on a Saturday, it was observed on Friday, June 18, 2021. Where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for these preliminary results is on June 21, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

[6] This rate is based on the weighted-average of the margins calculated for those companies selected for individual review using the publicly-ranged U.S. quantities. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin

## Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[7] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[8] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Case and rebuttal briefs should be filed using ACCESS.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[12] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[13]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication date of this notice, pursuant to section 751(a)(3)(A) of the Act, unless the deadline is extended.

## Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14]

Pursuant to 19 CFR 351.212(b)(1), because both respondents reported the entered value for all of their U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the review-specific average rate, calculated as noted in the ''Preliminary Results of Review'' section, above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[15]

Consistent with its recent notice,[16] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

## Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation.[17] These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

## Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 21, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

## Appendix II—Review-Specific Average Rate Applicable to Companies Not Selected for Individual Review

1. Abad Fisheries Private Limited
2. ADF Foods Ltd.
3. Albys Agro Private Limited
4. Al-Hassan Overseas Private Limited
5. Allana Frozen Foods Pvt. Ltd.
6. Allanasons Ltd.
7. Alps Ice & Cold Storage Private Limited

determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the Review-Specific Average Rate for the Preliminary Results,'' dated concurrently with this notice.

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.303.

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See* 19 CFR 351.212(b)(1).

[15] *See* section 751(a)(2)(C) of the Act.

[16] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 884 (January 15, 2021).

[17] *See Notice of Amended Final Determination of Sale at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (February 1, 2005).

8. Amarsagar Seafoods Private Limited
9. Amulya Seafoods
10. Anantha Seafoods Private Limited
11. Anjaneya Seafoods
12. Asvini Agro Exports
13. Ayshwarya Seafood Private Limited
14. B R Traders
15. Baby Marine Eastern Exports
16. Baby Marine Exports
17. Baby Marine International
18. Baby Marine Sarass
19. Baby Marine Ventures
20. Balasore Marine Exports Private Limited
21. BB Estates & Exports Private Limited
22. Bell Exim Private Limited (Bell Foods (Marine Division))
23. Bell Exim Pvt. Ltd.
24. Bhatsons Aquatic Products
25. Bhavani Seafoods
26. Bijaya Marine Products
27. Blue Fin Frozen Foods Pvt. Ltd.
28. Blue Water Foods & Exports P. Ltd.
29. Britto Seafood Exports Pvt Ltd.
30. Canaan Marine Products
31. Capithan Exporting Co.
32. Cargomar Private Limited
33. Chakri Fisheries Private Limited
34. Chemmeens (Regd)
35. Cherukattu Industries (Marine Div)
36. Cochin Frozen Food Exports Pvt. Ltd.
37. Continental Fisheries India Pvt. Ltd.
38. Coreline Exports
39. Corlim Marine Exports Pvt. Ltd.
40. Crystal Sea Foods Private Limited
41. Delsea Exports Pvt. Ltd.
42. Devi Sea Foods Limited [18]
43. Empire Industries Limited
44. Entel Food Products Private Limited
45. Esmario Export Enterprises
46. Everblue Sea Foods Private Limited
47. Febin Marine Foods
48. Fouress Food Products Private Limited
49. Frontline Exports Pvt. Ltd.
50. G A Randerian Ltd.
51. Gadre Marine Exports
52. Galaxy Maritech Exports P. Ltd.
53. Geo Aquatic Products (P) Ltd.
54. Godavari Mega Aqua Food Park Private Limited
55. Grandtrust Overseas (P) Ltd.
56. Green House Agro Products
57. GVR Exports Pvt. Ltd.
58. Hari Marine Private Limited
59. Haripriya Marine Export Pvt. Ltd.
60. HIC ABF Special Foods Pvt. Ltd.
61. Hiravati Exports Pvt. Ltd.
62. Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)
63. Hiravati Marine Products Private Limited
64. HMG Industries Limited
65. Hyson Logistics and Marine Exports Private Limited
66. Indian Aquatic Products
67. Indo Aquatics
68. Indo Fisheries
69. Indo French Shellfish Company Private Limited
70. International Freezefish Exports
71. Jinny Marine Traders
72. Jiya Packagings
73. Karunya Marine Exports Private Limited
74. Kaushalya Aqua Marine Products Exports Pvt. Ltd.
75. Kay Kay Exports
76. Kings Marine Products
77. Koluthara Exports Ltd.
78. Landauer Ltd.
79. Libran Cold Storages (P) Ltd.
80. Mangala Sea Products
81. Marine Harvest India
82. Megaa Moda Pvt. Ltd.
83. Milsha Agro Exports Private Limited
84. Milsha Sea Products
85. Minaxi Fisheries Private Limited
86. Mindhola Foods LLP
87. MMC Exports Limited
88. MTR Foods
89. N.K. Marine Exports LLP
90. Naik Frozen Foods
91. Naik Oceanic Exports Pvt. Ltd./Rafiq Naik Exports Pvt. Ltd.
92. Naik Seafoods Ltd.
93. Nekkanti Mega Food Park Private Limited
94. Nine Up Frozen Foods
95. Nutrient Marine Foods Limited
96. Oceanic Edibles International Limited
97. Paragon Sea Foods Pvt. Ltd.
98. Paramount Seafoods
99. Parayil Food Products Pvt., Ltd.
100. Pesca Marine Products Pvt., Ltd.
101. Pijikay International Exports P Ltd.
102. Pravesh Seafood Private Limited
103. Premier Exports International
104. Premier Marine Foods
105. Premier Seafoods Exim (P) Ltd.
106. RDR Exports
107. R F Exports
108. RF Exports Private Limited
109. R V R Marine Products Limited
110. Raju Exports
111. Raunaq Ice & Cold Storage
112. Royal Imports and Exports
113. Royal Oceans
114. Rupsha Fish Private Limited
115. S Chanchala Combines Private Limited
116. Sagar Samrat Seafoods
117. Sahada Exports
118. Salet Seafoods Private Limited
119. Samaki Exports Private Limited
120. Sasoondock Matsyodyog Sahakari Society Ltd.
121. Seagold Overseas Pvt. Ltd.
122. Shimpo Exports Private Limited
123. Shimpo Seafoods Private Limited
124. Shiva Frozen Food Exp. Pvt. Ltd.
125. Shroff Processed Food & Cold Storage P Ltd.
126. Silver Seafood
127. Sita Marine Exports
128. Sonia Fisheries Private Limited
129. Sri Sakkthi Cold Storage
130. SSF Ltd.
131. Star Agro Marine Exports Private Limited
132. Star Organic Foods Private Limited
133. Stellar Marine Foods Private Limited
134. Sterling Foods
135. Sun Agro Exim
136. Supran Exim Private Limited
137. Suvarna Rekha Exports Private Limited
138. Suvarna Rekha Marines P Ltd.
139. TBR Exports Pvt Ltd.
140. Teekay Marine P. Ltd.
141. The Waterbase Limited
142. Triveni Fisheries P Ltd.
143. U & Company Marine Exports
144. Ulka Sea Foods Private Limited
145. Uniroyal Marine Exports Ltd.
146. Unitriveni Overseas
147. Vasai Frozen Food Co.
148. Veronica Marine Exports Private Limited
149. Victoria Marine & Agro Exports Ltd.
150. Vinner Marine
151. Vitality Aquaculture Pvt. Ltd.
152. VRC Marine Foods LLP
153. Zeal Aqua Limited

[FR Doc. 2021–13622 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–DS–P**

[18] Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, the results of this administrative review apply to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–122–858]**

### Certain Softwood Lumber Products From Canada: Notice of Initiation and Preliminary Results of Countervailing Duty Changed Circumstances Review

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

**SUMMARY:** The Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) to determine whether Chaleur Forest Products LP (CFP LP) and Chaleur Forest Products Inc. (CFP Inc.) are the successors-in-interest (SIIs) to Chaleur Sawmills LP (Chaleur LP) and Fornebu Lumber Co. Inc. (Fornebu Inc.), respectively, in the context of the

countervailing duty (CVD) order on certain softwood lumber products (softwood lumber) from Canada. We also preliminarily determine that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable June 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 3, 2018, Commerce published in the **Federal Register** a CVD order on softwood lumber from Canada.[1] On March 11, 2021, CFP LP and CFP Inc. (collectively, the Chaleur Companies) requested that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), Commerce conduct a CCR of the *Order* to confirm that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively, and accordingly, to assign them the cash deposit rates of Chaleur LP and Fornebu Inc.[2] In its submission, the Chaleur Companies state that Chaleur LP and Fornebu Inc. undertook name changes to CFP LP and CFP Inc., respectively, but are otherwise unchanged.[3] In a March 19, 2021, filing, the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (hereinafter referred to as the petitioner) argued that Fornebu Inc. was not eligible to receive a cash deposit rate that differs from the all-others rate that is listed in the *Order* and, thus, argued that Commerce should refrain from initiating the CCR.[4] In a March 29, 2021, filing, the Chaleur Companies argue that Fornebu Inc. is eligible for a CCR and that Commerce should, therefore, initiate and preliminarily determine that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc, respectively.[5]

On April 12, 2021, Commerce issued a deficiency letter to the Chaleur Companies requesting additional information and documentation regarding changes to operations, ownership, and corporate and legal structure during the relevant period.[6] On May 3, 2021, the Chaleur Companies submitted an adequate response to the deficiency letter.[7]

## Scope of the Order

The merchandise subject to the *Order* is certain softwood lumber products.[8] The products are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4406.11.0000; 4406.91.0000; 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4407.11.00.01; 4407.11.00.02; 4407.11.00.42; 4407.11.00.43; 4407.11.00.44; 4407.11.00.45; 4407.11.00.46; 4407.11.00.47; 4407.11.00.48; 4407.11.00.49; 4407.11.00.52; 4407.11.00.53; 4407.12.00.01; 4407.12.00.02; 4407.12.00.17; 4407.12.00.18; 4407.12.00.19; 4407.12.00.20; 4407.12.00.58; 4407.12.00.59; 4407.19.05.00; 4407.19.06.00; 4407.19.10.01; 4407.19.10.02; 4407.19.10.54; 4407.19.10.55; 4407.19.10.56; 4407.19.10.57; 4407.19.10.64; 4407.19.10.65; 4407.19.10.66; 4407.19.10.67; 4407.19.10.68; 4407.19.10.69; 4407.19.10.74; 4407.19.10.75; 4407.19.10.76; 4407.19.10.77; 4407.19.10.82; 4407.19.10.83; 4407.19.10.92; 4407.19.10.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; 4418.50.0010; 4418.50.0030; 4418.50.0050 and 4418.99.10.00. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

## Initiation and Preliminary Results of CCR

Pursuant to section 751(b)(1) of the Act, Commerce will conduct a CCR upon receipt of information concerning, or a request from, an interested party for a review of a CVD order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by the Chaleur Companies supporting their claim that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively, demonstrates changed circumstances sufficient to warrant such a review.[9] Therefore, in accordance with section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), we are initiating a CCR based upon the information contained in Chaleur Companies' filings.[10]

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.[11] In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.[12]

In a CVD CCR, Commerce will make an affirmative successorship finding (*i.e.,* that the respondent company is the

[1] *See Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 347 (January 3, 2018) (*Order*).

[2] *See* Chaleur Companies' Letter, ''Certain Softwood Lumber Products from Canada: Chaleur's Request for Changed Circumstances Reviews,'' dated March 11, 2021 (CCR Request).

[3] *Id.* at 2–3.

[4] *See* Petitioner's Letter, ''Certain Softwood Lumber Products from Canada: Response to Chaleur's Response for Changed Circumstances Reviews,'' dated March 19, 2021.

[5] *See* Chaleur Companies' Letter, ''Certain Softwood Lumber Products from Canada: Rebuttal to Petitioner's Response to Chaleur's Request for Changed Circumstances Reviews,'' dated March 29, 2021.

[6] *See* Commerce's Letter, ''Certain Softwood Lumber Products from Canada: Countervailing Duty Changed Circumstances Review Request: Response to CCR Request from Chaleur Forest Products LP (Chaleur FP LP) and Chaleur Forest Products Inc. (Chaleur FP Inc.) (collectively, the Chaleur Companies),'' dated April 12, 2021.

[7] *See* Chaleur Companies' Letter, ''Certain Softwood Lumber Products from Canada: Chaleur's Response to the Department's Deficiency Letter,'' dated May 3, 2021 (Deficiency Response).

[8] For a complete description of the *Order, see* Memorandum, ''Initiation and Preliminary Results of Changed Circumstances Review: Preliminary Decision Memorandum,'' dated concurrently with this notice (Initiation and Preliminary Decision Memorandum).

[9] *See* 19 CFR 351.216(d); *see also* CCR Request and Deficiency Response.

[10] *See* CCR Request and Deficiency Response.

[11] *See* 19 CFR 351.221(c)(3)(ii).

[12] *See, e.g., Notice of Initiation and Preliminary Results of Changed Circumstances Reviews: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,* 85 FR 5193 (January 29, 2020), unchanged in *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Changed Circumstances Reviews,* 85 FR 14638 (March 13, 2020) (*Passenger Vehicle and Light Truck Tires from China CCR*).

same subsidized entity for CVD cash deposit purposes as the predecessor company) where there is no evidence of significant changes in the respondent's: (1) Operations; (2) ownership; and (3) corporate and legal structure during the relevant period (*i.e.,* the ''look-back window'') that could have affected the nature and extent of the respondent's subsidy levels.[13] Where Commerce makes an affirmative CVD successorship finding, the successor's merchandise will be entitled to enter under the predecessor's cash deposit rate.[14]

In accordance with 19 CFR 351.216, we preliminarily determine that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively. Record evidence, as submitted by the Chaleur Companies, indicates that CFP LP and CFP Inc. operate as essentially the same business entities as Chaleur LP and Fornebu Inc., respectively, with respect to the subject merchandise.[15] Specifically, all record information with respect to trading operations, shareholders, and corporate and legal structure demonstrates that CFP LP and CFP Inc. are the same subsidized entity as their predecessors.[16] For the complete SII analysis, refer to the accompanying Initiation and Preliminary Decision Memorandum. Commerce will issue its final results of the review in accordance with the time limits set forth in 19 CFR 351.216(e).

Should the final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise exported by CFP LP and CFP Inc. the CVD cash deposit rates applicable to Chaleur LP and Fornebu Inc., effective the date of publication of the final results.

## Public Comment

Pursuant to 19 CFR 351.310(c), and interested party may request a hearing within 30 days of publication of this notice. In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[17] All comments are to be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) available to registered users at *https://access.trade.gov,* and must also be served on interested parties. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day it is due.[18] Until further notice, Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information.[19]

## Final Results of the Changed Circumstances Review

Consistent with 19 CFR 351.216(e), Commerce will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days of publication of these preliminary results, if all parties agree to our preliminary finding.

## Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act, and 19 CFR 351.216(b) and 351.221(c)(3).

Dated: June 14, 2021.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations.*

[FR Doc. 2021–13623 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–DS–P**

[13] *See Certain Pasta from Turkey: Preliminary Results of Countervailing Duty Changed Circumstances Review,* 74 FR 47225 (September 15, 2009). Here, the relevant period, or ''look-back window,'' is December 31, 2020 (end of the period of review associated with the most recent opportunity to request an administrative review) through March 11, 2021 (date of the CCR request).

[14] *See Passenger Vehicle and Light Truck Tires from China CCR.*

[15] *See* Initiation and Preliminary Decision Memorandum; *see also* CCR Request and Deficiency Response.

[16] *Id.*

[17] *See* 19 CFR 351.309(c)(2).

[18] *See* 19 CFR 351.303(b).

[19] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

---

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Evaluation of National Estuarine Research Reserve; Public Meeting; Request for Comments

**AGENCY:** Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of public meeting and opportunity to comment.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the Apalachicola National Estuarine Research Reserve.

**DATES:** NOAA will consider all written comments received by Friday, August 13, 2021. A virtual public meeting will be held on Wednesday, August 4, 2021 at 12 p.m. EDT. To participate in the virtual public meeting, registration is required by Tuesday, August 3, 2021, at 5 p.m. EDT.

**ADDRESSES:** You may submit written comments on the national estuarine research reserve NOAA intends to evaluate by emailing Susie Holst Rice, Evaluator, NOAA Office for Coastal Management at *Susie.Holst@noaa.gov.* See **SUPPLEMENTARY INFORMATION** for other information about submitting comments.

*Registration:* To register for the virtual public meeting, visit *https://docs.google.com/forms/d/e/1FAIpQLSeR67COjWtau7B3zk_nz6WQ-FOgYmlnhe5-INWDJGpnPaR6lA/viewform?usp=sf_link.* If you have difficulty registering, contact Susie Holst Rice by email at *Susie.Holst@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Susie Holst Rice, Evaluator, NOAA Office for Coastal Management by email at *Susie.Holst@noaa.gov* or call (603) 862–1205. Copies of the previous evaluation findings, reserve management plan, and reserve site profile may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Susie Holst Rice.

**SUPPLEMENTARY INFORMATION:** Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved national estuarine research reserves. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state of Florida has met the national objectives, adhered to the Reserve's management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the

availability of the Final Evaluation Findings.

**Submitting Comments**

Timely comments received by the Office for Coastal Management are considered part of the public record and may be publicly accessible. Any personal information (*e.g.,* name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments. You may also provide public comments during the virtual public meeting. You may participate online or by phone. If you would like to provide comment during the public meeting, please select ''yes'' during the online registration. The line-up of speakers will be based on the date and time of registration. Once you register, you will receive a confirmation of your registration. One hour prior to the start of the meeting on August 4, 2021, you will be emailed a link to the public meeting and information about participating.

**Keelin Kuipers,**

*Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2021–13583 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice of Availability of a Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition

**AGENCY:** National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of availability of a draft programmatic environmental impact statement; request for comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) has prepared a draft programmatic environmental impact statement (PEIS) in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), to analyze the potential environmental impacts associated with NOS's recurring data collection projects to characterize submerged features (*e.g.,* habitat, bathymetry, marine debris). The ''action area'' for these projects encompasses United States (U.S.) rivers, states' offshore waters, the U.S. territorial sea, the contiguous zone, the U.S. Exclusive Economic Zone (U.S. EEZ), and coastal and riparian lands. As a part of the Proposed Action, NOS may use active acoustic equipment such as sub-bottom profilers, single beam and multibeam echo sounders, side-scan sonars, and Acoustic Doppler Current Profilers. The Draft PEIS analyzes NOS data collection projects for a time period of 6 years. Publication of this document begins the 60-day public comment period for the Draft PEIS.

**DATES:** Written comments on the Draft PEIS will be accepted on or before August 24, 2021.

**ADDRESSES:** The Draft PEIS can be viewed or downloaded from the NOS website at *https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html.* You may submit comments on this document, identified by NOAA–NOS–2021–0055, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NOS–2021–0055 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Please direct written comments to DOC/NOAA/NOS Environmental Compliance Coordinator, SSMC4-Station 13612, 1305 East West Highway, Silver Spring, MD 20910.
- *Email: nosaa.ec@noaa.gov.*

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Giannina DiMaio, DOC/NOAA/NOS, Environmental Compliance Coordinator, SSMC4-Station 13612, 1305 East West Highway, Silver Spring, MD 20910, *nosaa.ec@noaa.gov,* 240–533–0918.

**SUPPLEMENTARY INFORMATION:** The Proposed Action analyzed in the Draft PEIS is to continue NOS's surveying and mapping projects throughout the action area. The Draft PEIS has been prepared to: (1) Inform NOS and the public on the physical, biological, economic, and social impacts of NOS mapping and surveying projects; and (2) assist NOS in deciding how to execute its mapping and surveying program over the next 6 years.

The Draft PEIS assesses the direct, indirect, and cumulative environmental impacts of a suite of surveying and mapping data collection activities. NOS initially planned to address the environmental impacts of the Proposed Action through a Programmatic Environmental Assessment (PEA) and published a Notice of Intent to prepare a PEA in the **Federal Register** on December 19, 2016 (81 FR 91921). However, during preparation of the PEA, NOS determined that NOS and the public would be better served through the Environmental Impact Statement process due to the geographic scope of the mapping program and the complexities of the analysis.

The purpose of the Proposed Action is to gather accurate and timely data on the marine and coastal environment. The need for the Proposed Action is to ensure safety at sea, economic well-being, and the efficient stewardship of public trust resources. NOS projects would include surveys performed from crewed vessels and remotely-operated or autonomous vehicles, operated by NOS field crews, contractors, grantees, or permit/authorization holders. NOS may use echo sounders and other active acoustic equipment and employ other equipment, including bottom samplers and conductivity, temperature, and depth instruments to collect the needed data. A project could also involve supporting activities, such as the use of divers and the installation of tide buoys.

The Draft PEIS evaluates three alternatives:

- *Alternative A—No Action:* Under Alternative A, NOS would continue to operate a variety of equipment and technologies to gather accurate and timely data on the nature and condition of the marine and coastal environment. This alternative reflects the technology, equipment, scope, and methods currently in use by NOS, at the level of effort reflecting NOS fiscal year 2019 funding levels. (NOS operations were widely disrupted during the 2020 field season due to the COVID–19 pandemic. Therefore, the PEIS relies on 2019 as the baseline year for Alternative A, as it is the most recent example of typical field operations that would be enacted if NOS chose to continue historical levels of project effort.)
- *Alternative B:* This alternative consists of Alternative A plus the more

widespread adoption of new techniques and technologies (such as remotely operated vehicles (ROVs), microwave water level (MWWL) radar sensors, etc.) to more efficiently perform surveying, mapping, charting and related data gathering. Specific examples of adaptive methods and equipment that NOS programs are likely to adopt under Alternative B in the next 6 years include:

○ Greater use of ROVs with echo sounder technologies;

○ Greater use of autonomous underwater vehicles (AUVs) and autonomous surface vehicles (ASVs) with echo sounder technologies;

○ Conversion of one or more existing 10-m (33 feet) crewed survey boats into ASVs;

○ Greater use of more efficient, wide-beam sonar systems (phase-differencing bathymetric systems) for nearshore hydrographic surveys;

○ Increased field operations in the National Marine Sanctuary system with associated requirements for hydroacoustic charting, surveying, mapping and associated activities; and

○ Installation, operation, and maintenance of additional water level stations including transitioning to mostly MWWL radar sensors and upgraded storm strengthening to make stations more climate resilient.

Under Alternative B, all of the activities and equipment operation described in Alternative A would continue, many at a higher level of effort. The nature of these actions would not change, but the overall level of activity would be increased.

• *Alternative C:* Like Alternative B, Alternative C adopts new techniques and technologies to encourage greater program efficiencies regarding surveying, mapping, charting, and related data gathering activities. In addition, Alternative C would consist of NOS program implementation with an overall funding increase of 20 percent relative to Alternative B. Under Alternative C, all of the activities and equipment operation described in Alternative B would continue, many at a higher level of effort. The nature of these actions would not change, but the overall level of activity would be augmented.

NOS will initiate consultations under the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the Magnuson–Stevens Fishery Conservation and Management Act, and the National Marine Sanctuaries Act following publication of the Draft PEIS. NOS will also complete the required analysis and documentation to comply with Section 106 of the National Historic Preservation Act and Section 307 of the Coastal Zone Management Act.

The purpose of this NOA is to invite affected government agencies, non-governmental organizations, tribes and tribal organizations, and interested members of the public to participate in the Draft PEIS process and provide comments on the structure, contents, and analysis in the Draft PEIS. The official public review and comment period ends on August 24, 2021. Please visit the project web page for additional information regarding the program: *https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html.*

**Authority:** The preparation of the Draft PEIS was conducted in accordance with the requirements of NEPA, the Council on Environmental Quality's Regulations (40 CFR 1500 *et seq.* (1978)), other applicable regulations, and NOAA's policies and procedures for compliance with those regulations. While the CEQ regulations implementing NEPA were revised as of September 14, 2020 (85 FR 43304, Jul. 16, 2020), NOS prepared this Draft PEIS using the 1978 CEQ regulations because this environmental review began on December 19, 2016, when NOS published a Notice of Intent to conduct scoping and prepare a Draft Programmatic Environmental Assessment. Written comments must be received on or before August 24, 2021.

**Paul M. Scholz,**

*Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.*

[FR Doc. 2021–13361 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–JE–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB162]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Delaware and New Jersey

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

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an IHA to Garden State Offshore Energy, LLC (Garden State) to incidentally harass, by Level B harassment, marine mammals incidental to marine site characterization surveys offshore of Delaware and New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0482) and along potential export cable routes to landfall locations in Delaware and New Jersey.

**DATES:** This authorization is effective from June 11, 2021 through June 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Carter Esch, Office of Protected Resources, NMFS, (301) 427–8421. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

## Summary of Request

On November 2, 2020, NMFS received a request from Garden State for an IHA to take marine mammals incidental to marine site characterization surveys offshore of Delaware and New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0482) and along potential export cable routes (ECRs) to a landfall location in Delaware and New Jersey. Following NMFS' review of the draft application, a revised version was submitted on March 30, 2021. The application was deemed adequate and complete on April 5, 2021. Garden State's request is for take of a small number of 16 species of marine mammals (with 17 managed stocks) by Level B harassment only. Neither Garden State nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

## Description of Specified Activity

### *Overview*

As part of its overall marine site characterization survey operations, Garden State plans to conduct high-resolution geophysical (HRG) surveys in the Lease Area and along potential ECRs to landfall locations in Delaware and New Jersey.

The purpose of the marine site characterization surveys is to obtain a baseline assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of offshore wind facility development. Surveys are also conducted to support engineering design and to map unexploded ordnance. Underwater sound resulting from Garden State's site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of Level B harassment. Table 1 identifies representative survey equipment with the expected potential to result in exposure of marine mammals and potentially result in take. The survey activities planned by Garden State are described in detail in the notice of the proposed IHA (86 FB 22160; April 27, 2021).

### *Dates and Duration*

The estimated duration of HRG survey activity is expected to be up to 350 survey days over the course of a single year (''survey day'' defined as a 24-hour (hr) activity period), with 200 vessel survey days expected in the Lease Area and 150 vessel survey days expected in the ECR area. This schedule is based on 24-hour operations and includes potential down time due to inclement weather. Although some shallow-water locations may be surveyed by a smaller vessel during daylight hours only, the estimated number of survey days assumes uniform 24-hr operations.

### *Specific Geographic Region*

The survey activities will occur within the Project Area which includes the Lease Area and potential ECRs to landfall locations, as shown in Figure 1 of the notice of the proposed IHA. The Lease Area is approximately 284 square kilometers ($km^2$) and is within the Delaware Wind Energy Area (WEA) of the Bureau of Ocean Energy Management (BOEM) Mid-Atlantic planning area. Water depths in the Lease Area range from 15 meters (m) to 30 m. Water depths in the ECR area extend from the shoreline to approximately 30 m.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT

| Equipment | Acoustic source type | Operating frequency (kHz) | $SL_{rms}$ (dB re 1 μPa m) | $SL_{0\text{-}pk}$ (dB re 1 μPa m) | Pulse duration (width) (millisecond) | Repetition rate (Hz) | Beamwidth (degrees) | CF = Crocker and Fratantonio (2016) MAN = Manufacturer |
|---|---|---|---|---|---|---|---|---|
| **Non-Impulsive, Non-Parametric, Shallow Sub-Bottom Profilers (CHIRP Sonars)** | | | | | | | | |
| ET 216 (2000DS or 3200 top unit). | Non-impulsive, mobile, intermittent. | 2–16; 2–8 | 195 | ..... | 20 | 6 | 24 | MAN. |
| ET 424 ..... | Non-impulsive, mobile, intermittent. | 4–24 | 176 | ..... | 3.4 | 2 | 71 | CF. |
| ET 512 ..... | Non-impulsive, mobile, intermittent. | 0.7–12 | 179 | ..... | 9 | 8 | 80 | CF. |
| GeoPulse 5430A ..... | Non-impulsive, mobile, intermittent. | 2–17 | 196 | ..... | 50 | 10 | 55 | MAN. |
| Teledyne Benthos Chirp III—TTV 170. | Non-impulsive, mobile, intermittent. | 2–7 | 197 | ..... | 60 | 15 | 100 | MAN. |
| **Impulsive, Medium Sub-Bottom Profilers (Sparkers & Boomers)** | | | | | | | | |
| AA, Dura-spark UHD (400 tips, 500 J) [1]. | Impulsive, mobile ..... | 0.3–1.2 | 203 | 211 | 1.1 | 4 | Omni | CF. |
| AA, Dura-spark UHD (400+400) [1]. | Impulsive, mobile ..... | 0.3–1.2 | 203 | 211 | 1.1 | 4 | Omni | CF (AA Dura-spark UHD Proxy). |
| GeoMarine, Geo-Source dual 400 tip sparker (800 J) [1]. | Impulsive, mobile ..... | 0.4–5 | 203 | 211 | 1.1 | 2 | Omni | CF (AA Dura-spark UHD Proxy). |
| GeoMarine Geo-Source 200 tip sparker (400 J) [1]. | Impulsive, mobile ..... | 0.3–1.2 | 203 | 211 | 1.1 | 4 | Omni | CF (AA Dura-spark UHD Proxy). |
| GeoMarine Geo-Source 200–400 tip light weight sparker (400 J) [1]. | Impulsive, mobile ..... | 0.3–1.2 | 203 | 211 | 1.1 | 4 | Omni | CF (AA Dura-spark UHD Proxy). |
| GeoMarine Geo-Source 200–400 tip freshwater sparker (400 J) [1]. | Impulsive, mobile ..... | 0.3–1.2 | 203 | 211 | 1.1 | 4 | Omni | CF (AA Dura-spark UHD Proxy). |

TABLE 1—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT—Continued

| Equipment | Acoustic source type | Operating frequency (kHz) | $SL_{rms}$ (dB re 1 μPa m) | $SL_{0\text{-}pk}$ (dB re 1 μPa m) | Pulse duration (width) (millisecond) | Repetition rate (Hz) | Beamwidth (degrees) | CF = Crocker and Fratantonio (2016) MAN = Manufacturer |
|---|---|---|---|---|---|---|---|---|
| AA, triple plate S-Boom (700–1,000 J)[2] ..... | Impulsive, mobile ..... | 0.1–5 | 205 | 211 | 0.6 | 4 | 80 | CF |

– = not applicable; NR = not reported; μPa = micropascal; AA = Applied Acoustics; dB = decibel; ET = EdgeTech; HF = high-frequency; J = joule; LF = low-frequency; Omni = omnidirectional source; re = referenced to; PK = zero-to-peak sound pressure level; SL = source level; $SPL_{rms}$ = root-mean-square sound pressure level; UHD = ultra-high definition; WFA = weighting factor adjustments.

[1] The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the survey. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

[2] Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP–D700 and CSP–N). The CSP–D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP–N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S-Boo.

As noted above, a detailed description of Garden State's planned surveys is provided in the **Federal Register** notice for the proposed IHA (86 FR 22160; April 27, 2021). Since that time, no changes have been made to the planned survey activities; therefore, a detailed description if not provided here. Please refer to that **Federal Register** notice for the more thorough description of the specified activity. Required mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

**Comments and Responses**

A notice of NMFS' proposal to issue an IHA to Garden State was published in the **Federal Register** on April 27, 2021 (86 FR 22160). During the 30-day comment period, NMFS received comments from: (1) A group of environmental non-governmental organizations (ENGOs) including the Natural Resources Defense Council, Conservation Law Foundation, National Wildlife Federation, Defenders of Wildlife, Southern Environmental Law Center, Wildlife Conservation Society, Surfrider Foundation, Mass Audubon, Friends of the Earth, International Fund for Animal Welfare, NY4WHALES, WDC Whale and Dolphin Conservation, Marine Mammal Alliance Nantucket, Gotham Whale, All Our Energy, Seatuck Environmental Association, Inland Ocean Coalition, Nassau Hiking & Outdoor Club, and Connecticut Audubon Society; and (2) the Delaware Department of Resources and Environmental Control (DNREC).

NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* Please see the letters for full detail and rationale for the comments.

*Comment 1:* The ENGOs recommended that NMFS incorporate additional data sources into calculations of marine mammal density and take and that NMFS must ensure all available data are used to ensure that any potential shifts in North Atlantic right whale habitat usage are reflected in estimations of marine mammal density and take. The ENGOs asserted in general that the density models used by NMFS do not fully reflect the abundance, distribution, and density of marine mammals for the U.S. East Coast and therefore result in an underestimate of take.

*Response:* At the outset of their letter, the ENGOs note that the comments reflect overarching concerns regarding NMFS' IHAs for marine site characterization survey (including HRG survey) activities required for offshore wind energy development, as well as their intention that the comments be considered in relation to all authorizations associated with marine site characterization activities for offshore wind energy off the U.S. East Coast. The comments provided in the letter apparently focus concern on available data regarding the Massachusetts and Rhode Island and Massachusetts Wind Energy Areas, and on North Atlantic right whale habitat usage within those areas. As such, the specific comments pertaining to those data and right whale habitat usage within those areas are not germane to this specific action, *i.e.,* issuance of an IHA associated with HRG survey activity off of Delaware and New Jersey. We address the general comments regarding sufficiency of the available data on marine mammal occurrence below.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Lab (MGEL) (Roberts *et al.* 2016, 2017, 2018, 2020) represent the best available scientific information concerning marine mammal occurrence within the U.S. Atlantic Ocean. Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016); more information, including the model results and supplementary information for each of those models, is available at *https://seamap.env.duke.edu/models/Duke/EC/*. These models provided key improvements over previously available information, by incorporating additional aerial and shipboard survey data from NMFS and from other organizations collected over the period 1992–2014, incorporating 60 percent more shipboard and 500 percent more aerial survey hours than did previously available models; controlling for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting; and modeling density from an expanded set of eight physiographic and 16 dynamic oceanographic and biological covariates. In subsequent years, certain models have been updated on the basis of additional data as well as methodological improvements. In addition, a new density model for seals was produced as part of the 2017–18 round of model updates.

Of particular note, Roberts *et al.* (2020) further updated density model results for North Atlantic right whales by incorporating additional sighting data and implementing three major changes: increasing spatial resolution, generating monthly estimates on three time periods of survey data, and dividing the study area into five discrete regions. This most recent update—model version 9 for North Atlantic right whales—was undertaken with the following objectives (Roberts *et al.,* 2020):

- To account for recent changes to right whale distributions, the model should be based on survey data that extend through 2018, or later if possible. In addition to updates from existing collaborators, data should be solicited from two survey programs not used in prior model versions:
  - Aerial surveys of the Massachusetts and Rhode Island Wind Energy Areas led by New England Aquarium (Kraus *et*

*al.,* 2016), spanning 2011–2015 and 2017–2018.

○ Recent surveys of New York waters, either traditional aerial surveys initiated by the New York State Department of Environmental Conservation in 2017, or digital aerial surveys initiated by the New York State Energy Research and Development Authority in 2016, or both.

• To reflect a view in the right whale research community that spatiotemporal patterns in right whale density changed around the time the species entered a decline in approximately 2010, consider basing the new model only on recent years, including contrasting ''before'' and ''after'' models that might illustrate shifts in density, as well as a model spanning both periods, and specifically consider which model would best represent right whale density in the near future.

• To facilitate better application of the model to near-shore management questions, extend the spatial extent of the model farther in-shore, particularly north of New York.

• Increase the resolution of the model beyond 10 kilometers (km), if possible.

All of these objectives were met in developing the most recent update to the North Atlantic right whale density model. The commenters do not cite this most recent report, and the comments suggest that the aforementioned data collected by the New England Aquarium is not reflected in the model. Therefore, it is unclear whether the commenters are aware of the most recently available data, which is used herein.

As noted above, NMFS has determined that the Roberts *et al.* suite of density models represent the best available scientific information, and we specifically note that the 2020 version of the North Atlantic right whale model may address some of the specific concerns provided by the commenters. (Note that there has been an additional minor model update affecting predictions for Cape Cod Bay in the month of December, which is not relevant to the location of this survey off of Delaware and New Jersey.) However, NMFS acknowledges that there will always be additional data that is not reflected in the models and that may inform our analyses, whether because the data were not made available to the model authors or because the data is more recent than the latest model version for a specific taxon. NMFS will review any recommended data sources to evaluate their applicability in a quantitative sense (*e.g.,* to an estimate of take numbers) and, separately, to ensure that relevant information is considered qualitatively when assessing the impacts of the specified activity on the affected species or stocks and their habitat. NMFS will continue to use the best available scientific information, and we welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including North Atlantic right whales, in U.S. Atlantic waters.

The ENGOs cited several additional sources of information that are not reflected in currently available density models, including sightings databases and passive acoustic monitoring (PAM) efforts. However, no specific recommendations were made with regard to use of this information in informing the take estimates. Rather, the commenters reference a disparate array of data sources (some which are indeed reflected in the most recent models) and suggest that NMFS should ''collate and integrate these and more recent data sets to more accurately reflect marine mammal presence for future IHAs and other work.'' NMFS would welcome in the future constructive suggestions as to how these objectives might be more effectively accomplished. NMFS used the best scientific information available at the time the analyses for the proposed IHA were conducted, and has considered all available data, including sources referenced by the commenters, in reaching its determinations in support of issuance of the IHA requested by Garden State.

*Comment 2:* The ENGOs noted that the Roberts *et al.* model does not differentiate between species of pilot whale or seal or between stocks of bottlenose dolphin. The ENGOs express concern that, as a result, NMFS may not conduct the appropriate species-or stock-specific negligible impact analysis. The ENGOs also imply that use of these models may produce inaccurate take numbers by stating that ''[m]iscalculation of take levels based on incomplete data could have serious implications for the future conservation of these species and stocks.''

*Response:* The MMPA requires that species- or stock-specific negligible impact determinations be made, and NMFS has done so. In this case, NMFS has authorized take numbers specific to each affected species or stock. As a general matter, NMFS is unaware of any available density data which differentiates between species of pilot whales or seals, or stocks of bottlenose dolphins. However, lack of such data does not preclude the requisite species- or stock-specific findings. In the event that an amount of take is authorized at the guild or species level only, *e.g.,* for pilot whales or bottlenose dolphins, respectively, NMFS may adequately evaluate the effects of the activity by conservatively assuming (for example) that all takes authorized for the guild or species would accrue to each potentially affected species or stock. In this case, NMFS has apportioned the overall take number for bottlenose dolphins according to stock, as described in the Estimated Take section and, for pilot whales, has assigned take on the basis of an assumed group size of 10 for each potentially affected species. NMFS does not agree that use of these models is likely to result in miscalculation of take levels, and the commenters do not provide support for this statement.

*Comment 3:* The ENGOs assert that NMFS has not acknowledged the use of areas south of Nantucket and Martha's Vineyard as important habitat for foraging and social behavior for North Atlantic right whales, but rather that NMFS believes the areas are important solely as a migratory pathway. The commenters also asserted that NMFS is overly reliant on the description of biologically important areas (BIA) provided in LaBrecque *et al.* (2015), stating that ''NMFS should not rely on the North Atlantic right whale migratory corridor BIA as the sole indicator of habitat importance for the species.''

*Response:* The specified activity associated with the IHA addressed herein is located off of Delaware and New Jersey. Therefore, this comment is not relevant to issuance of this IHA. However, as a general matter, NMFS disagrees with the commenters' assertion. Although NMFS has in other notices discussed at length the use of the referenced area as a migratory pathway (and recognition of such use through the area's description as a BIA for right whales), we have also acknowledged the more recent data and its implications for the use of the referenced area (85 FR 63508; December 7, 2018; 86 FR 11930; March 1, 2021). Similarly, NMFS does not agree with the assertion that our understanding of important habitat for marine mammals stems solely from existing, described BIAs. NMFS concurs with the statement that BIAs are not comprehensive and are intended to be periodically reviewed and updated and we routinely review newly available information to inform our understanding of important marine mammal habitat. In this case, the specified geographical region does not include important habitat other than that described as being the migratory pathway for right whales.

*Comment 4:* The ENGOs commented that the waters off Cape Hatteras, North Carolina, have high marine mammal

biodiversity and that marine mammals occur at unusually high densities off Cape Hatteras compared to other areas along the East Coast. The ENGOs asserted that this area demands special attention from NMFS.

*Response:* NMFS concurs with the commenters regarding the importance of deepwater areas off of Cape Hatteras. However, the specific activity associated with the IHA addressed herein does not occur off of Cape Hatteras and, in general, the site characterization surveys conducted in support of wind energy development that are the subject of the ENGO comment letter occur in shallow water (not the area of high biodiversity and density referenced by commenters). When appropriate, NMFS has accorded special attention to the development of additional mitigation for activities conducted in that location (83 FR 63268; December 7, 2018). NMFS uses the best available scientific information when analyzing potential impacts to marine mammals and in developing prescribed mitigation sufficient to meet the MMPA's ''least practicable adverse impact'' standard, and has done so in this case.

*Comment 5:* The ENGOs asserted that NMFS must analyze cumulative impacts to North Atlantic right whales and other marine mammal species and stocks and ensure appropriate mitigation of these cumulative impacts. The ENGOs express particular concern about the cumulative impacts of survey activities off Rhode Island and Massachusetts on North Atlantic right whales. They further recommended that NMFS develop programmatic incidental take regulations applicable to site characterization activities. DNREC noted that an IHA was recently issued to Skipjack for take of marine mammals incidental to marine site characterization surveys offshore of Delaware (86 FR 18943; April 12, 2021) and recommended that NMFS consider the potential cumulative impacts of Skipjack and Garden State surveys prior to issuing an IHA to Garden State.

*Response:* Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, both this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants. Therefore, the IHA issued to Skipjack for take associated with marine site characterization surveys is considered discrete from and unrelated to Garden State's IHA.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Garden State was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, we also indicated (1) that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species. In this case, cumulative impacts have been adequately addressed under NEPA in prior environmental analyses that form the basis for NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. Regarding activities in the Mid- and South Atlantic region, in 2018 NMFS signed a Record of Decision that (1) adopted the Bureau of Ocean Energy Management's 2014 Final Programmatic Environmental Impact Statement that evaluated the direct, indirect, and cumulative impacts of geological and geophysical survey activities on the Mid- and South Atlantic Outer Continental Shelf to support NMFS' analysis associated with issuance of incidental take authorizations pursuant to sections 101(a)(5)(A) or (D) of the MMPA and the regulations governing the taking and importing of marine mammals (50 CFR part 216), and (2) in accordance with 40 CFR 1505.2, announced and explained the basis for our decision to review and potentially issue incidental take authorizations under the MMPA on a case-by-case basis, if appropriate. Separately, NMFS has previously written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* 2019 Ørsted EA for survey activities offshore southern New England; 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island.

Separately, cumulative effects were analyzed as required through NMFS' required intra-agency consultation under section 7 of the ESA, which determined that NMFS' action of issuing the IHA is not likely to adversely affect listed marine mammals or their critical habitat.

Finally, the ENGOs suggested that NMFS should promulgate programmatic incidental take regulations for site characterization activities. Although NMFS is open to this approach, we have not received a request for such regulations. The ENGOs do not explain their apparent position that NMFS may advance regulations absent a requester.

*Comment 6:* The ENGOs state that NMFS should not adjust estimated take numbers for large whales on the basis of assumed efficacy of mitigation requirements, and assert that NMFS' assumptions regarding effectiveness of mitigation requirements are unfounded.

*Response:* In this case, NMFS did not propose to adjust downward any estimated take number based on proposed mitigation measures, and has not done so in the issued IHA. Therefore, the comment is not relevant to this specific action. Generally, NMFS does not agree with the apparent contention that it is never appropriate to reduce estimated take numbers based on anticipated implementation and effectiveness of mitigation measures, and will continue to evaluate the appropriateness of doing so on a case-specific basis.

While we acknowledge the commenters' concerns regarding unfounded assumptions concerning the

effectiveness of mitigation requirements in reducing actual take, it is important to also acknowledge the circumstances of a particular action. In most cases, the maximum estimated Level B harassment zone associated with commonly-used acoustic sources is approximately 150 meters (m), whereas the typically-required shutdown zone for North Atlantic right whales is 500 m. For North Atlantic right whales, NMFS expects that this requirement will indeed be effective in reducing actual take below the estimated amount, which typically does not account for the beneficial effects of mitigation.

*Comment 7:* The ENGOs state that NMFS must require mitigation measures that meet the least practicable adverse impact standard, imply that the requirements prescribed by NMFS have not met that standard, and recommend various measures that the commenters state NMFS should require.

The ENGOs first state that NMFS should prohibit site assessment and characterization activities involving equipment with noise levels that the commenters assert could cause injury or harassment to North Atlantic right whales during periods of highest risk, which the commenters define as times of highest relative density of animals during their migration, and times when mother-calf pairs, pregnant females, surface active groups, or aggregations of three or more whales are, or are expected to be, present. The commenters additionally state that NMFS should require that work commence only during daylight hours and good visibility conditions to maximize the probability that marine mammals are detected and confirmed clear of the exclusion zone before activities begin. If the activity is halted or delayed because of documented or suspected North Atlantic right whale presence in the area, the commenters state that NMFS should require operators to wait until daylight hours and good visibility conditions to recommence.

*Response:* NMFS acknowledges the limitations inherent in detection of marine mammals at night. However, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones). The ENGOs do not provide any support for the apparent contention that injury is a potential outcome of these activities. Regarding Level B harassment, any potential impacts would be limited to short-term behavioral responses, as described in greater detail herein. The commenters establish that the status of North Atlantic right whales in particular is precarious. NMFS agrees in general with the discussion of this status provided by the commenters. NMFS also agrees with the commenters that certain recommended mitigation requirements, *e.g.,* avoiding impacts in places and times of greatest importance to marine mammals, limiting operations to times of greatest visibility, would be effective in reducing impacts. However, the commenters fail entirely to establish that Garden State's specified site assessment and characterization survey activities—or site assessment and characterization survey activities in general—would have impacts on North Atlantic right whales (or any other species) such that operational limitations would be warranted. In fact, NMFS considers this category of survey operations to be near de minimis, with the potential for Level A harassment for any species to be discountable and the severity of Level B harassment (and, therefore, the impacts of the take event on the affected individual), if any, to be low. In that context, there is no need for more restrictive mitigation requirements, and the commenters offer no justification to the contrary.

Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing noise into the marine environment. The restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the applicant to begin operations only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. Finally, NMFS is requiring the use of night vision equipment (night vision goggles with thermal clip-ons and infrared/thermal imaging technology) to facilitate detection of marine mammals approaching and within the exclusion zones during pre-start clearance and active survey operations during nighttime operations, In consideration of the likely effects of the activity on marine mammals absent mitigation, potential unintended consequences of the measures as proposed by the commenters, practicability of the recommended measures for the applicant, and required use of night vision equipment, NMFS has determined that restricting operations as recommended is not warranted or practicable in this case.

*Comment 8:* The ENGOs recommended that NMFS establish an exclusion zone (EZ) of 1,000-m around each vessel conducting activities with noise levels that they assert could result in injury or harassment to North Atlantic right whales, and a minimum EZ of 500 m for all other large whale species and strategic stocks of small cetaceans.

*Response:* NMFS disagrees with this recommendation, and has determined that the EZs included here are sufficiently protective. We note that the 500-m EZ for North Atlantic right whales exceeds the modeled distance to the largest Level B harassment isopleth distance (141 m) by a factor of more than three. The commenters do not provide any justification for the contention that the existing EZs are insufficient, and do not provide any rationale for their recommended alternatives (other than that they are larger).

*Comment 9:* The ENGOs stated that NMFS' requirements related to visual monitoring are inadequate. The commenters specifically noted their belief that a requirement for one Protected Species Observer (PSO) to be on duty during daylight hours is insufficient, and recommended that NMFS require the use of infrared equipment to support visual monitoring by PSOs during periods of darkness. DNREC also recommended that infrared equipment be used to support visual monitoring by PSOs during periods of darkness.

*Response:* NMFS typically requires that a single PSO must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours only. Although NMFS acknowledges that the single PSO cannot reasonably maintain observation of the entire 360-degree area around the vessel, it is reasonable to assume that the single PSO engaged in continual scanning of such a small area (*i.e.,* 500-m EZ, which is greater than the maximum 141-m harassment zone) will

be successful in detecting marine mammals that are available for detection at the surface. The monitoring reports submitted to NMFS have demonstrated that PSOs active only during daylight operations are able to detect marine mammals and implement appropriate mitigation measures. As far as visual monitoring at night, we have not historically required visual monitoring at night because available information demonstrated that such monitoring should not be considered effective. However, as night vision technology has continued to improve, NMFS has adapted its practice, and two PSOs are required to be on duty at night. Moreover, as previously noted, NMFS has included a requirement in the final IHA that night-vision equipment (*i.e.,* night-vision goggles with thermal clip-ons and infrared/thermal imaging technology) must be available for use.

Regarding specific technology cited by the ENGOs, NMFS appreciates the suggestion and agrees that relatively new detection platforms have shown promising results. Following review of the ENGO's letter, we considered these and other supplemental platforms as suggested. However, to our knowledge, there is no clear guidance available for operators regarding characteristics of effective systems, and the detection systems cited by the commenters are typically extremely expensive, and are therefore considered impracticable for use in most surveys. The commenters do not provide specific suggestions with regard to recommended systems or characteristics of systems. NMFS does not generally consider requirements to use systems such as those cited by the commenters to currently be practicable.

*Comment 10:* The ENGOs recommended that NMFS should require PAM at all times, both day and night, to maximize the probability of detection for North Atlantic right whales, and other species and stocks. DNREC also recommended the combined use of visual monitoring and PAM, especially during nighttime operations, to minimize impacts on protected species.

*Response:* The foremost concern expressed by the ENGOs in making the recommendation to require use of PAM is with regard to North Atlantic right whales. However, the commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes. It is generally well-accepted fact that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including right whales) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 μPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m)—this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low—together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for right whales and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

*Comment 11:* The ENGOs recommended that NMFS require applicants to use the lowest practicable source level.

*Response:* Wind energy developers selected the equipment necessary during HRG surveys to achieve their objectives. As part of the analysis for all HRG IHAs, NMFS evaluated the effects expected as a result of use of this equipment, made the necessary findings, and imposed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what constitutes the ''lowest practicable source level'' for an operator's survey objectives.

*Comment 12:* The ENGOs recommended that NMFS require all offshore wind energy related project vessels operating within or transiting to/from survey areas, regardless of size, to observe a 10-knot speed restriction during the entire survey period.

*Response:* NMFS does not concur with these measures. NMFS has analyzed the potential for ship strike resulting from various HRG activities and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include: A requirement that all vessel operators comply with 10 knot (18.5 km/hour) or less speed restrictions in any established dynamic management area (DMA) or seasonal management area (SMA); a requirement that all vessel operators reduce vessel speed to 10

knots (18.5 km/hour) or less when any large whale, mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500 m minimum separation distance has been established; a requirement that all vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales; and a requirement that all vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the ship strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization survey activities which were issued IHAs from NMFS.

*Comment 13:* The ENGOs recommend that NMFS work with relevant experts and stakeholders towards developing a robust and effective near real-time monitoring and mitigation system for North Atlantic right whales and other endangered and protected species (*e.g.,* fin, sei, minke, and humpback whales) during offshore wind energy development.

*Response:* NMFS is generally supportive of this concept. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments which have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications. The ENGOs cited the NMFS publication ''Technical Memorandum NMFS-OPR-64: North Atlantic Right Whale Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'' which is available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations.* This report summarizes a workshop NMFS convened to address objectives related to monitoring North Atlantic right whales and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of North Atlantic right whale calls that visual survey teams can then respond to for collection of identification photographs or biological samples.

*Comment 14:* The ENGOs state that NMFS must not issue renewal IHAs, and assert that the process is contrary to statutory requirements.

*Response:* NMFS' IHA renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a renewal IHA, are valid for a period of not more than one year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA renewals. The notice of the proposed IHA published in the **Federal Register** on April 27, 2021 (86 FR 22160) made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a renewal for this project. Because any renewal (as explained in the Comments and Responses section) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of Specified Activity section) or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one in the coming months.

While there will be additional documents submitted with a renewal request, for a qualifying renewal these will be limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request will also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

*Comment 15:* The ENGOs expressed concern about past instances where NMFS has modified issued IHAs in response to preliminary monitoring data indicating that certain species of marine mammal were being encountered more frequently than anticipated.

*Response:* No modifications are included as part of this action and, therefore, this comment is not relevant to this IHA.

*Comment 16:* DNREC recommended that NMFS require the implementation of seasonal restrictions on site characterization activities that have the potential to injure or harass the North Atlantic right whale from November 1 through April 30.

*Response:* NMFS is concerned about the status of the North Atlantic right whale, given that a UME has been in effect for this species since June of 2017 and that there have been a number of recent mortalities. NMFS appreciates the value of seasonal restrictions under some circumstances. However, in this case, we have determined seasonal restrictions are not warranted. NMFS is requiring Garden State to comply with restrictions associated with identified SMAs and they must comply with DMAs, if any DMAs are established near the project area. Furthermore, we have established a 500-m shutdown zone for North Atlantic right whales, which is more than three times as large as the greatest Level B harassment isopleth calculated for the specified activities for this IHA. The largest behavioral isopleth is 141 m associated with the Applied Acoustics Dura-Spark UHD and GeoMarine Geo-Source sparkers. Take estimation conservatively assumes that these acoustic sources will operate on all survey days although it is probable that Garden State will only use sparkers on a subset of survey days, and on the remaining days utilize HRG equipment with considerably smaller Level B harassment isopleths. Therefore, the

number of Level B harassment takes is likely an overestimate. Finally, significantly shortening Garden State's work season is impracticable given the number of survey days planned for the specified activity for this IHA.

*Comment 17:* DNREC noted that NMFS published an extension of emergency measures to address fishery observer coverage during the COVID–19 coronavirus pandemic, providing NMFS with continued authority under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to waiver observer coverage requirements when such action is necessary due to the COVID–19 public health emergency (85 FR 17285; March 27, 2020). DNREC's understanding is that this emergency action is not related to the PSO requirement under the MMPA, and that NMFS does not have any intention of waiving the PSO requirement for Garden State's marine site characterization surveys.

*Response:* DNREC is correct in its understanding that the extension of emergency measures providing NMFS with the authority to waive fishery observer coverage under the MSA does not apply to required PSO coverage under an issued MMPA IHA.

## Changes From the Proposed IHA to Final IHA

NMFS has clarified that night vision equipment PSOs will be required to use during nighttime survey operations will include night vision goggles with thermal clip-ons and infrared/thermal imagery.

## Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, NMFS follows the Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 SARs (Hayes *et al.,* 2020) and draft 2020 SARS available (except as otherwise noted) at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.*

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE AFFECTED BY GARDEN STATE'S ACTIVITY

| Common name | Scientific name | Stock | ESA/MMPA status; Strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| Family Balaenidae: | | | | | | |
| North Atlantic right whale [4] | *Eubalaena glacialis* | Western North Atlantic | E/D; Y | 368 (0; 356; 2020) | 0.8 | 18.6 |
| Family Balaenopteridae (rorquals): | | | | | | |
| Humpback whale | *Megaptera novaeangliae* | Gulf of Maine | -/-; Y | 1,393 (0; 1,375; 2016) | 22 | 58 |
| Fin whale | *Balaenoptera physalus* | Western North Atlantic | E/D; Y | 6,802 (0.24; 5,573; 2016) | 11 | 2.35 |
| Sei whale | *Balaenoptera borealis* | Nova Scotia | E/D; Y | 6,292 (1.015; 3,098) | 6.2 | 1.2 |
| Minke whale | *Balaenoptera acutorostrata* | Canadian East Coast | -/-; N | 21,968 (0.31; 17,002; 2016) | 170 | 10.6 |
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| Family Physeteridae: | | | | | | |
| Sperm whale | *Physeter macrocephalus* | NA | E; Y | 4,349 (0.28;3,451) | 3.9 | 0 |
| Family Delphinidae: | | | | | | |
| Long-finned pilot whale | *Globicephala melas* | Western North Atlantic | -/-; N | 39,215 (0.30; 30,627) | 306 | 21 |
| Short finned pilot whale | *Globicephala macrorhynchus* | Western North Atlantic | -/-;Y | 28,924 (0.24; 23,637) | 236 | 160 |
| Bottlenose dolphin | *Tursiops truncatus* | Western North Atlantic Offshore. | -/-; N | 62,851 (0.23; 51,914) | 519 | 28 |
| | | W.N.A. Northern Migratory Coastal. | -/-;Y | 6,639 (0.41,4 ,759, 2016) | 48 | 12.2–21.5 |
| Common dolphin | *Delphinus delphis* | Western North Atlantic | -/-; N | 172,947 (0.21; 145,216; 2016) | 1,452 | 399 |
| Atlantic white-sided dolphin. | *Lagenorhynchus acutus* | Western North Atlantic | -/-; N | 93,233 (0.71; 54,443) | 544 | 26 |
| Atlantic spotted dolphin | *Stenella frontalis* | Western North Atlantic | -/-; N | 39,921 (0.27; 32,032; 2012) | 320 | 0 |
| Risso's dolphin | *Grampus griseus* | Western North Atlantic | -/-; N | 35,493 (0.19; 30,289) | 303 | 54.3 |
| Family Phocoenidae (porpoises): | | | | | | |

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE AFFECTED BY GARDEN STATE'S ACTIVITY—Continued

| Common name | Scientific name | Stock | ESA/ MMPA status; Strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| Harbor porpoise | *Phocoena phocoena* | Gulf of Maine/Bay of Fundy | -/-; N | 95,543 (0.31; 74,034) | 851 | 217 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Phocidae (earless seals): | | | | | | |
| Gray seal [5] | *Halichoerus grypus* | Western North Atlantic | -/-; N | 27,131 (0.19; 23,158, 2016) | 1,389 | 4,729 |
| Harbor seal | *Phoca vitulina* | Western North Atlantic | -/-; N | 75,834 (0.15; 66,884, 2018) | 2,006 | 350 |

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Abundance source is Pace (2021). PBR and Annual M/SI source is draft 2020 SAR (Hayes et al. 2020). Because PBR is based on the minimum population estimate, we anticipate it will be slightly lower than what is presented here given the Pace (2021) abundance; however, the 2020 SARs are not yet finalized. Regardless of final numbers, NMFS recognizes the NARW stock is critically endangered with a low PRB and high annual M/SI rate due primarily to ship strikes and entanglement.

[5] The NMFS stock abundance estimate applies to U.S. population only, however the actual stock abundance is approximately 451,431.

As indicated above, all 16 species (with 17 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur and has been authorized by NMFS. In addition to what is included in Sections 3 and 4 of the application, the SARs, and NMFS' website, further detail informing the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UME) and important habitat areas) was provided in the notice of the proposed IHA (86 FR 22160; April 27, 2021) and is not repeated here. Except for the updated North Atlantic right whale abundance (Pace 2021), no additional new relevant information is available since publication of that notice.

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009).

For more detail concerning these groups and associated frequency ranges,

please see NMFS (2018) for a review of available information. Sixteen marine mammal species (14 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the planned survey activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), eight are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

The notice of proposed IHA included a summary of the ways that Garden State's specified activity may impact marine mammals and their habitat (86 FR 22160; April 27, 2021). Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring within the same specified geographical region (*e.g.,* 82 FR 20563, May 3, 2017; 85 FR 36537, June 17, 2020; 85 FR 37848, June 24, 2020; 85 FR 48179, August 10, 2020; 86 FR 26465; May 14, 2021). No significant new information is available, and NMFS refers the reader to the notice of proposed IHA and to these documents rather than repeating the details here. The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by Garden State's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. The notice of proposed IHA also provided background information regarding active acoustic sound sources and acoustic terminology, which is not repeated here.

The potential effects of Ocean Wind's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

**Estimated Take**

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Level B behavioral harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B behavioral harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated, even absent mitigation, nor authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in the Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated, even absent mitigation, or authorized for this activity.

Generally speaking, NMFS estimates take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. NMFS notes that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, NMFS describes the factors considered here in more detail and present the take estimate.

*Acoustic Thresholds*

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed (*i.e.,* Level B harassment) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for the impulsive sources (*i.e.,* boomers, sparkers) and non-impulsive, intermittent sources (*e.g.,* CHIRP SBPs) evaluated here for Garden State's survey activities.

*Level A harassment*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see NMFS' 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Garden State's activity includes the use of impulsive (*i.e.,* sparkers and boomers) and non-impulsive (*e.g.,* CHIRP SBP) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources Garden State plans to use, and the potential for Level A harassment is not evaluated further in this document. Please see Garden State's application for details of a quantitative exposure analysis exercise (*i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures). Maximum estimated Level

A harassment isopleths were less than 3 m for all sources and hearing groups with the exception of an estimated 37 m zone and 17 m zone calculated for high-frequency cetaceans during use of the GeoPulse 5430 CHIRP SBP and the TB CHIRP III, respectively (see Table 1 for source characteristics). Garden State did not request authorization of take by Level A harassment, and no take by Level A harassment is authorized by NMFS.

*Ensonified Area*

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the planned surveys and the sound levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Garden State that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics Dura-Spark UHD and GeoMarine Geo-Source sparkers would produce the largest Level B harassment isopleth (141 m; please see Table 4 of Garden State's application). Estimated Level B harassment isopleths associated with the boomer and CHIRP SBP systems planned for use are estimated as 25 and 36 m, respectively. Although Garden State does not expect to use sparker sources on all planned survey days, it assumed for purposes of analysis that the sparker would be used on all survey days. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

*Marine Mammal Occurrence*

In this section, NMFS provides information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2020) represent the best available information regarding marine mammal densities in the planned survey area. The density data presented by Roberts *et al.* (2016, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* Marine mammal density estimates in the survey area (animals/km$^2$) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For the exposure analysis, density data from Roberts *et al.* (2016, 2017, 2018, 2020) were mapped using a geographic information system (GIS). Density grid cells that included any portion of the planned survey area were selected for all survey months (see Figure 3 in Garden State's application).

Densities from each of the selected density blocks were averaged for each month available to provide monthly density estimates for each species (when available based on the temporal resolution of the model products), along with the average annual density. Please see Tables 7 and 8 of Garden State's application for density values used in the exposure estimation process for the Lease Area and the potential ECRs, respectively. Note that no density estimates are available for the portion of the ECR area in Delaware Bay, so the marine mammal densities from the density models of Roberts *et al.* (2016, 2017, 2018, 2020) were assumed to apply to this area. Additional data regarding average group sizes from survey effort in the region was considered to ensure adequate take estimates are evaluated.

*Take Calculation and Estimation*

Here NMFS describes how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 141 m distance associated with sparkers) to the Level B harassment criterion and the estimated trackline distance traveled per day by a given survey vessel (*i.e.,* 70 km) are then used to calculate the daily ensonified area, or zone of influence (ZOI) around the survey vessel.

The ZOI is a representation of the maximum extent of the ensonified area around a sound source over a 24-hr period. The ZOI for each piece of equipment operating below 200 kHz was calculated per the following formula:

$$ZOI = (Distance/day \times 2r) + \pi r^2$$

Where r is the linear distance from the source to the harassment isopleth.

ZOIs associated with all sources with the expected potential to cause take of marine mammals are provided in Table 6 of Garden State's application. The largest daily ZOI (19.8 km$^2$), associated with the various sparkers planned for use, was applied to all planned survey days.

Potential Level B harassment exposures are estimated by multiplying the average annual density of each species within either the Lease Area or potential ECR area by the daily ZOI. That product is then multiplied by the number of operating days expected for the survey in each area assessed, and the product is rounded to the nearest whole number. These results are shown in Table 4.

TABLE 4—SUMMARY OF AUTHORIZED TAKE NUMBERS

| Species | Abundance | Level B takes [1] | Max percent population |
|---|---|---|---|
| **Low-Frequency Cetaceans** | | | |
| Fin whale | 6,802 | 9 | 0.13 |
| Sei whale | 6,292 | 0 (1) | 0.02 |
| Minke whale | 21,968 | 3 | 0.01 |
| Humpback whale | 1,393 | 4 | 0.29 |
| North Atlantic right whale | 412 | 14 | 3.40 |
| **Mid-Frequency Cetaceans** | | | |
| Sperm whale [3] | 4,349 | 0 (3) | 0.07 |
| Atlantic white-sided dolphin | 93,233 | 15 | 0.00 |
| Atlantic spotted dolphin | 39,921 | 9 | 0.00 |
| Common bottlenose dolphin: [2] | | | |
| Offshore Stock | 62,851 | 437 | 0.21 |
| Migratory Stock | 6,639 | 1,192 | 7.77 |
| Pilot Whales [3] | | | |
| Short-finned pilot whale | 28,924 | 3 (10) | 0.03 |
| Long-finned pilot whale | 39,215 | 3 (10) | 0.03 |
| Risso's dolphin | 35,493 | 0 (30) | 0.08 |
| Common dolphin | 172,974 | 112 | 0.06 |
| **High-Frequency Cetaceans** | | | |
| Harbor porpoise | 95,543 | 98 | 0.03 |
| **Pinnipeds** | | | |
| Seals: [4] | | | |
| Gray seal | 451,431 | 9 | 0.00 |
| Harbor seal | 75,834 | 9 | 0.01 |

[1] Parenthesis denote changes from calculated take estimates. Increases from calculated values are based on assumed average group size for the species; sei whale, Kenney and Vigness-Raposa, 2010; sperm whale and Risso's dolphin, Barkaszi and Kelly, 2018.
[2] Roberts *et al.* (2016) does not provide density estimates for individual stocks of common bottlenose dolphins; therefore, stock densities were delineated using the 20-m isobath.
[3] Roberts (2018) only provides density estimates for ''generic'' pilot whales; therefore, an equal potential for takes has been assumed either for each species.
[4] Roberts (2018) only provides density estimates for ''generic'' seals; therefore, densities were split evenly between the two species.

The take numbers shown in Table 4 are those requested by Garden State, with the exception of the two pilot whale species. Garden State requested 3 takes by Level B harassment for each pilot whale species (*i.e.,* short-finned and long-finned pilot whales). However, the requested number of takes is below the mean group size for each of these species; therefore, NMFS increased to 10 (from 3, proposed by Garden State) the number of takes by Level B harassment for each of these species, based on published mean group sizes (Kenney and Vigness-Raposa, 2010). For all other species, NMFS concurs with the take numbers requested by Garden State and has authorized them.

## Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS carefully considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

### *Mitigation for Marine Mammals and Their Habitat*

NMFS has prescribed the following mitigation measures to be implemented during Garden State's marine site characterization surveys.

### *Marine Mammal Exclusion Zones*

Marine mammal EZs must be established around the HRG survey equipment and monitored by PSOs:

- 500 m EZ for North Atlantic right whales during use of all acoustic sources; and

• 100 m EZ for all marine mammals, with certain exceptions specified below, during operation of impulsive acoustic sources (boomer and/or sparker).

If a marine mammal is detected approaching or entering the EZs during the HRG survey, the vessel operator must adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

*Pre-Start Clearance of the Exclusion Zones*

Garden State must implement a 30-minute pre-start clearance period of the EZs prior to the initiation of ramp-up of HRG equipment. During this period, the EZ will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective EZ. If a marine mammal is observed within an EZ during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective EZ or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

*Ramp-Up of Survey Equipment*

When technically feasible, a ramp-up procedure must be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power.

A ramp-up must begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. When technically feasible, the power will then be gradually turned up and other acoustic sources would be added.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective exclusion zone. Ramp-up will continue if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species).

Activation of survey equipment through ramp-up procedures may not occur when visual observation of the pre-start clearance zone is not expected to be effective (*i.e.,* during inclement conditions such as heavy rain or fog).

*Shutdown Procedures*

An immediate shutdown of the impulsive HRG survey equipment will be required if a marine mammal is sighted entering or within its respective exclusion zone. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed *(i.e.,* 30 minutes for all other species).

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (36 m, non-impulsive; 141 m impulsive), shutdown must occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective EZs. If the acoustic source is shut down for a period longer than 30 minutes and PSOs have maintained constant observation, then pre-start clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement will be waived for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops* and seals. Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped detected in the exclusion zone and belongs to a genus other than those specified.

*Vessel Strike Avoidance*

Garden State will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures must include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

• Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal;

• All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes including SMAs and DMAs when in effect;

• All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 knots or less while transiting to and from Project Area;

• All vessels must reduce their speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;

• All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action;

• All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales;

• All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel);

• When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained;

• These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the Project Area during the survey, the vessels will abide by speed restrictions in the DMA.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

*Monitoring Measures*

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Garden State would employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task and/or have demonstrated experience in the role of an independent PSO during an HRG survey. At least one PSO aboard each acoustic source vessel must have a minimum of 90 days at-sea experience working as a PSO during a geophysical survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specific duties in support of approved, independent PSOs on smaller vessels with limited crew capacity operating in nearshore waters.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including EZs, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established EZs during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in

proximity to EZs. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared/thermal imaging technology would be used to facilitate detection of marine mammals approaching and within the EZs during pre-start clearance and active survey operations. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

*Reporting Measures*

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Esch@noaa.gov.* The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends, vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-start clearance survey, ramp-up, shutdown, end of operations, etc.).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Garden State must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Garden State personnel discover an injured or dead marine mammal, Garden State will report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Garden State must report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;

- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. NMFS also assesses the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 4, given that NMFS expects the anticipated effects of the planned survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is anticipated or authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the notice of the proposed IHA (86 FR 22160; April 27, 2021), non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations and the estimated small size of the Level A harassment zones.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

*North Atlantic Right Whales*

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As discussed in the notice of the proposed IHA (86 FR 22160; April 27, 2021), elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the survey area overlaps a migratory corridor Biologically Important Area (BIA) for North Atlantic right whales. Due to the fact that that the survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Garden State's planned activities. Additionally, only very limited take by Level B harassment of North Atlantic right whales has been requested and is being authorized by NMFS as HRG survey operations are required to maintain a 500 m EZ and shutdown if a North Atlantic right whale is sighted at or within the EZ. The 500 m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* GeoMarine Geo-Source 400 tip sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small Level A harassment zones associated with HRG equipment types planned for use. NMFS does not anticipate that North Atlantic right whales takes resulting from Garden State's activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

*Other Marine Mammal Species With Active UMEs*

As discussed in the notice of the proposed IHA (86 FR 22160; April 27, 2021), there are several active UMEs occurring in the vicinity of Garden State's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual mortality/serious injury (M/SI; 350) is well below PBR (2,006) (Hayes *et al.,* 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic exclusive economic zone as well as in Canada (Hayes *et al.,* 2020).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 4, including those with active UMEs to the level of least practicable adverse impact. In particular they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for North Atlantic right whales, the activities will occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration. In addition, mitigation measures to shutdown at 500 m to minimize potential for Level B behavioral harassment would limit any take of the species; and
- The required mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS has authorized incidental take of 16 marine mammal species (with 17 managed stocks.) The total amount of takes authorized relative to the best available population abundance is less than 8 percent for one stock (bottlenose dolphin northern coastal migratory stock) and less than 4 percent of all other species and stocks, which NMFS finds are small numbers of marine mammals relative to the estimated overall population abundances for those stocks (see Table 4).

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes,

funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever NMFS proposes to authorize take for endangered or threatened species, in this case with NMFS Greater Atlantic Regional Fisheries Office (GARFO).

The NMFS OPR is authorizing the incidental take of four species of marine mammals which are listed under the ESA: North Atlantic right, fin, sei, and sperm whales. The OPR requested initiation of Section 7 consultation with NMFS GARFO on April 19, 2021, for the issuance of the IHA. On June 1, 2021, NMFS GARFO determined that issuance of the IHA to Garden State is not likely to adversely affect the North Atlantic, fin, sei, or sperm whale or result in take of any marine mammals that would violate the ESA.

### National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which NMFS have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

### Authorization

NMFS has issued an IHA to Garden State for the potential harassment of small numbers of 16 marine mammal species (with 17 managed stocks) incidental to conducting marine site characterization surveys offshore of Delaware and New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0482) and along potential export cable routes to landfall locations in Delaware and New Jersey, provided the previously mentioned mitigation, monitoring, and reporting requirements are followed.

Dated: June 14, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–13530 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–22–P**

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XB168]**

## Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington

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

**ACTION:** Notice of issuance of letters of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that two Letters of Authorization (LOA) have been issued to the U.S. Navy (Navy) for the take of marine mammals incidental to maintenance construction activities at facilities in Washington.

**DATES:** The LOAs are effective from July 16, 2021, through January 15, 2022, and from July 16, 2021, through February 15, 2022.

**ADDRESSES:** The LOAs and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-marine-structure-maintenance-and-pile-replacement-wa.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### Summary of Request

On April 17, 2019, we issued a final rule upon request from the Navy for authorization to take marine mammals incidental to maintenance construction activities at six facilities in Washington (84 FR 15963). The Navy plans to conduct construction necessary for maintenance of existing in-water structures at the following facilities: Naval Base Kitsap (NBK) Bangor, NBK Bremerton, NBK Keyport, NBK Manchester, Zelatched Point, and Naval Station Everett (NS Everett). These repairs include use of impact and vibratory pile driving, including installation and removal of steel, concrete, plastic, and timber piles. The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in harassment of marine mammals.

For the 2021–22 in-water work season, the Navy requested issuance of LOAs for work planned at NBK Manchester and NBK Bangor. The Navy submitted site-specific monitoring plans. Following NMFS review and approval of the required plans, we have issued the requested LOAs. The approved plans are available online at:

*www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-marine-structure-maintenance-and-pile-replacement-wa.*

For the 2020–21 in-water work season, the Navy requested issuance of LOAs for work planned at NBK Manchester and Zelatched Point. The work planned for NBK Manchester was delayed and will now occur during the 2021–22 work season. The Navy submitted a monitoring report for work conducted at Zelatched Point, which is available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-marine-structure-maintenance-and-pile-replacement-wa.*

**Authorization**

We have issued two LOAs to the Navy authorizing the take of marine mammals incidental to maintenance construction activities, as described above. Take of marine mammals will be minimized through the implementation of the following planned mitigation measures: (1) Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities; (2) shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and (3) soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The Navy will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under these LOAs will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: June 22, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–13566 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Customer Surveys

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 2, 2021 (86 FR 12179), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic & Atmospheric Administration, Commerce.

*Title:* NOAA Customer Surveys.

*OMB Control Number:* 0648–0342.

*Form Number(s):* None.

*Type of Request:* Regular submission [Revision and extension of a current information collection.].

*Number of Respondents:* 65,860 (197,580 for 3-year period).

*Average Hours per Response:* Response time varies from 5 minutes for most web surveys to two hours for focus groups or interviews.

*Total Annual Burden Hours:* 9,298 (27,894 for 3-year period).

*Needs and Uses:* This request is for a revision and extension of a currently approved generic information collection.

This collection follows the guidelines contained in the OMB Resource Manual for Customer Surveys. In accordance with Executive Order 12862, the National Performance Review, and good management practices, National Oceanic and Atmospheric Administration (NOAA) offices seek approval to continue to gather customer feedback on services and/or products which can be used in planning for service/product modification and prioritization. Under this generic clearance, individual offices would use approved questionnaires and develop new questionnaires, as needed, by selecting subsets of the approved set of collection questions and tailoring those specific questions to be meaningful for their particular programs. Surveys currently typically include IT and website satisfaction surveys, Weather Service product surveys, and National Marine Sanctuary participation surveys, among others.

This generic clearance will not be used to survey any bodies NOAA regulates unless precautions are taken to ensure that the respondents believe that they are not under any risk for not responding or for the contents of their responses, *e.g.,* in no survey to such a population will the names and addresses of respondents be required.

Two sets of survey questions are used for generation of program-level questionnaires. Quantitative questions seek to obtain numerical ratings from respondents on their satisfaction with various aspects of the product or service they obtained—satisfaction with the quality of the product, the courtesy of the staff, the format of and documentation for data received, and similar standard types of questions. The offices using such questions are able to determine which aspects of their program need improvement or have improved. Qualitative questions are more focused on who is using the product and service, how it is being used, and the medium or format in which the respondent would like to see data provided.

NOAA seeks to add new questions to the approved question bank in order to more accurately reflect information required by NOAA in order to carry out its mission. Additionally, the number of anticipated respondents, responses, and burden hours have been updated to more accurately reflect the burden imposed by this collection.

*Affected Public:* Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government; Farms.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Executive Order 12862, Circular A–11.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by

selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0342.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–13539 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–12–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB191]**

### Management Track Assessment for Atlantic Mackerel, Black Sea Bass, Golden Tilefish, and Scup Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS and the Assessment Oversight Panel (AOP) will convene the Management Track Assessment Peer Review Meeting for the purpose of reviewing Atlantic mackerel, black sea bass, golden tilefish, and scup. The Management Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the lead stock assessment analyst and reviewed by an independent panel of stock assessment experts called the AOP. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

**DATES:** The public portion of the Management Track Assessment Peer Review Meeting will be held from June 28, 2021–July 1, 2021. The meeting will conclude on July 1, 2021 at 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

**ADDRESSES:** The meeting will be held via Google Meet (*https://meet.google.com/tvt-hfpg-jnd*).

**FOR FURTHER INFORMATION CONTACT:** Michele Traver, phone: 508–495–2195; email: *michele.traver@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about the AOP meeting and the stock assessment peer review, please visit the NMFS/NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/management-track-stock-assessments.*

**Daily Meeting Agenda—Management Track Peer Review Meeting**

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

MONDAY, JUNE 28, 2021

| Time | Activity | Lead |
|---|---|---|
| 9 a.m–9:15 a.m | Welcome/Logistics<br>Introductions/Process | Russ Brown/<br>Michele Traver. |
| 9:15 a.m–9:30 a.m | Background/AOP Review | Russ Brown. |
| 9:30 a.m–10:30 a.m | Black Sea Bass | Gary Shepherd. |
| 10:30 a.m–10:45 a.m | Break. | |
| 10:45 a.m–11:45 a.m | Black Sea Bass cont | Gary Shepherd. |
| 11:45 a.m–12:15 p.m | Discussion/Review/Summary | Review Panel. |
| 12:15 p.m.–12:30 p.m | Public Comment | Public. |
| 12:30 p.m.–1:30 p.m | Lunch. | |
| 1:30 p.m.–2:30 p.m | Golden Tilefish | Paul Nitschke. |
| 2:30 p.m.–3 p.m | Discussion/Review/Summary | Review Panel. |
| 3 p.m.–3:15 p.m | Break. | |
| 3:15 p.m.–4:15 p.m | Scup | Mark Terceiro. |
| 4:15 p.m.–4:45 p.m | Discussion/Review/Summary | |
| 4:45 p.m.–5 p.m | Public Comment | Public. |
| 5 p.m | Adjourn. | |

TUESDAY, JUNE 29, 2021

| Time | Activity | Lead |
|---|---|---|
| 9 a.m–9:15 a.m | Brief Overview and Logistics | Michele Traver/<br>Tom Miller (Chair). |
| 9:15 a.m–10:30 a.m | Atlantic Mackerel | Kiersten Curti. |
| 10:30 a.m–10:45 a.m | Break. | |
| 10:45 a.m–11:30 a.m | Atlantic Mackerel cont. | Kiersten Curti. |
| 11:30 a.m–12 p.m | Discussion/Review/Summary | Review Panel. |
| 12 p.m.–12:15 p.m | Public Comment | Public. |
| 12:15 p.m.–1:15 p.m | Lunch. | |
| 1:15 p.m.–3 p.m | Follow-Ups | Review Panel/Analysts. |
| 3 p.m.–3:15 p.m | Break. | |
| 3:15 p.m.–4:30 p.m | Report Writing | Review Panel. |
| 4:30 p.m | Adjourn. | |

WEDNESDAY, JUNE 30, 2021

| Time | Activity | Lead |
|---|---|---|
| 9 a.m–12 p.m | Follow-Ups/Report Writing | Review Panel. |
| 12 p.m.–1 p.m | Lunch. | |
| 1 p.m.–5 p.m | Report Writing | Review Panel. |
| 5 p.m | Adjourn. | |

**Thursday, July 1, 2021 Will Be Used for Report Writing if Necessary*

The meeting is open to the public; however, during the 'Report Writing' session on Wednesday, June 30th, and Thursday, July 1st, the public should not engage in discussion with the Peer Review Panel.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email, at least 5 days prior to the meeting date.

Dated: June 22, 2021.

**Jennifer M. Wallace,**

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

[FR Doc. 2021–13639 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Public Search Facility User ID and Badging

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 16, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

*Title:* Public Search Facility User ID and Badging.

*OMB Control Number:* 0651–0041.

*Form Numbers:*

- PTO–2030 (Application for Public User ID).
- PTO–2224 (Security Identification Badges for Public Users).

*Type of Review:* Extension and revision of a currently approved information collection.

*Estimated Number of Respondents:* 5,525 respondents per year.

*Estimated Number of Responses:* 5,925 responses per year.

*Estimated Time per Response:* The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to complete the information in this information collection, depending on the form. This includes the time to gather the necessary information, prepare the appropriate form, and submit the completed item to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 474 hours.

*Estimated Total Annual Non-Hour Cost Burden:* $1,505.

*Needs and Uses:* The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility to make publicly accessible USPTO patent and trademark collections for search and retrieval. The Public Search Facility is located in a publicly accessible portion of USPTO headquarters in Alexandria, Virginia, and offers the public access to the collection's paper, microfilm, and electronic files and trained staff to assist users with searches. The USPTO also offers training courses to assist users with the advanced electronic search systems available at the facility.

This information collection covers information collected in applications required for those members of the public who wish to use the electronic search systems at the Public Search Facility to establish a USPTO online access account, and to obtain, renew, or replace online access accounts. The public may apply for an online access account at the Public Search Facility reference desk by providing the necessary information and proper identification. The access account includes a bar-coded user number and an expiration date. Users may renew their account by validating and updating the required information and may obtain a replacement for a lost account information by providing proper identification. Users who wish to register for the voluntary training courses may do so by completing the appropriate form.

This information collection also covers information in applications to establish, renew, or replace security identification badges issued, under the authority provided in 41 CFR part 102–81, to members of the public who wish to access the Public Search Facility. Users may apply for a security badge in-person at the USPTO Security Office by providing the necessary information and presenting a valid form of identification with photograph. A security badge includes a color photograph of the user and must be worn at all times while within the USPTO facilities.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 0651–0041.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0041 information request'' in the subject line of the message.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office,

P.O. Box 1450, Alexandria, VA 22313–1450.

**Kimberly Hardy,**

*Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.*

[FR Doc. 2021–13502 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent Prosecution Highway (PPH) Program

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 16, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

*Title:* Patent Prosecution Highway (PPH) Program.

*OMB Control Number:* 0651–0058.

*Form Numbers:*

- PTO/SB/20GLBL (Request for Participation in the Global/IP5 PPH Pilot Program in the USPTO)
- PTO/SB/20BR (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Brazilian National Institute of Industrial Property (INPI) and the USPTO)
- PTO/SB/20CZ (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Industrial Property Office of the Czech Republic (IPOCZ) and the USPTO)
- PTO/SB/20MX (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Mexican Institute of Industrial Property (TMPI) and the USPTO)
- PTO/SB/20NI (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Nicaraguan Registry of Intellectual Property (NRIP) and the USPTO)
- PTO/SB/20PH (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Intellectual Property Office of the Philippines (IPOPH) and the USPTO)
- PTO/SB/20RO (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Romanian State Office of Inventions and Trademarks (OSIM) and the USPTO)
- PTO/SB/20SA (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program between the Saudi Authority for Intellectual Property of the Kingdom of Saudi Arabia (SAIP) and the USPTO)
- PTO/SB/20TW (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Taiwan Intellectual Property Office (TIPO) and the USPTO)

*Type of Review:* Extension and revision of a currently approved information collection.

*Estimated Number of Respondents:* 3,567 respondents per year.

*Estimated Number of Responses:* 7,090 responses per year.

*Estimated Time per Response:* The USPTO estimates that it will take the public approximately 2 hours to complete a response. This includes the time to gather the necessary information, create the documents, and submit the completed item to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 14,180 hours.

*Estimated Total Annual Non-Hour Cost Burden:* $0.

*Needs and Uses:* The Patent Prosecution Highway (PPH) is a framework in which an application whose claims have been determined to be patentable by an Office of Earlier Examination (OEE) is eligible to go through an accelerated examination in an Office of Later Examination (OLE) with a simple procedure upon an applicant's request. By leveraging the search and examination work product of the OEE, PPH programs (1) deliver lower prosecution costs, (2) support applicants in their efforts to obtain stable patent rights efficiently around the world, and (3) reduce the search and examination burden, while improving the examination quality, of participating patent offices.

In 2014, the USPTO and several other offices acted to consolidate and replace existing PPH programs, with the goal of streamlining the PPH process for both offices and applicants. To that end, the USPTO and other offices established the Global PPH pilot program and the IP5 PPH pilot program. Both the Global PPH and the IP5 PPH pilot programs are running concurrently and are substantially identical, differing only with regard to their respective participating offices. The USPTO is participating in both the Global PPH pilot program and the IP5 PPH pilot program. For USPTO applications, the Global PPH and IP5 PPH pilot programs supersede any prior PPH program between the USPTO and each Global PPH and IP5 PPH participating office. Any existing PPH programs between the USPTO and offices that are not participating in either the Global PPH pilot program or the IP5 PPH pilot program remain in effect.

This information collection covers data gathered through the Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program, which the public uses to request an accelerated examination within the PPH provisions (35 U.S.C. 119).

*Affected Public:* Private sector; individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 0651–0058.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0058 information request'' in the subject line of the message.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

**Kimberly Hardy,**

*Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.*

[FR Doc. 2021–13535 Filed 6–24–21; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

**DATES:** *Comments must be received on or before:* July 25, 2021.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) and service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Product(s)*

*NSN(s)—Product Name(s):* MR 10810—Snack Bowl, Includes Shipper 20810
*Designated Source of Supply:* Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
*Mandatory for:* The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4
*Contracting Activity:* Military Resale-Defense Commissary Agency
*Distribution:* C-List

*NSN(s)—Product Name(s):*
6515–01–656–4831—Tourniquet, Tactical Pneumatic 2 Inch
6515–01–656–6223—Tourniquet, Tactical Pneumatic, 3 Inch
*Designated Source of Supply:* Alphapointe, Kansas City, MO
*Mandatory For:* 100% of the requirement of the Department of Defense
*Contracting Activity:* DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
*Distribution:* C-List

*NSN(s)—Product Name(s):* 5110–00–510–4505—Riffler Set, Die Sinker's, 12PC
*Designated Source of Supply:* South Texas Lighthouse for the Blind, Corpus Christi, TX
*Mandatory for:* Total Government Requirement
*Contracting Activity:* FEDERAL ACQUISITION SERVICE, FAS HEARTLAND REGIONAL ADMINISTRATO
*Distribution:* B-List

*Service(s)*

*Service Type:* Contractor Operated Parts Store (COPARS)
*Mandatory for:* US Marine Corps, Motor Transportation Department, Marine Corps Base Hawaii, Kaneohe Bay, HI
*Designated Source of Supply:* Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
*Contracting Activity:* DEPT OF THE NAVY, HQBN MCBH

*Service Type:* Document Management Service
*Mandatory for:* National Geospatial-Intelligence Agency, Records Management Program, St Louis, MO
*Designated Source of Supply:* ServiceSource, Inc., Oakton, VA
*Contracting Activity:* NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY (NGA), NATL GEOSPATIAL-INTELLIGENCE AGENCY

*Service Type:* Furniture Design, Configuration, and Installation Service
*Mandatory for:* U.S. Department of Commerce, US Census Bureau, 4600 Silver Hill Road; and Bowie Computer Center, Suitland, MD
*Designated Source of Supply:* Industries for the Blind and Visually Impaired Inc., 445 S Curtis Road, West Allis, WI
*Contracting Activity:* U.S. Department of Commerce, US Census Bureau National Processing Center

### Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):* 7520–01–451–9178—Pen, Ballpoint, Retractable, Essential LVX, Black, Medium Point
*Designated Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI
*Contracting Activity:* GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

*NSN(s)—Product Name(s):* 8440–00–000–0000—Belt, Trousers
*Designated Source of Supply:* Travis Association for the Blind, Austin, TX
*Contracting Activity:* DLA TROOP SUPPORT, PHILADELPHIA, PA

*NSN(s)—Product Name(s):*
AF335—Jacket, USAF, Unisex, Cold Weather Waist Length Insulated, Blue, Sizes S thru 2XL
AF340—Turtleneck, USAF, Unisex, Dark Navy Blue, Numerous Sizes
AF330—Jacket, USAF, Waist Length, Unisex, Dark Navy Blue, Numerous Sizes
AF320—Pants, USAF, Unisex, Rain, Dark Navy Blue, Numerous Sizes
AF310—Jacket, USAF, ¾ Length, Unisex, Dark Navy Blue, Numerous Sizes
AF380—Over Pants, USAF, Unisex, Cold Weather, Dark Navy Blue, Numerous Sizes
AF420—Nameplate, Class A, USAF, Metal, Polished Nickel Finish with black Lettering
AF412B—Belt, Class B/Primary Duty, USAF, Unisex, Black Leather, Numerous Sizes
AF411A—Belt, Class A/Primary Duty, USAF, Unisex, Black Leather, Numerous Sizes
AF9440—Badge, USAF, ''DEPUTY CHIEF'', Metallic Polished Nickel Finish, 1″ x ⅞″
AF9450—Badge, USAF, ''ASSISTANT TO THE OPERATIONS OFFICER'', Metallic Polished Nickel Finish, 1″x⅞″
AF9460—Badge, USAF, ''SHIFT SUPERVISOR'', Metallic Polished Nickel Finish, 1″ x ⅞″
AF9470—Badge, USAF, ''TRAINING SUPERVISOR'', Metallic Polished Nickel Finish, 1″ x ⅞″
AF9490—Necktie, USAF, Unisex, Dark Navy Blue
AF9483—Insignia, USAF, Collar Chevrons Officer (3 Stripes), USAF Metallic Silver or Polished Nickel Finish
AF9482—Insignia, USAF, Collar Chevrons Officer (2 stripes), USAF, Metallic Silver or Polished Nickel Finish
AF9412—Badge, ''Police'', USAF, Nickel Finish, 3″ x 2″
AF9411—Patch, USAF, Longevity Stripe, Blue and Gold
AF110—Shirt, Class A/Primary Duty, USAF, Men's, Long Sleeve, Dark Navy Blue, Numerous Sizes
AF111—Shirt, Class A/Primary Duty, USAF, Women's, Long Sleeve, Dark Navy Blue, Numerous Sizes
AF9415—Hat Badge, Formal, USAF, Nickel Finish
AF9410P—Patch, ''Police'', USAF, Half Size, 3″ x 2″
AF9414G—Patch, ''Guard'', USAF, Half Size, 3″ x 2″
AF9413P—Patch, ''Police'', USAF, Full Size, 4″ x ⅝″
AF9413G—Patch, ''Guard'', USAF, Full Size, 4″ x ⅝″
AF230—Trousers, class B/Utility, USAF, Unisex, Dark Navy Blue, Numerous Sizes
AF220—Shirt, Class B/Utility, USAF, Short Sleeve, Unsex, Dark Navy Blue, Numerous Sizes
AF210—Shirt, Class B/Utility, USAF, Long Sleeve, Unisex, Dark Navy Blue, Numerous Sizes
AF150—Hat, Formal, USAF, Unisex, Dark Navy Blue, S;M;L;XL
AF140—Ballcap, Standard, USAF, Unisex, Dark Navy Blue, M/L;L/XL

AF131—Pants, Class A/Primary Duty, USAF, Women's, Flex Waist, Dark Navy Blue, Numerous Sizes
AF130—Pants, Class A/Primary Duty, USAF, Men's, Flex Waist, Dark Navy Blue, Numerous Sizes
AF120—Shirt, Class A/Primary Duty, USAF, Men's, Short Sleeve, Dark Navy Blue, Numerous Sizes
AF121—Shirt, Class A/Primary Duty, USAF, Women's Short Sleeve, Dark Navy Blue, Numerous Sizes
AF9410—Necktie Bar Clasp, USAF, Metal, Polished Nickel Finish
AF430—Nameplate, Class B, USAF, Cloth, Dark Navy Blue with Silver/Gray Thread Lettering
AF390—Coveralls/Jumpsuit, USAF, Unisex, Lightweight, Dark Navy Blue, Numerous Sizes
AF370—Parka, USAF, Unisex, Cold Weather, Dark Navy Blue, Numerous Sizes
AF350—Fleece Liner, USAF, Unisex, Dark Navy Blue, Liner for Jacket, Numerous Sizes
AF360—Cap, USAF, Unisex, Lined Weather Watch, Dark Navy Blue, One Size Fits All
*Designated Source of Supply:* Human Technologies Corporation, Utica, NY
*Contracting Activity:* FA8003 AFICA DD, WRIGHT PATTERSON AFB, OH

*NSN(s)—Product Name(s):* 2945–00–019–0280—Kit, Fuel & Oil Filter Element
*Designated Source of Supply:* SVRC Industries, Inc., Saginaw, MI
*Contracting Activity:* DLA AVIATION, RICHMOND, VA

*NSN(s)—Product Name(s):* 2540–00–575–8391—Mirror and Bracket Assembly
*Designated Source of Supply:* The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL
*Contracting Activity:* DLA LAND AND MARITIME, COLUMBUS, OH

*Service(s)*

*Service Type:* Assembly of Food Packet, Food Packet, Survival, Abandon Ship: NSN 8970–00–299–1365
*Designated Source of Supply:* National Industries for the Blind, Alexandria, VA
*Contracting Activity:* DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

*Service Type:* Prime Vendor support for Foreign Military Sales
*Mandatory for:* RDECOM Contracting Center—Aberdeen, MD (Off-site: 507 Kent Street, Utica NY), 507 Kent Street, Utica, NY
*Designated Source of Supply:* Central Association for the Blind & Visually Impaired, Utica, NY
*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC–APG

*Service Type:* Assembly of Food Packet
*Mandatory for:* Defense Supply Center Philadelphia, Philadelphia, PA
*Designated Source of Supply:* Cincinnati Association for the Blind, Cincinnati, OH
*Contracting Activity:* DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

**Michael R. Jurkowski,**
*Deputy Director, Business Operations.*

[FR Doc. 2021–13606 Filed 6–24–21; 8:45 am]
**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the procurement list.

**SUMMARY:** This action adds product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

**DATES:** *Date added to and deleted from the Procurement List:* July 25, 2021.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

### Additions

On 4/9/2021 and 4/30/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

*End of Certification*

Accordingly, the following product(s) and service(s) are added to the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):* 1095–01–577–1801—Knife, Combat, Tanto Point, Automatic, 3.6″ Blade
*Designated Source of Supply:* DePaul Industries, Portland, OR
*Mandatory for:* 100% of the requirement of the Department of Defense
*Contracting Activity:* DEFENSE LOGISTICS AGENCY, DLA LAND AND MARITIME
*Distribution:* C-List

*Service(s)*

*Service Type:* Facility Support Services
*Designated for:* U.S. Geological Survey, Western Fisheries Research Center—Marrowstone Marine Field Station, Nordland, WA
*Mandatory Source of Supply:* Skookum Educational Programs, Bremerton, WA
*Contracting Activity:* U.S. GEOLOGICAL SURVEY, OFFICE OF ACQUISITON GRANTS

*Service Type:* Custodial and Grounds Maintenance Services
*Mandatory for:* U.S. Customs and Border Protection, U.S. Border Patrol-San Diego Sector, Chula Vista, CA
*Designated Source of Supply:* Bona Fide Conglomerate, Inc., El Cajon, CA
*Contracting Activity:* U.S. CUSTOMS AND BORDER PROTECTION, BORDER ENFORCEMENT CTR DIV

### Deletions

On 5/14/2021 and 5/21/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

*End of Certification*

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):* 8465–00–753–6335—Kit, Maintenance
*Contracting Activity:* DLA TROOP SUPPORT, PHILADELPHIA, PA

*NSN(s)—Product Name(s):*
7920–01–512–9343—Mop Head, Wet, Looped-End, Anti-Microbial, 22 oz., Green
7920–01–512–9345—Mop Head, Wet, Looped-End, Anti-Microbial, 22 oz., Blue
7920–01–512–8965—Mop Head, Wet, Looped-End, Anti-Microbial, 32 oz., Green
7920–01–512–8972—Mop Head, Wet, Looped-End, Anti-Microbial, 32 oz., Blue
7920–01–512–9343—Mop Head, Wet, Looped-End, Anti-Microbial, 22 oz., Green
7920–01–512–9345—Mop Head, Wet, Looped-End, Anti-Microbial, 22 oz., Blue
7920–01–512–8965—Mop Head, Wet, Looped-End, Anti-Microbial, 32 oz., Green
7920–01–512–8972—Mop Head, Wet, Looped-End, Anti-Microbial, 32 oz., Blue
7920–00–782–3784—Flat Mop Frame, Plastic, 24″, Handles
7920–00–782–3784—Flat Mop Frame, Plastic, 24″, Handles

*Designated Source of Supply:* Alphapointe, Kansas City, MO
*Contracting Activity:* STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

*NSN(s)—Product Name(s):*
7930–01–513–1144—Cleaner, Glass, Floral, 1 Gallon
7930–01–512–7172—Cleaner, Washroom, Multi-Surface, Biobased, 1 Gal
7930–01–512–7759—Cleaner, All-Purpose, Low Foam, Biobased, 1 Gal
7930–01–513–6571—Cleaner, Heavy Duty, Biobased, Citrus, 1 Gal

*Mandatory Source of Supply:* The Lighthouse for the Blind, St. Louis, MO
*Contracting Activity:* GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

*NSN(s)—Product Name(s):* 7520–01–587–9640—Pen, Ballpoint, Retractable, 3 Pack, Black, Fine Point
*Mandatory Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI
*Contracting Activity:* GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

*NSN(s)—Product Name(s):*
8415–01–515–4289—Cover, Advanced Combat Helmet System (ACH), w/o Communications Flap, Arctic White, Sm/Med
8415–01–515–4290—Cover, Advanced Combat Helmet System (ACH), w/o Communications Flap, Arctic White, Lg/XLg

*Designated Source of Supply:* Mount Rogers Community Services Board, Wytheville, VA
*Contracting Activity:* DLA TROOP SUPPORT, PHILADELPHIA, PA

*NSN(s)—Product Name(s):* 7520–01–484–5254—Pen, Ball Point, Retractable, Ergonomic, MD Executive Grip, Black Barrel, Black Ink, Medium Point
*Designated Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI
*Contracting Activity:* GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

*NSN(s)—Product Name(s):*
8455–01–645–2728—Neck Lanyard, Cord Style, J-Hook, Tan, 36″ x .25″
8455–01–645–2731—Neck Lanyard, Strap Style, J-Hook, Tan, 36″ x .75″

*Designated Source of Supply:* West Texas Lighthouse for the Blind, San Angelo, TX
*Contracting Activity:* GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

*Service(s)*

*Service Type:* Photocopying
*Mandatory for:* Environmental Protection Agency, Research Triangle PK, NC
*Mandatory Source of Supply:* Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
*Contracting Activity:* ENVIRONMENTAL PROTECTION AGENCY, U.S. ENVIRONMENTAL PROTECTION AGENCY

**Michael R. Jurkowski,**

*Deputy Director, Business Operations.*

[FR Doc. 2021–13607 Filed 6–24–21; 8:45 am]

BILLING CODE 6353–01–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Enrollment and Exit Form

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled AmeriCorps Enrollment and Exit Form for review and approval in accordance with the Paperwork Reduction Act.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 26, 2021.

**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:** Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Amy Borgstrom, at (202) 422–2781 or by email to *aborgstrom@cns.gov.*

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of AmeriCorps, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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**

A 60-day Notice requesting public comment was published in the **Federal Register** on February 24, 2021 at Vol. 86, 11268. This comment period ended April 25, 2021. No public comments were received from this Notice.

*Title of Collection:* AmeriCorps Enrollment and Exit Form.

*OMB Control Number:* 3045–0006. Type of Review: Renewal.

*Respondents/Affected Public:* Individuals and Households.

*Total Estimated Number of Annual Responses:* 296,000.

*Total Estimated Number of Annual Burden Hours:* 49,333.

*Abstract:* This information collection allows AmeriCorps to collect information from potential AmeriCorps members and from members ending their term of service. AmeriCorps seeks to renew the current information collection. The revisions are intended to make the gender categories more inclusive and add three new questions that are key to ensuring we are engaging members from diverse backgrounds and are responsive to requirements of the American Rescue Plan. The information collection will otherwise be used in the same manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on September 30, 2023.

Dated: June 14, 2021.

**Erin Dahlin,**

*Chief Program Advisor.*

[FR Doc. 2021–13557 Filed 6–24–21; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Record of Decision for the Department of the Air Force Fifth Generation Formal Training Unit Optimization Environmental Impact Statement

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Notice of availability of record of decision.

**SUMMARY:** On March 24, 2021, the Department of the Air Force (DAF) signed a Record of Decision (ROD) based on the Fifth Generation Formal Training Unit (FTU) Optimization at Joint Base Langley-Eustis (JBLE-Langley) and Eglin Air Force Base (AFB) Environmental Impact Statement (EIS).

**ADDRESSES:** Mr. Nolan Swick, AFCEC/CZN, 2261 Hughes Avenue, Suite 155, JBSA-Lackland Air Force Base, Texas 78236–9853, (210) 925–3392; *nolan.swick@us.af.mil.*

**SUPPLEMENTARY INFORMATION:** The ROD is for two decisions involving Eglin AFB, Florida. The first decision is to permanently beddown the F–22 Formal Training Unit (FTU) mission that is temporarily operating at Eglin AFB to JBLE-Langley, Virginia, and the second decision permanently beds down one additional F–35A FTU squadron at Eglin AFB. On June 3, 2021, the DAF signed an Amended ROD to track precisely with the numbers of aircraft comprising the F–22 FTU permanent beddown as analyzed in the Final EIS. All other decisions and statements documented in the March 24, 2021, ROD remain unchanged and shall have continuing full force and effect.

The DAF decisions documented in the ROD were based on matters discussed in the Final Environmental Impact Statement, inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available to the public on February 5, 2021 through a Notice of Availability in the **Federal Register** (Volume 86, Number 23, page 8356) with a waiting period that ended on March 8, 2021.

**Authority:** This Notice of Availability is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (32 CFR parts 989.21(b) and 989.24(b)(7)).

**Adriane Paris,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2021–13493 Filed 6–24–21; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID: USA–2021–HQ–0011]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Army, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Claims Service, Center for Personnel Claims Support (AMIM–KNG–CP) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 24, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Claims Service, Center for Personnel Claims Support (AMIM–KNG–CP), 50 Third Avenue, Suite 307, FT. Knox, KY 40121, ATTN: Mark Edick, Deputy Director/Operations Officer, or call 502–626–3000.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Administrative Claims for Loss and Damage to Personal Property; DD Form 1842 (Claims for Loss or Damage to Personal Property Incident to Service) and DD Form 1844 (List of Property and Claims Analysis Chart), OMB Control Number 0702–PROP.

*Needs and Uses:* The collection of information is required to process and settle claims for the loss, damage or destruction of personal property, household goods (HHGs), unaccompanied baggage (UBH), non-temporary storage (NTS), Privately Owned Vehicles (POV's) related to and

in conjunction with U.S. Government-sponsored official travel. This also includes loss, damage or destruction caused by fire, flood, theft vandalism and/or unusual occurrence that occurred incident to service. Respondents are retired/former military, retired/former Federal (GS/NAF) employees, US military Academy students, ROTC Cadets, family members with Power of Attorney, and Next of Kin.

*Affected Public:* Individuals and households.

*Annual Burden Hours:* 336.

*Number of Respondents:* 224.

*Responses per Respondent:* 2.

*Annual Responses:* 448.

*Average Burden per Response:* 45 minutes.

*Frequency:* On occasion.

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2021–13595 Filed 6–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2021–HA–0023]**

### Submission for OMB Review; Comment Request

**AGENCY:** The Office of the Assistant Secretary of Defense for Health Affairs, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by July 26, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* COVID–19 Vaccine Screening and Immunization Documentation; DHA Form 207; OMB Control Number 0720–0068.

*Type of Request:* Revision.

*Number of Respondents:* 2,000,000.

*Responses per Respondent:* 2.

*Annual Responses:* 4,000,000.

*Average Burden per Response:* 5 minutes.

*Annual Burden Hours:* 333,333.34.

*Needs and Uses:* The Defense Health Agency (DHA) has created the DHA Form 207, ''COVID–19 Vaccine Screening and Immunization Documentation'' to determine if the COVID–19 vaccine can be administered to a patient. The DHA Form 207 is used to determine and document patient eligibility and vaccine declinations for a COVID–19 vaccination. Respondents include Active Duty military members, Federal employees, beneficiaries, and contractors (based on their employment) who wish to receive the vaccine.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Dr. James Crowe.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–13579 Filed 6–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2021–HA–0052]**

### Proposed Collection; Comment Request

**AGENCY:** The Office of the Assistant Secretary of Defense for Health Affairs, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 24, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, 7700 Arlington Blvd., Room 3M368B, ATTN: Ms. Jennylynn Balmer, Falls Church, VA 22042 or call 703–681–8429.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Screening and Monitoring of DoD Personnel Deployed to Ebola Outbreak Areas; DD Form 2990 and DD Form 2991; OMB Control Number 0720–0056.

*Needs and Uses:* The information collection requirement is necessary to ensure DoD personnel deployed in support of Operation UNITED ASSISTANCE are promptly evaluated for possible exposure(s) to the Ebola virus during deployment to, and within 12 hours prior to departing from, an Ebola outbreak country or region. Ebola is a Quarantinable Communicable Disease as named in Executive Order 13295 and supported by several DoD and Federal laws. This information will be used by DoD medical and public health officials to (1) ensure Ebola exposure risk is evaluated, (2) proper prevention and quarantine efforts are implemented, (3) appropriate medical care is provided, (4) medical surveillance programs are robust and (5) the spread of Ebola beyond area of concern is minimized. The DoD has consulted with the Centers for Disease Control and Prevention, the Department of State, the Agency for International Development, and several Defense Agencies regarding disease control efforts and health surveillance in response to the public health emergency in West Africa and worldwide. DoD has also specifically discussed these new information collections with representatives of the various Military Services, representing deploying military members who have participated in the development of the content of these forms.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 480.

*Number of Respondents:* 1,200.

*Responses per Respondent:* 2.

*Annual Responses:* 2,400.

*Average Burden per Response:* 12 minutes.

*Frequency:* On occasion.

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–13617 Filed 6–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2021–OS–0016]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by July 26, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Industrial Capabilities Questionnaire; DD Form 2737; OMB Control Number 0704–0377.

*Type of Request:* Extension.

*Number of Respondents:* 12,800.

*Responses per Respondent*: 1.

*Annual Responses:* 12,800.

*Average Burden per Response:* 12 hours.

*Annual Burden Hours*: 153,600 hours.

*Needs and Uses:* The information collection requirement is necessary to provide the adequate industrial capability analyses to indicate a diverse, healthy, and competitive industrial base capable of meeting Department of Defense demands. Additionally, the information is required to perform the industrial assessments required by Chapter 148, section 2502 of Title 10 of the U.S. Code; and to support development of a defense industrial base information system as required by Section 722 of the 1992 Defense Production Act, as amended, and Section 802 of Executive Order 12919. Respondents are companies/facilities specifically identified as being of interest to the Department of Defense. The DD Form 2737 Industrial Capabilities Questionnaire records pertinent information needed to conduct industrial base analysis for senior DoD leadership to ensure a robust defense industrial base that supports the warfighter.

*Affected Public:* Business or other for-profit; Not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's obligation*: Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2021–13581 Filed 6–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2021–HA–0050]**

### Proposed Collection; Comment Request

**AGENCY:** The Office of the Assistant Secretary of Defense for Health Affairs, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 24, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, ATTN: Ms. Zelly Zim, 8111 Gatehouse Road, 229D, Falls Church, VA 22042 or call 571–232–1551.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* TRICARE Select Enrollment, Disenrollment, and Change Form; DD Form 3043; OMB Control Number 0720–0061.

*Needs and Uses:* The information collection requirement is necessary to obtain each non-active duty TRICARE beneficiary's personal information needed to: (1) Complete his/her enrollment into the TRICARE Select health plan option, (2) dis-enroll a beneficiary, or (3) change a beneficiary's enrollment information (*e.g.,* address, add a dependent, report other health insurance). This information is required to ensure the beneficiary's TRICARE benefits and claims are administered based on their TRICARE plan of choice. Without this new enrollment form, each non-active duty TRICARE beneficiary is automatically defaulted into direct care, limiting their health care options to military hospitals and clinics. These beneficiaries would have no TRICARE coverage when using the TRICARE network of providers for services not available at their local military hospital or clinic.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 24,825.

*Number of Respondents:* 99,300.

*Responses per Respondent:* 1.

*Annual Responses:* 99,300.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2021–13626 Filed 6–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

---

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2021–OS–0053]**

### Proposed Collection; Comment Request

**AGENCY:** The Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 24, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Ms. Angela Duncan at the Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09–09, Alexandria, VA 22350–3100 or call 571–372–7574.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* QuickCompass of Sexual Assault Prevention and Response Personnel (QSAPR), OMB Control Number 0704–0603.

*Needs and Uses:* The QuickCompass of Sexual Assault Prevention and Response Personnel (QSAPR) assesses perceived professional or other reprisal or retaliation; access to sufficient physical and mental health services as a result of the nature of their work; access to installation and unit commanders; access to victims and alleged offender's immediate commander; responsiveness of commanders to Sexual Assault Response Coordinators (SARCs); support and services provided to sexual assault victims; understanding of others of the process and their willingness to assist; adequacy of training received by SARCs and Sexual Assault Prevention and Response (SAPR) VAs to effectively perform their duties; and other factors affecting the ability of SARCs and SAPR VAs to perform their duties. In addition, the results of the survey will assess progress, identify shortfalls, and revise policies and programs as needed. The FY21 NDAA requires that not later than June 30, 2021 the Secretary of Defense (SECDEF) survey SARCs and SAPR VAs on their ability to perform duties. SECDEF is required to submit a report of the survey results and actions to be taken as a result of the survey to the Senate and House Committees on Armed Services. In order to be able to meet reporting requirements for DoD

leadership, the Military Services, and Congress, the survey needs to be completed by May 2021 to be able to present results to leadership by the end of 2021. That will also allow the results to be shared with the Department and Congress in the DoD SAPRO Annual Report as they have been in previous cycles. Data will be aggregated and reported triennially in perpetuity. Ultimately, the study will provide a report to Congress and all of the data, programs, and computational details necessary for replication and peer review.

*Affected Public:* Individuals or households.

*Annual burden hours*: 1,667.

*Number of Respondents:* 5,000.

*Responses per Respondent*: 1.

*Annual Responses:* 5,000.

*Average Burden per Response*: 20 minutes.

*Frequency:* Every 3 years.

The target population for this survey will be all SARCs, VAs, and SVCs/VLCs who are either Active Duty, Reserves/National Guard, or a DoD civilian employee. The survey will solicit insights into characteristics of SAPR programs to better understand how responders are trained for their position and their perceptions of how well their program is supported and executed.

The full online survey system will be hosted internally on OPA contractor servers. Participants will receive email communications notifying them about the importance of the survey, the confidential nature of the data collection, how the data will be used, and how to access the website. Respondents will be given a unique link and passcode to enter the survey in all email communications. They will receive up to no more than seven emails during the survey fielding. The reminder emails will be sent only to those selected sample members who have not yet responded to the survey or who are not active refusers. Once they complete the questions on the survey, there is a submit button to send their response.

OPA weights the eligible respondents in order to make inferences about the entire population of SAPR Personnel. The weighting methodology utilizes standard weighting processes.

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–13615 Filed 6–24–21; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2021–OS–0051]**

### Proposed Collection; Comment Request

**AGENCY:** The Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 24, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Undersecretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301, Room 2C548A, Kathryn E. Purinton, 703–571–0106.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Involuntary Allotment Application; DD Form 2653; OMB Control Number 0704–0367.

*Needs and Uses:* This collection of information is in response to requests for involuntary allotments. Before responding to a request, the responsible government official must have information that identifies both the applicant and the member against whom the involuntary allotment is sought; proves that the request is based on a valid court judgment; shows that the judgment comports with the provision of the Soldiers and Sailors Civil Relief Act (SCRA); and enables consideration for whether exigencies of military duty caused the absence of the member from a judicial proceeding upon which the judgment is based. With the exception of information concerning exigencies of military duty, an applicant for an involuntary allotment must provide required information before a government official can act on the applicant's request. The information from the DD Form 2653 is used by DFAS officials to determine whether an involuntary allotment should be established against the pay of a member of the Armed Forces. The information is used to provide government reviewing officials with necessary information to ensure that both the law and due process considerations are accounted for, including information sufficient for a decision maker to determine that the request is based on a valid judgment and that the SCRA has been complied with.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 1,392 hours.

*Number of Respondents:* 2,783.

*Responses per Respondent:* 1.

*Annual Responses:* 2,783.

*Average Burden per Response:* 30 minutes.

*Frequency:* On occasion.

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–13609 Filed 6–24–21; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2021–HQ–0006]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Navy, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 24, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Department of the Navy Information Management Control Officer, 2000 Navy Pentagon, Rm. 4E563, Washington, DC 20350, Ms. Barbara Figueroa or call 703–614–7885.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Prospective Studies of US Military Forces: The Millennium Cohort Study; OMB Control Number 0703–0064.

*Needs and Uses:* The information collection requirement is necessary to respond to recommendations by Congress and by the Institute of Medicine to perform investigations that systematically collect population-based demographic and health data so as to track and evaluate the health of military personnel throughout the course of their careers and after leaving military service. The Millennium Cohort Family Study also evaluates the impact of military life on military families.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 100,764.

*Number of Respondents:* 134,351.

*Responses per Respondent*: 1.

*Annual Responses*: 134,351.

*Average Burden per Response*: 45 minutes.

*Frequency:* On occasion.

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2021–13596 Filed 6–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2021–HQ–0005]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Navy, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 24, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Department of the Navy Information Management Control Officer, 2000 Navy Pentagon, Rm. 4E563, Washington, DC 20350, Ms. Barbara Figueroa or call 703–614–7885.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* CATCH Program; OMB Control Number 0703–0069.

*Needs and Uses:* The information collection requirement is necessary to assist with the identification of serial sexual assault offenders within the military services.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 150.

*Number of Respondents:* 300.

*Responses per Respondent:* 1.

*Annual Responses:* 300.

*Average Burden per Response:* 30 minutes.

*Frequency:* On occasion.

Dated: June 16, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–13594 Filed 6–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2021–SCC–0059]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Student Loan Program Deferment Request Forms

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before July 26, 2021.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Federal Student Loan Program Deferment Request Forms.

*OMB Control Number:* 1845–0011.

*Type of Review:* An extension without change of a currently approved collection.

*Respondents/Affected Public:* Individuals and Households.

*Total Estimated Number of Annual Responses:* 683,903.

*Total Estimated Number of Annual Burden Hours:* 109,426.

*Abstract:* These forms serve as the means by which borrowers in the William D. Ford Federal Direct Loan (Direct Loan), Federal Family Education Loan (FFEL) and the Federal Perkins Loan (Perkins Loan) Programs may request deferment of repayment on their loans if they meet certain statutory and regulatory criteria. The U.S. Department of Education and other loan holders uses the information collected on these forms to determine whether a borrower meets the eligibility requirements for the specific deferment type being submitted.

Dated: June 22, 2021.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021–13569 Filed 6–24–21; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Update on Reimbursement for Costs of Remedial Action at Uranium and Thorium Processing Sites

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of acceptance of Title X claims during fiscal year (FY) 2021.

**SUMMARY:** This Notice announces the Department of Energy's (DOE) acceptance of claims in FY 2021 from eligible uranium and thorium processing site licensees for reimbursement under Title X of the Energy Policy Act of 1992. The FY 2022 DOE Office of Environmental Management's Congressional Budget Request included $33.5 million for the Title X Uranium and Thorium Reimbursement Program.

**DATES:** The closing date for the submission of FY 2021 Title X claims is September 27, 2021. The claims will be processed for payment together with any eligible unpaid approved claim balances from prior years, based on the availability of funds from congressional appropriations. If the total approved claim amounts exceed the available funding, the approved claim amounts will be reimbursed on a prorated basis. All reimbursements are subject to the availability of funds from congressional appropriations.

**ADDRESSES:** Claims must be submitted by certified or registered mail, return receipt requested, to Jalena Dayvault, U.S. Department of Energy, Office of Legacy Management, 2597 Legacy Way, Grand Junction, Colorado 81503. Two copies of the claim should be included with each submission. In addition to the mailed hardcopies, claims may be submitted electronically to *Jalena.Dayvault@lm.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Julia Donkin, Title X Program Lead at (202) 586–5000 or email: *Julia.Donkin@em.doe.gov.*

**SUPPLEMENTARY INFORMATION:** DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (*e.g.,* statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites. The eligible licensees incurred these costs to remediate byproduct material, generated as an incident of sales to the United States Government of uranium or thorium that was extracted or concentrated from ores processed primarily for their source material contents. To be reimbursable, costs of remedial action must be for work that is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as

determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

**Authority:** Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

### Signing Authority

This document of the Department of Energy was signed on June 17, 2021, by Julia Donkin, Office of Waste Disposal, Office of Environmental Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 22, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2021–13555 Filed 6–24–21; 8:45 am]

**BILLING CODE 6450–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21–2156–000]**

### Antelope Expansion 1B, 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 Antelope Expansion 1B, 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 July 12, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 21, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–13602 Filed 6–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

June 21, 2021.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP21–898–000.

*Applicants:* Eastern Shore Natural Gas Company.

*Description:* § 4(d) Rate Filing: Capital Cost Surcharge #2 to be effective 7/15/2021.

*Filed Date:* 6/15/21.

*Accession Number:* 20210615–5081.

*Comments Due:* 5 p.m. ET 6/28/21.

*Docket Numbers:* RP20–921–004.

*Applicants:* Maritimes & Northeast Pipeline, L.L.C.

*Description:* Compliance filing RP20–921 MNE Settlement Compliance Filing to be effective 6/1/2021.

*Filed Date:* 6/17/21.

*Accession Number:* 20210617–5116.

*Comments Due:* 5 p.m. ET 6/29/21.

*Docket Numbers:* RP21–899–000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* Petition for Limited Waiver of Tariff Provision of El Paso Natural Gas, L.L.C.

*Filed Date:* 6/17/21.

*Accession Number:* 20210617–5127.

*Comments Due:* 5 p.m. ET 6/29/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 21, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–13604 Filed 6–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG21–170–000.
*Applicants:* Lincoln Land Wind, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Lincoln Land Wind, LLC.
*Filed Date:* 6/17/21.
*Accession Number:* 20210618–5032.
*Comments Due:* 5 p.m. ET 7/8/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–4633–005.
*Applicants:* Madison Gas and Electric Company.
*Description:* Triennial Market Power Analysis for Central Region of Madison Gas and Electric Company.
*Filed Date:* 6/17/21.
*Accession Number:* 20210617–5135.
*Comments Due:* 5 p.m. ET 8/16/21.

*Docket Numbers:* ER19–381–002.
*Applicants:* Power Holding LLC.
*Description:* Amendment to the December 29, 2020 Triennial Market Power Analysis for Southeast Region of Power Holding LLC.
*Filed Date:* 6/17/21.
*Accession Number:* 20210617–5139.
*Comments Due:* 5 p.m. ET 7/8/21.

*Docket Numbers:* ER21–2157–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Tariff Cancellation: Termination of AltaGas San Joaquin Hanford GSFA and GIA (TO SA 24) to be effective 8/17/2021.
*Filed Date:* 6/17/21.
*Accession Number:* 20210617–5110.
*Comments Due:* 5 p.m. ET 7/8/21.

*Docket Numbers:* ER21–2158–000.
*Applicants:* VETCO.
*Description:* Compliance filing: eTariff Filing to Comply with Order in Docket No. ER21–712–000 to be effective 1/1/2021.
*Filed Date:* 6/18/21.
*Accession Number:* 20210618–5008.
*Comments Due:* 5 p.m. ET 7/9/21.

*Docket Numbers:* ER21–2159–000.
*Applicants:* Solios Power Midwest Trading LLC.
*Description:* Tariff Cancellation: Cancellation of Market-Based Rate Tariff to be effective 6/23/2021.
*Filed Date:* 6/18/21.
*Accession Number:* 20210618–5010.
*Comments Due:* 5 p.m. ET 7/9/21.

*Docket Numbers:* ER21–2160–000.
*Applicants:* New England Hydro Transmission Electric Company.
*Description:* Compliance filing: 2021–06–18 Filing of Settlement Tariff Records to Comply With Order in ER21–712 to be effective 1/1/2021.
*Filed Date:* 6/18/21.
*Accession Number:* 20210618–5011.
*Comments Due:* 5 p.m. ET 7/9/21.

*Docket Numbers:* ER21–2161–000.
*Applicants:* New England Hydro Transmission Corporation.
*Description:* Compliance filing: 2021–06–18 Filing of Settlement Tariff Records to Comply With Order in ER21–712 to be effective 1/1/2021.
*Filed Date:* 6/18/21.
*Accession Number:* 20210618–5012.
*Comments Due:* 5 p.m. ET 7/9/21.

*Docket Numbers:* ER21–2162–000.
*Applicants:* New England Electric Transmission Corporation.
*Description:* Compliance filing: 2021–06–18 Filing of Settlement Tariff Records to Comply With Order in ER21–712 to be effective 1/1/2021.
*Filed Date:* 6/18/21.
*Accession Number:* 20210618–5013.
*Comments Due:* 5 p.m. ET 7/9/21.

*Docket Numbers:* ER21–2163–000.
*Applicants:* IRH Management Committee.
*Description:* Compliance filing: Use Agreement Baseline and Compliance Filing to be effective 6/21/2021.
*Filed Date:* 6/21/21.
*Accession Number:* 20210621–5000.
*Comments Due:* 5 p.m. ET 7/12/21.

*Docket Numbers:* ER21–2164–000.
*Applicants:* MATL LLP.
*Description:* § 205(d) Rate Filing: Tariff Waiver and Amendment—Order 676–H to be effective 5/15/2015.
*Filed Date:* 6/21/21.
*Accession Number:* 20210621–5009.
*Comments Due:* 5 p.m. ET 7/12/21.

*Docket Numbers:* ER21–2166–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: Revised RS 188—Colstrip 1&2 Transmission Agreement with Puget Sound Energy to be effective 9/1/2021.
*Filed Date:* 6/21/21.
*Accession Number:* 20210621–5015.
*Comments Due:* 5 p.m. ET 7/12/21.

*Docket Numbers:* ER21–2167–000.
*Applicants:* Heartland Generation Ltd.
*Description:* Tariff Cancellation: Cancellation to be effective 6/22/2021.
*Filed Date:* 6/21/21.
*Accession Number:* 20210621–5053.
*Comments Due:* 5 p.m. ET 7/12/21.

*Docket Numbers:* ER21–2168–000.
*Applicants:* PacifiCorp.
*Description:* § 205(d) Rate Filing: OATT Revised Attachment U (revised effective date) to be effective 10/1/2021.
*Filed Date:* 6/21/21.
*Accession Number:* 20210621–5061.
*Comments Due:* 5 p.m. ET 7/12/21.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF21–1007–000.
*Applicants:* Bloom Energy Corporation.
*Description:* Form 556 of Bloom Energy Corporation.
*Filed Date:* 6/21/21.
*Accession Number:* 20210618–5041.
*Comments Due:* None-Applicable.

*Docket Numbers:* QF21–1008–000.
*Applicants:* Bloom Energy Corporation.
*Description:* Form 556 of Bloom Energy Corporation [Hicksville].
*Filed Date:* 6/21/21.
*Accession Number:* 20210618–5043.
*Comments Due:* None-Applicable.

*Docket Numbers:* QF21–1009–000.
*Applicants:* Bloom Energy Corporation.
*Description:* Form 556 of Bloom Energy Corporation [Main Hospital].
*Filed Date:* 6/21/21.
*Accession Number:* 20210621–5063.
*Comments Due:* None-Applicable.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 21, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–13603 Filed 6–24–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL21–78–000]**

### PJM Interconnection, L.L.C.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 17, 2021, the Commission issued an order in Docket No. EL21–78–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether PJM Interconnection, L.L.C.'s Open Access Transmission Tariff and the Amended and Restated Operating Agreement are unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. *PJM Interconnection, L.L.C.,* 175 FERC ¶ 61,231 (2021).

The refund effective date in Docket No. EL21–78–000, 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. EL21–78–000 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 (2020), 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 TYY, (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.

Dated: June 21, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–13601 Filed 6–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 4334–017]**

### EONY Generation Limited; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 4334–017.

c. *Date filed:* January 28, 2021.

d. *Applicant:* EONY Generation Limited (EONY).

e. *Name of Project:* Philadelphia Hydroelectric Project.

f. *Location:* On the Indian River, in the Village of Philadelphia in Jefferson County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Franz Kropp, Director, Generation, EONY, 7659 Lyonsdale Road, Lyons Falls, NY 13368; (613) 225–0418, ext. 7498. Murray Hall, Manager, Generation, EONY, 7659 Lyonsdale Road, Lyons Falls, NY 13368; (613) 382–7312.

i. *FERC Contact:* Emily Carter at (202) 502–6512, or *Emily.Carter@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send 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–4334–017.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted but is not ready for environmental analysis at this time.

l. *Project Description:* The existing Philadelphia Hydroelectric Project consists of (1) a 65-acre reservoir at a normal maximum water surface elevation of 475.4 feet; [1] (2) two concrete dams joined by an island and designated as the east diversion dam, which is 60 feet long and 2 to 3 feet high with a crest elevation of 474.4 feet, and topped with 1.2-foot-high flashboards, and the west diversion dam, which has two sections totaling approximately 30 feet long and 10.4 feet high with a crest elevation of 475.4 feet; (3) a 45-foot-long non-overflow section that includes a reinforced concrete intake structure; (4) a 377-foot-long, 9.5-foot-diameter concrete penstock; (5) a 54.5-foot-long by 30-foot-wide reinforced concrete powerhouse; (6) one 3.645-megawatt horizontal Kaplan-type turbine-generator unit; (7) trashracks with 2.5-inch clear spacing; (8) a 4,160-volt, approximately 50-foot-long buried transmission line; (9) a switchyard; and (10) appurtenant facilities. The average annual generation was 10,092,492 kilowatt-hours for the period from 2016 to 2020.

EONY currently operates the project in run-of-river mode and discharges a minimum flow of 20 cubic feet per second (cfs) into the project's 1,250-foot-long bypassed reach to project aquatic resources.

As part of the license application, EONY filed a settlement agreement on behalf of itself, the U.S. Fish and Wildlife Service, and the New York State Department of Environmental Conservation. As part of the settlement

[1] All elevations are in National Geodetic Vertical Datum of 1929.

agreement, EONY proposes to: (1) Continue to operate the project in a run-of-river mode; (2) provide a minimum flow in the bypassed reach of 28 cfs; [2] (3) install seasonal trashracks with 1-inch spacing; (4) implement a Trashrack Operations and Maintenance Plan, a Bat and Eagle Protection Plan, an Invasive Species Management Plan, and an Impoundment Drawdown and Cofferdam Plan; and (5) implement several improvements to an existing fishing platform to make it accessible to persons with disabilities, including the addition of an accessible parking space, an associated access aisle and access route from the accessible parking space to the fishing platform, and modifications to the railing surrounding the fishing platform.

m. A copy of the application is available for review via the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–4334). For assistance, contact FERC Online Support. 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, (866) 208–3676 or (202) 502–8659 (TTY). In addition, the public portions of the application will be made available during regular business hours at two locations: (1) EONY's Lyonsdale, NY office located at 7659 Lyonsdale Road, Lyons Falls, New York 13368; and (2) Bodman Memorial Library located at 8 Aldrich Street, Philadelphia, New York 13673.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: June 21, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–13600 Filed 6–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

[2] EONY determined that the proposed 28-cfs minimum flow would not result in incremental losses of generation compared to the current condition because the field measurement of the existing minimum flow was approximately 28 cfs, which accounted for flashboard leakage and was most likely present during the term of the existing license.

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PL21–2–000]**

### State Voluntary Agreements To Plan and Pay for Transmission Facilities

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of policy statement.

**SUMMARY:** This policy statement addresses state efforts to develop transmission facilities through voluntary agreements to plan and pay for those facilities. We clarify that Voluntary Agreements are not categorically precluded by the Federal Power Act or the Commission's existing rules and regulations.

**DATES:** This policy statement is effective June 17, 2021.

**FOR FURTHER INFORMATION CONTACT:**

David Tobenkin (Technical Information), Office of Energy Policy and Innovation, (202) 502–6445, *david.tobenkin@ferc.gov*

Lina Naik (Legal Information), Office of the General Counsel, (202) 502–8882, *lina.naik@ferc.gov*

Jay Sher (Technical Information), Office of Energy Market Regulation, (202) 502–8921, *jay.sher@ferc.gov*

**SUPPLEMENTARY INFORMATION:**

1. This policy statement addresses state efforts to develop transmission facilities through voluntary agreements to plan and pay for those facilities (Voluntary Agreements). Voluntary Agreements include agreements among: (1) Two or more states; (2) one or more states and one or more public utility transmission providers; or (3) two or more public utility transmission providers. We clarify that Voluntary Agreements are not categorically precluded by the Federal Power Act (FPA) [1] or the Commission's existing rules and regulations, and encourage interested parties considering the use of such agreements to consult with Commission staff. To the extent that states, public utility transmission providers, or other stakeholders believe that the relevant tariffs impose barriers to Voluntary Agreements, the Commission is open to filings to remove or otherwise address those barriers.

2. Developing cost-effective and reliable transmission facilities remains a priority of this Commission.[2] Voluntary Agreements can further those goals by, for example, providing states with a way to prioritize, plan, and pay for transmission facilities that, for whatever reason, are not being developed pursuant to the regional transmission planning processes required by Order No. 1000.[3] In addition, in some cases, Voluntary Agreements may allow state-prioritized transmission facilities to be planned and built more quickly than would comparable facilities that are

[1] 16 U.S.C. 791a *et seq.*

[2] *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051, at P 2 (2011), *order on reh'g and clarification,* Order No. 1000–A, 77 FR 32184 (May 31, 2012), 139 FERC ¶ 61,132, *order on reh'g and clarification,* Order No. 1000–B, 77 FR 64890 (Oct. 24, 2012), 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014) (instituting reforms to ensure more efficient and cost-effective regional transmission planning); *see also Elec. Transmission Incentives Pol'y Under Section 219 of the Federal Power Act,* 170 FERC ¶ 61,204, at P 31 (2020) (Transmission Incentives NOPR) (noting ''FPA section 219(a) requires that the Commission provide incentive-based rates for electric transmission for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion''). The Commission noted in the Transmission Incentives NOPR that there is a need for existing and new transmission facilities to help facilitate integration of a variety of types of resources. Transmission Incentives NOPR, 170 FERC ¶ 61,204 at P 28.

[3] Order No. 1000, 136 FERC ¶ 61,051 at P 146. Order No. 1000 established rules and regulations addressing, among other things, regional transmission planning, interregional transmission coordination, and cost allocation methods for new transmission facilities. This includes requiring each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan and complies with certain transmission planning principles.

planned through the regional transmission planning process(es).

3. Nevertheless, we are concerned that confusion regarding the relationship between Voluntary Agreements and Commission rules and regulations may be deterring such agreements. Accordingly, in this policy statement, we clarify that neither the FPA nor the Commission's rules and regulations categorically preclude Voluntary Agreements among: (1) Two or more states; (2) one or more states and one or more public utility transmission providers; or (3) two or more public utility transmission providers to plan and pay for new transmission facilities. In particular, we note that Order No. 1000 allows market participants, including states, to negotiate voluntarily alternative cost sharing arrangements that are distinct from the relevant regional cost allocation method(s).[4]

4. As an illustration, we note that the Commission accepted certain non-Order No. 1000, alternative cost sharing arrangements in the context of Order No. 1000 compliance filings.[5] In the case of PJM, the Commission held that it ''need not find that the State Agreement Approach and corresponding cost allocation method comply with Order No. 1000.''[6] Specifically, with regard to PJM's State Agreement Approach, the Commission found the approach supplemented and did ''not conflict or otherwise replace'' PJM's Order No. 1000 process to consider transmission needs driven by public policy requirements.[7]

5. More recently, the Commission approved a study agreement that initiated a Voluntary Agreement process in PJM. There, the New Jersey Board of Public Utilities (New Jersey Board), acting pursuant to PJM's State Agreement Approach, issued an order formally requesting that PJM open a competitive proposal window to solicit proposals for transmission facilities to expand the PJM transmission system and to identify system improvements to interconnect and provide for the deliverability of 7,500 MW of offshore wind generation into New Jersey by 2035. The New Jersey Board and PJM entered into a study agreement directing PJM to solicit proposals for possible transmission facilities and analyze them to determine the more efficient or cost-effective enhancement or expansion of transmission facilities to meet New Jersey's offshore wind goals.[8] The New Jersey Board explained that this type of collaborative approach to transmission planning will help ensure that the high-voltage transmission system accommodates state clean energy policies and represents a type of state-federal collaboration consistent with Commission rules and regulations.[9]

6. To the extent that states or public utility transmission providers believe there are barriers to Voluntary Agreements in Commission-jurisdictional tariffs or other agreements, we encourage them to identify those barriers and, as necessary, consider making filings before this Commission to address those barriers. Commission staff is available to consult on these issues as states, public utility transmission providers, and other stakeholders consider addressing such barriers and the topic of Voluntary Agreements more generally. We encourage relevant parties to contact Commission staff regarding all potential Voluntary Agreements.

## I. Document Availability

7. 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 (*https://www.ferc.gov*). 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.

8. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

9. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Commissioner Chatterjee is not participating.

Commissioner Danly is concurring with a separate statement attached.

Commissioner Christie is concurring with a separate statement attached.

Issued: June 17, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

**Department of Energy**

*Federal Energy Regulatory Commission*

State Voluntary Agreements To Plan and Pay for Transmission Facilities

PL21–2–000

DANLY, Commissioner, *concurring:*

1. I concur in the issuance of this policy statement on state voluntary agreements to plan and pay for transmission facilities. I do not know what it accomplishes, but we are not ''categorically precluded'' from issuing it, and if there is a chance that it can help critical transmission infrastructure to be built, then I see no reason to oppose it.

2. The policy states that ''[W]e are concerned that confusion regarding the relationship between Voluntary Agreements and Commission rules and regulations may be deterring [Voluntary]

[4] *See id.* PP 561, 724; Order No. 1000–A, 139 FERC ¶ 61,132 at PP 728–729; *see also* Order No. 1000, 136 FERC ¶ 61,051 at P 209 n.189 (''[W]e strongly encourage states to participate actively in the identification of transmission needs driven by Public Policy Requirements. Public utility transmission providers, for example, could rely on committees of state regulators or, with appropriate approval from Congress, compacts between interested states to identify transmission needs driven by Public Policy Requirements for the public utility transmission providers to evaluate in the transmission planning process.''). While we focus here on Voluntary Agreements as a potential tool for states to advance state policy goals, the policy statement does not alter market participants' ability to pursue such arrangements absent state involvement.

[5] For example, the Commission accepted PJM Interconnection, L.L.C.'s (PJM) State Agreement Approach to transmission planning, which is a transmission planning and cost allocation mechanism supplementary to PJM's Order No. 1000 regional transmission planning process. Through the State Agreement Approach, one or more state governmental entities authorized by their respective states, individually or jointly, may agree voluntarily to be responsible for the allocation of all costs of a proposed transmission facility that addresses state public policy requirements identified or accepted by the relevant state(s) in the PJM region. *See PJM Interconnection, L.L.C.,* 142 FERC ¶ 61,214, at PP 142–143 (2013), *order on reh'g and compliance,* 147 FERC ¶ 61,128, at P 92 (2014); PJM, Intra-PJM Tariffs, Operating Agreement, sched. 6, section 1.5.9(a) (State Agreement Approach) (26.0.0). Similarly, ISO New England Inc.'s (ISO–NE) tariff includes a voluntary process that enables the New England States Committee on Electricity (NESCOE) and state public utility regulators to plan and pay for transmission facilities. *See ISO New England Inc.,* 143 FERC ¶ 61,150, at P 121 (2013); ISO–NE, ISO New England Inc. Transmission, Markets and Services Tariff, sched. 12, section B.6 (Public Policy Transmission Upgrade Costs) (7.0.0).

[6] *PJM Interconnection, L.L.C.,* 142 FERC ¶ 61,214 at P 142.

[7] *Id.*

[8] *PJM Interconnection, L.L.C.,* 174 FERC ¶ 61,090 (2021).

[9] *Id.* P 10.

agreements.'' [1] We do not cite any examples of such confusion, but—who knows—it may well exist.

3. To attempt to dispel this possible confusion, we ''clarify that Voluntary Agreements are not categorically precluded by the Federal Power Act (FPA) [2] or the Commission's existing rules and regulations.'' [3] This amounts to a declaration that the FPA and existing rules and regulations do not obviously prohibit all Voluntary Agreements—I have no quarrel with that. But I do believe it necessary to remind everyone that each Voluntary Agreement must still individually pass muster under our statute and regulations.

4. The actual policy in our statement is an invitation:

To the extent that states or public utility transmission providers believe there are barriers to Voluntary Agreements in Commission-jurisdictional tariffs or other agreements, we encourage them to identify those barriers and, as necessary, consider making filings before this Commission to address those barriers.[4]

5. We do not need a policy statement to invite filings. But there is no harm in it. I also invite and welcome filings before the Commission so that we can ensure that critical transmission, and critical natural gas pipelines, and other critical infrastructure, can obtain the approvals and regulatory certainty they require in order to be built.

For these reasons, I respectfully concur.

James P. Danly,
*Commissioner.*

**Department of Energy**

*Federal Energy Regulatory Commission*

State Voluntary Agreements To Plan and Pay for Transmission Facilities

Docket No. PL21–2–000

CHRISTIE, Commissioner, *concurring:*

1. I concur and write separately to add the following.

2. Today's Policy Statement [1] reaffirms that voluntary agreements among states to promote transmission development to meet state public policies are not categorically precluded by Commission rules and regulations. Order No. 1000 made clear that states voluntarily could negotiate alternative cost sharing arrangements that are distinct from the relevant regional cost allocation method [2] and that order highlighted a vehicle for multiple states to cooperate, interstate compacts.[3] As the Policy Statement notes, the Commission has accepted certain alternative cost sharing arrangements in the context of Order No. 1000 compliance filings.[4] I would note that voluntary agreements are open to all states without regard to whether they participate in Regional Transmission Organizations (RTOs) or Independent System Operators (ISOs) [5] and they need not be limited in purpose to transmission only. Relevant history illustrates.

3. RTOs/ISOs [6] were established more than two decades ago during the ''restructuring'' era that saw about half the states initially adopt some version of policies requiring their vertically-integrated utilities to divest or at least ''functionally separate'' their generating assets, which were then supposed to compete on price in RTO/ISO markets with independent power producers (''IPPs,'' sometimes called ''NUGS'' for non-utility generators—the acronyms float like confetti in this business).[7]

4. Importantly, the states which chose to participate in RTO/ISO markets during the restructuring era shared a general consensus that the purpose of RTOs/ISOs was to plan the regional transmission necessary to promote reliability at the *least-cost* to consumers and to operate energy and capacity markets to provide consumers with *least-cost* power on a *non-discriminatory* basis, *i.e.,* without regard to the source of the electrons (sometimes called ''economic dispatch''). Federal regulation reflected this consensus about the purpose of RTOs/ISOs.[8]

5. That consensus no longer exists at either the state or federal levels. The past several years have seen an increasing divergence of public policies in states that are members of multi-state RTOs/ISOs, over such fundamental issues as mandated resource mixes, compensation in capacity markets, transmission planning criteria and cost allocation, and carbon taxes.[9] The disappearance of the original consensus about the purpose of RTO/ISO markets has serious implications across a range of issues, but the adoption of this Policy Statement by the Commission offers a good time to emphasize that states that wish to cooperate with other states which share similar public-policy goals—whether environmental, reliability or economic—have options for achieving regional benefits outside the context of RTO/ISO participation.

6. In particular, I would point out that while this Policy Statement emphasizes the potential availability of voluntary agreements among states to promote interstate transmission development, voluntary state agreements may also be available for other purposes. Before the restructuring era, many state-regulated utilities participated in multi-state power pools [10] designed to support reliability by wheeling power from state to state when needed to avoid load shedding, as well as facilitating bilateral

[1] *State Voluntary Agreements to Plan and Pay for Transmission Facilities,* 175 FERC ¶ 61,225, at P 3 (2021) (Policy Statement).

[2] 16 U.S.C. 791a *et seq.*

[3] Policy Statement, 175 FERC ¶ 61,225 at P 1.

[4] *Id.* P 6.

[1] *State Voluntary Agreements to Plan and Pay for Transmission Facilities,* 175 FERC ¶ 61,225 (2021) (Policy Statement).

[2] *See* Policy Statement at PP 3–4, nn.4–5.

[3] *See id.* at n.4. Interstate compacts among states must be approved by Congress. U.S. Const. art.1, section 10, cl. 3.

[4] Policy Statement at n.5 (citing PJM's State Agreement Approach as an example of a vehicle by which a state or states may voluntarily pursue transmission projects to fulfill their own individual public policies and bear the costs of such policy-driven projects themselves.).

[5] Technically speaking, state-regulated utilities participate in RTOs/ISOs, subject to state law.

[6] *See Regional Transmission Organizations,* Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh'g,* Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty.* v. *FERC,* 272 F.3d 607 (D.C. Cir. 2001). Order No. 2000 was issued in 1999 and established criteria for RTOs/ISOs.

[7] The restructuring era was short-lived. Several states subsequently reversed their earlier decisions and returned to some form of vertical integration. *See* Tyson Slocum, *The Failure of Electricity Deregulation: History, Status and Needed Reforms,* Public Citizen's Energy Program, March 2007, at 5; *see, e.g.,* Ch. 933, 2007 Va. Acts of Assembly (April 4, 2007). Restructuring was sometimes inaccurately called ''deregulation,'' which implied a move from highly structured cost-of-service regulation to true free markets in power supply, but it was typically more a swap of one complicated regulatory construct for another one just as vulnerable to rent-seeking. *See, e.g.,* Severin Borenstein and James Bushnell, *The U.S. Electricity Industry after 20 Years of Restructuring,* National Bureau of Economic Research, April 2015, at Abstract (''We argue that the greatest political motivation for restructuring was rent shifting, not efficiency improvements, and that this explanation is supported by observed waxing and waning of political enthusiasm for electricity reform.''); *see also id.* at 1.

[8] The Energy Policy Act of 2005 provided a definition of economic dispatch: as ''the operation of generation facilities to produce energy at the *lowest cost to reliably serve consumers,* recognizing any operational limits of generation and transmission facilities.'' Energy Policy Act of 2005 (EPAct 2005), Public Law 109–58, 1234(b), 119 Stat. 594, 960 (2005) (codified at 42 U.S.C. 16432(b)) (emphasis added).

[9] This divergence did not happen yesterday, but has been building. One commentator wrote ten years ago that ''. . . state legislation and regulatory choices continue to push the electricity industries of the various states along *vastly different* paths.'' Ari Peskoe, *A Challenge for Federalism: Achieving National Goals in the Electricity Industry,* 18 Mo. Envtl. L. & Pol'y Rev. 209, 211 (2011) (''Peskoe'') (emphasis added).

[10] For over half a century, PJM was a power pool. *See https://pjm.com/about-pjm/who-we-are/pjm-history.*

sales of excess power.[11] These sales would benefit customers of the selling utility, when booked as a customer credit for off-system sales, and benefit customers of the purchasing utility when booked in the ''fuel factor'' at cost, with no return on equity (ROE) applied.

7. Options such as these are still available. Through the use of interstate compacts, enabling legislation [12] could create multi-state entities that can plan transmission projects—as this Policy Statement encourages—but such entities also could be designed to function as modern, innovative versions of power pools aligned with the member states' public policies as to resource adequacy and preferences. The enabling legislation could also ensure a sufficient state role in the governance to ensure that the authority was used only in accordance with member-state policies.[13]

8. States sharing similar public policies which desire to collaborate with each other to obtain the benefits of regional cooperation have innovative options to explore and consider whether they participate in an RTO/ISO or do not. The adoption of this Policy Statement is a good time to emphasize that opportunity.

For these reasons, I respectfully concur.

Mark C. Christie,
*Commissioner.*

[FR Doc. 2021–13440 Filed 6–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

[11] *See generally* Peskoe at 223–24. Any application to this Commission to establish a power pool or other similar arrangement will, of course, come with its own specific evidentiary record and will be considered individually under applicable laws at the time.

[12] Power pools were generally regulated by the Federal Power Commission, and later by FERC. *See, e.g., id.* Congress could, however, through enabling legislation, grant various regulatory powers to the requesting states which seek to participate in a power pool arrangement. For example, Congress could include in such grant of authority an explicit power to apply a carbon tax to wholesale transactions in a power pool if such power was requested by the member states, avoiding the many questions attendant to whether RTOs/ISOs themselves have such power. *See Carbon Pricing in Organized Wholesale Electricity Markets,* 175 FERC ¶ 61,036 (2021) (Christie, Comm'r concurring in part and dissenting in part at PP 12–14, 17–24 (available at *https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurring-part-and-dissenting-part*)).

[13] For an example of such a broad grant of power to the states, Congress in the Energy Policy Act of 2005 allowed three or more contiguous states to enter into a compact, subject to the approval by Congress, to form their own regional transmission siting entities that would have siting authority for those states. EPAct 2005, Public Law 109–58, section 1221(i), 119 Stat. 594, 950 (2005) (codified at 16 U.S.C. 824p(i)).

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–10025–03–OP]**

## Request for Nominations of Candidates for the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter (PM) Panel

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts for the CASAC PM Panel. This panel will provide advice through the chartered CASAC on updates to the science and policy assessments supporting the agency's reconsideration of the December 2020 decision to retain the PM National Ambient Air Quality Standards (NAAQS).

**DATES:** Nominations should be submitted by July 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2050 or via email at *yeow.aaron@epa.gov.*

General information concerning the CASAC can be found on the following website: *https://epa.gov/casac.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also: Advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. As amended, 5 U.S.C., App. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including PM. The ecological effects of PM will be covered as part of the ongoing review of the secondary NAAQS for oxides of nitrogen, oxides of sulfur, and PM.

The EPA Administrator recently announced his decision to reconsider the December 2020 decision to retain the particulate matter (PM) National Ambient Air Quality Standards (NAAQS). These standards were last revised in 2012. EPA is reconsidering the 2020 decision because available scientific evidence and technical information suggests that the current standards may not be adequate to protect public health and welfare. EPA has requested that CASAC review updates to the science and policy assessments that will supplement the existing record. The CASAC PM Panel will provide advice through the Chartered CASAC.

The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA). As a Federal Advisory Committee, the CASAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The CASAC and the CASAC PM Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

*Request for Nominations:* The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise and research in the field of air pollution related to criteria pollutants. For the CASAC PM Panel, experts are being sought in the following fields, especially with respect to PM: Air quality and climate responses, atmospheric science and chemistry, toxicology, controlled human exposure studies, epidemiology, biostatistics, exposure assessment/modeling, risk assessment/modeling, and visibility impairment.

*Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals in the areas of expertise described above. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) using the online nomination form under ''Public Input on Membership'' on the CASAC web page at *https://epa.gov/casac.* To be considered, all nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex,

race, disability or ethnicity. Nominations should be submitted by July 16, 2021.

The following information should be provided on the nomination form: Contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted by the SABSO and will be asked to provide a recent *curriculum vitae* and a narrative biographical summary that includes: Current position, educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination process or the public comment process described below, or who are unable to submit nominations through the CASAC website, should contact the DFO, as identified above. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates on the CASAC website at *https://epa.gov/casac.* Public comments on each List of Candidates will be accepted for 21 days from the date the list is posted. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and viewpoints.

Candidates may be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form is required for Special Government Employees (SGEs) and allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as an SGE and private interests and activities, or the appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the CASAC home page at *https://epa.gov/casac.* This form should not be submitted as part of a nomination.

**Thomas H. Brennan,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2021–13498 Filed 6–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2020–0182; FRL–10025–55–ORD]**

## Availability of the IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds; Extension of Public Comment Period

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

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending the public comment period for the document titled, ''Availability of the IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds.'' The original **Federal Register** document announcing the public comment period was published on May 28, 2021. The public science webinar will convene on July 14, 2021.

**DATES:** The public comment period for the notice published on May 28, 2021 (86 FR 28832), is being extended. The EPA must receive comments on or before July 13, 2021.

**ADDRESSES:** The ''Availability of the IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds'' is available via the internet on IRIS' website at *https://www.epa.gov/iris* and in the public docket at *https://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2020–0182.

**FOR FURTHER INFORMATION CONTACT:** For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information on the draft IRIS Assessment Plan for Inhalation Exposure to Vanadium and Compounds, contact Mr. Dahnish Shams, CPHEA; telephone: 202–564–2758; or email: *shams.dahnish@epa.gov.*

**SUPPLEMENTARY INFORMATION:** How to Submit Technical Comments to the Docket at *https://www.regulations.gov*.

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2020–0182 for the vanadium and compounds (Inhalation) IRIS assessment, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744. Due to COVID–19, there may be a delay in processing comments submitted by fax.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752. Due to COVID–19, there may be a delay in processing comments submitted by mail.

For information on visiting the EPA Docket Center Public Reading Room, visit *https://www.epa.gov/dockets.* Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room may be closed to the public with limited exceptions. The telephone number for the Public Reading Room is 202–566–1744. The public can submit comments via *www.Regulations.gov* or email.

*Instructions:* Direct your comments to docket number EPA–HQ–ORD–2020–0182 for vanadium and compounds (Inhalation). Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise

protected. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

*Docket:* Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

**Wayne Cascio,**

*Director, Center for Public Health and Environmental Assessment.*

[FR Doc. 2021–13517 Filed 6–24–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9057–1]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed June 7, 2021 10 a.m. EST Through June 21, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9.

**Notice**

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

*EIS No. 20210072, Draft, Caltrans, CA*, El Camino Real Roadway Renewal Project, *Comment Period Ends:* 08/09/2021, *Contact:* Yolanda Rivas 510–506–1461.

*EIS No. 20210073, Draft, USFS, WY*, Invasive and Other Select Plant Management on the Bighorn NF, *Comment Period Ends:* 08/09/2021, *Contact:* Christopher D. Jones 307–674–2627.

*EIS No. 20210074, Draft, USFS, CA*, Sugar Pine Project Water Right Permit 15375 Extension and Radial Gates Installation, *Comment Period Ends:* 08/24/2021, *Contact:* Timothy Cardoza 530–478–6210.

*EIS No. 20210075, Draft Supplement, USFS, MT*, Gold Butterfly Project, *Comment Period Ends:* 08/09/2021, *Contact:* Matthew Anderson 406–363–7121.

*EIS No. 20210076, Draft, FERC, NY*, Enhancement by Compression Project, *Comment Period Ends:* 08/09/2021, *Contact:* Office of External Affairs 866–208–3372.

*EIS No. 20210077, Final, USFS, ID*, Caribou-Targhee National Forest and Curlew National Grassland Integrated Weed Management Analysis, *Review Period Ends:* 08/09/2021, *Contact:* Heidi Heyrend 208–847–0375.

*EIS No. 20210078, Draft, UDOT, UT*, Little Cottonwood Canyon Environmental Impact Statement Wasatch Boulevard to Alta, *Comment Period Ends:* 08/09/2021, *Contact:* Josh Van Jura 801–231–8452.

*EIS No. 20210079, Final, CHSRA, CA*, Bakersfield to Palmdale Project Section: Final Environmental Impact Report/Environmental Impact Statement, *Review Period Ends:* 07/26/2021, *Contact:* Scott Rothenberg 916–403–6936.

*EIS No. 20210080, Draft, FERC, DE*, Marcus Hook Electric Compression Project, *Comment Period Ends:* 08/09/2021, *Contact:* Office of External Affairs 866–208–3372.

*EIS No. 20210081, Draft, FERC, AL*, Coosa River Hydroelectric Project, *Comment Period Ends:* 08/16/2021, *Contact:* Office of External Affairs 866–208–3372.

*EIS No. 20210082, Final, FAA, GA*, Spaceport Camden, *Review Period Ends:* 07/26/2021, *Contact:* Stacey Zee 202–267–9305.

*EIS No. 20210083, Draft, NOAA, PRO*, Surveying and Mapping Projects in United States Waters for Coastal and Marine Data Acquisition, *Comment Period Ends:* 08/24/2021, *Contact:* Giannina DiMaio 240–533–0918.

**Amended Notice**

*EIS No. 20200223, Draft, NRC, NM*, Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico, *Comment Period Ends:* 11/01/2021, *Contact:* Ashley Waldron 301–415–7317. Revision to FR Notice Published 02/12/2020; Reopening the Comment Period to end 11/01/2021.

*EIS No. 20210052, Draft, NMFS, PRO*, Programmatic Environmental Impact Statement for the Marine Mammal Health and Stranding Response Program, *Comment Period Ends:* 07/28/2021, *Contact:* Stephen Manley 301–427–8476. Revision to FR Notice Published 05/14/2021; Extending the Comment Period from 06/28/2021 to 07/28/2021.

Dated: June 21, 2021.

**Cindy S. Barger,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2021–13558 Filed 6–24–21; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Request for Comment on a Proposed Interpretation Exposure Draft, Debt Cancellation: An Interpretation of Statement of Federal Financial Accounting Standards (SFFAS) 7, Paragraph 313

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft of a proposed Interpretation of Federal Financial Accounting Standards titled *Debt Cancellation: An Interpretation of SFFAS 7, Paragraph 313.*

**DATES:** Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by July 23, 2021, and should be sent to *fasab@fasab.gov* or Monica R. Valentine, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

**ADDRESSES:** The exposure draft is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

**FOR FURTHER INFORMATION CONTACT:** Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

**Authority:** 31 U.S.C. 3511(d), the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and the FASAB Rules of Procedure, as amended in October 2010.

Dated: June 21, 2021.

**Monica R. Valentine,**

*Executive Director.*

[FR Doc. 2021–13491 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0688, OMB 3060–0688; FRS 31628]**

### Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before August 24, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0668.

*Title:* Section 76.936, Written Decisions.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit entities; State or Local, or Tribal government.

*Number of Respondents and Responses:* 150 respondents; 150 responses.

*Estimated Hours per Response:* 1 hour.

*Frequency of Response:* Third party disclosure requirement; On occasion reporting requirement.

*Total Annual Burden:* 150 hours.

*Total Annual Cost:* None.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 4(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality required with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* The information collection requirements contain in 47 CFR 76.936 require that a franchising authority must issue a written decision in a rate-making proceeding whenever it disapproves an initial rate for the basic service tier or associated equipment in whole or in part, disapproves a request for a rate increase in whole or in part, or approves a request for an increase whole or in part over the objection of interested parties. Franchising authorities are required to issue a written decision in rate-making proceedings pursuant to Section 76.936 so that cable operators and the public are made aware of the proceeding.

*OMB Control Number:* 3060–0688.

*Title:* Abbreviated Cost-of-Service Filing for Cable Network Upgrades, FCC Form 1235.

*Form Number:* FCC Form 1235.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities; State, local or tribal governments.

*Number of Respondents and Responses:* 10 respondents; 5 responses.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement.

*Estimated Hours per Response:* 10–20 hours.

*Total Annual Burden:* 150 hours.

*Total Annual Costs:* None.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Assessment:* No impact(s).

*Needs and Uses:* FCC Form 1235 is an abbreviated cost of service filing for significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-regulated cable services. FCC Form 1235 is filed following the end of the month in which upgraded cable services become available and are providing benefits to subscribers. In addition, FCC Form 1235 can be filed for pre-approval any time prior to the upgrade services becoming available to subscribers using projected upgrade costs. If the pre-approval option is exercised, the operator must file the form again following the end of the month in which upgraded cable services become available and are providing benefits to customers of regulated services, using actual costs where applicable.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2021–13487 Filed 6–24–21; 8:45 am]

**BILLING CODE 6712–01–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 July 12, 2021.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Thomas E. Carter, Sr. Trust, Thomas E. Carter, Sr., individually, and as trustee, together with the Allison M. Carter Trust, Allison M. Carter, as trustee, Gwen M. Carter, Mack N. Carter, Samuel K. Carter, Sarah J. Carter, Thomas E. Carter, Jr., and certain minor children in the Carter family, all of Park Ridge, Illinois; Mary C. Carter Seidel, Apex, North Carolina; Louis J. Carter, Paul P. Carter, and Geoffrey Yerke, all of Chicago, Illinois; and Joseph G. Carter, Arlington Heights, Illinois;* as the Carter Family Control Group a group acting in concert, to retain voting shares of Community Bank Corp., and thereby indirectly retain voting shares of Park Ridge Community Bank, both of Park Ridge, Illinois.

Board of Governors of the Federal Reserve System, June 22, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–13629 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 26, 2021.

*A. Federal Reserve Bank of St. Louis* (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Old National Bancorp, Evansville, Indiana;* to merge with First Midwest Bancorp, Inc., and thereby indirectly acquire First Midwest Bank, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System, June 22, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–13589 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 26, 2021.

*A. Federal Reserve Bank of Atlanta* (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Cypress Capital Group, Inc., Palm Beach, Florida;* to become a bank holding company concurrently with the conversion of its wholly-owned subsidiary, Cypress Trust Company, Palm Beach, to a Florida state-charted non-member bank, Cypress Bank & Trust, and to engage in financial and investment advisory activities pursuant to section 225.28(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 22, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–13590 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0154; Docket No. 2021–0053; Sequence No. 7]**

## Submission for OMB Review; Construction Wage Rate Requirements—Price Adjustment (Actual Method)

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and extension of a previously approved information collection requirement regarding construction wage rate requirements—price adjustment (Actual Method).

**DATES:** Submit comments on or before July 26, 2021.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

*Instructions:* All items submitted must cite OMB Control No. 9000–0154, Construction Wage Rate Requirements—Price Adjustment (Actual Method). Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. OMB Control Number, Title, and Any Associated Form(s)

9000–0154, Construction Wage Rate Requirements—Price Adjustment (Actual Method).

### B. Need and Uses

This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

• 52.222–32, Construction Wage Rate Requirements—Price Adjustment (Actual Method). This clause requires contractors to submit at the exercise of each option to extend the term of the contract, a statement of the amount claimed for incorporation of the most current Department of Labor wage determination, and any relevant supporting data, including payroll records, that the contracting officer may reasonably require.

Contracting officers use the information to establish the contract's construction requirements price adjustment to reflect the contractor's actual increase or decrease in wages and fringe benefits.

### C. Annual Burden

*Respondents:* 506.

*Total Annual Responses:* 506.

*Total Burden Hours:* 20,240.

### D. Public Comment

A 60-day notice was published in the **Federal Register** at 86 FR 20699, on April 21, 2021. No comments were received.

*Obtaining Copies:* Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0154, Construction Wage Rate Requirements—Price Adjustment (Actual Method).

**William Clark,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2021–13628 Filed 6–24–21; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Delegation of Authority

Notice is hereby given that I have delegated the authority to designate chairs and invite members to serve on the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel to the Centers for Disease Control and Prevention Director (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) Administrator. This authority may be redelegated by the CDC Director, or the ATSDR Administrator.

This delegation became effective upon date of signature. In addition, I hereby affirm and ratify any actions taken by you or your subordinates that involved the exercise of the authorities delegated herein, or substantially similar authorities vested in me by prior annual HHS appropriations acts, prior to the effective date of the delegation.

Dated: June 15, 2021.

**Xavier Becerra,**

*Secretary.*

[FR Doc. 2021–13605 Filed 6–24–21; 8:45 am]

**BILLING CODE 4160–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. FDA–2021–N–0386]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Class II Special Controls for Human Immunodeficiency Virus Serological Diagnostic and Supplemental Tests and Human Immunodeficiency Virus Nucleic Acid Diagnostic and Supplemental Tests

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on class II special controls for human immunodeficiency

virus (HIV) serological diagnostic and supplemental tests and HIV nucleic acid (NAT) diagnostic and supplemental tests.

**DATES:** Submit either electronic or written comments on the collection of information by August 24, 2021.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 24, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 24, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2021–N–0386 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Class II Special Controls for Human Immunodeficiency Virus Serological Diagnostic and Supplemental Tests and Human Immunodeficiency Virus Nucleic Acid Diagnostic and Supplemental Tests.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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:** 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:** Under the 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.

## Class II Special Controls for Human Immunodeficiency Virus Serological Diagnostic and Supplemental Tests and Human Immunodeficiency Virus Nucleic Acid Diagnostic and Supplemental Tests

*OMB Control Number 0910–NEW*

In the **Federal Register** of February 21, 2020 (85 FR 10110), we published a proposed order to reclassify certain HIV serological diagnostic and supplemental tests and HIV NAT diagnostic and supplemental tests from class III (premarket approval) into class II (special controls) (the proposed order). In the proposed order, FDA proposed special controls that the Agency believes are necessary to provide a

reasonable assurance of safety and effectiveness for these devices. The proposed special controls would require the submission of a log of all complaints annually for a period of 5 years following FDA clearance of a traditional premarket notification (510(k)) submission for a device within the scope of the proposed order.

Currently, manufacturers of HIV serological diagnostic and supplemental tests and HIV NAT diagnostic and supplemental tests are subject to FDA regulations in part 820 (21 CFR part 820), which govern the methods used in, and the facilities and controls used for, the design, manufacture, packaging, labeling, storage, installation, and servicing of all finished devices intended for human use. Manufacturers are required to maintain complaint files and to review and evaluate complaints for these devices under § 820.198 (21 CFR 820.198).

Complaints required to be reported in the annual logs under the proposed special controls, such as certain complaints involving unusually high invalid rates or issues with users conducting the test, may not meet the definition of a medical device report required to be reported to FDA under 21 CFR part 803 (medical device reporting; currently approved under OMB control number 0910–0437), but could potentially affect the safety and efficacy of these devices. If the proposed order is finalized, we intend to review the information in the complaint logs in a timely manner and engage with manufacturers as necessary. The submission of the complaint log would provide us with earlier notification of concerns and enable us to determine whether they have been adequately addressed. The Agency usually would not evaluate this kind of complaint information until an FDA inspection, which typically occurs less frequently than annually. We believe implementing these specific reporting measures as part of the special controls would be necessary to provide a reasonable assurance of safety and effectiveness for HIV diagnostic and supplemental tests subject to the proposed order.

*Description of Respondents:* The respondents to the information collection are manufacturers of HIV diagnostic and supplemental test devices that would be subject to the proposed order, if finalized.

Finalizing the proposed order would add classification regulations for these devices in 21 CFR part 866 (Immunology and Microbiology Devices) at 21 CFR 866.3956 for the HIV serological diagnostic and supplemental tests, and 21 CFR 866.3957 for the HIV NAT diagnostic and supplemental tests, and establish special controls necessary to provide reasonable assurance of their safety and effectiveness. As described above, the special controls would require the submission of a log of all complaints annually for a period of 5 years following FDA clearance of a traditional 510(k) submission for one of these devices.

We estimate the reporting burden hours associated with the proposed order, if finalized, to be approximately 30 reporting burden hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR citation, activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Proposed 21 CFR 866.3956(b)(1)(iii) and 866.3957(b)(1)(iii), Submission of log to FDA | 10 | 1 | 10 | 3 | 30 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the average burden per response on our experience with other types of annual report submissions. We base our estimate of the number of affected respondents on the expected number of manufacturers that would be submitting a 510(k) for a new device or changes to an existing device that would require a 510(k).

As noted above, manufacturers of the devices subject to the proposed order must already maintain complaint files and review and evaluate complaints under § 820.198. If the proposed order is finalized as proposed, we estimate it would take a manufacturer approximately 3 hours annually to review their existing records, prepare the complaint log, and submit it to FDA. Although respondents may submit the information electronically through the FDA Electronic Submission Gateway, on paper, or electronic media (*e.g.,* CD, DVD) to the Center for Biologics Evaluation and Research's Document Control Center, we assume that all manufacturers will submit their logs electronically.

Dated: June 21, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–13580 Filed 6–24–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2020–D–1802]**

### Cancer Clinical Trial Eligibility Criteria: Approach to Available Therapy in Non-Curative Settings; Draft Guidance for Sponsors; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for sponsors entitled ''Cancer Clinical Trial Eligibility Criteria: Approach to Available Therapy in Non-Curative Settings.'' The draft guidance provides recommendations to sponsors of clinical trials of investigational cancer drugs regarding the inclusion of patients who have not previously received available therapy (commonly referred to as existing treatment options) for their cancer in the non-curative setting. The draft guidance is intended to facilitate increased clinical trial options for patients with non-curable cancers by recognizing that, with appropriate informed consent, it may be reasonable for patients to be eligible for inclusion in trials of investigational cancer drugs, regardless of whether they have received available therapy, in the non-curative setting.

**DATES:** Submit either electronic or written comments on the draft guidance by August 24, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2020–D–1802 for ''Cancer Clinical Trial Eligibility Criteria: Approach to Available Therapy in Non-Curative Settings.'' 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 to 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:** Jennifer Gao, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2135, Silver Spring, MD 20993–0002, 240–402–4683; Chana Weinstock, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2357, Silver Spring, MD 20993–0002, 240–402–2625; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for sponsors entitled ''Cancer Clinical Trial Eligibility Criteria: Approach to Available Therapy in Non-Curative Settings.'' The draft guidance provides recommendations regarding the inclusion of patients who have not received available therapy for their cancer in clinical trials of investigational cancer drugs and biological products in the non-curative setting. For the purpose of this draft guidance, non-curative is defined as circumstances where there is extremely low likelihood for cure or for prolonged and/or near normal survival with available therapies (*i.e.,* hematologic malignancies or solid tumors that are unresectable, locally advanced, or metastatic cancer with unfavorable long-term overall survival).

For clinical trials of products regulated under part 312 (21 CFR part 312), FDA must determine that study subjects are not exposed to an unreasonable and significant risk of illness or injury (21 CFR 312.42(b)(1)(i) and (b)(2)(i)) to allow such trials to proceed. Therefore, eligibility criteria should generally require that patients have received available therapy(ies) that offer the potential for cure in a substantial proportion of patients in clinical trials evaluating investigational cancer drugs. Alternatively, such available therapy should be administered to all patients in the trial, where the investigational drug is added to such therapy. However, eligibility criteria in which patients receive an investigational drug(s) in lieu of available therapy are reasonable in the non-curative setting when patients have been provided with adequate information to make an informed decision on trial participation. The draft guidance also describes information that should be included in the informed consent when this approach is taken. The draft guidance further includes recommendations regarding efficacy analyses when this approach is taken.

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 ''Cancer Clinical Trial Eligibility Criteria: Approach to Available Therapy in Non-Curative Settings.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

**II. Paperwork Reduction Act of 1995**

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

**III. Electronic Access**

Persons with access to the internet may obtain the draft guidance at either *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: June 21, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–13585 Filed 6–24–21; 8:45 am]

**BILLING CODE 4164–01–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–N–0352]**

### Intent To Prepare an Environmental Impact Statement for Certain Sunscreen Drug Products for Over-the-Counter Use; Reopening of Comment Period

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

**ACTION:** Notice of intent; reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is reopening the comment period for public scoping on the environmental impact statement (EIS) described in the notice entitled ''Intent To Prepare an Environmental Impact Statement for Certain Sunscreen Drug Products for Over-the-Counter Use'' that appeared in the **Federal Register** of May 13, 2021. The Agency is taking this action to allow interested persons additional time to submit comments.

**DATES:** FDA is reopening the comment period for public scoping on the EIS identified in the notice published May 13, 2021 (86 FR 26224). To ensure the Agency considers your comments before it begins work on the draft EIS, submit either electronic or written comments on the scoping process discussed in the notice by July 14, 2021. If a virtual public scoping meeting is scheduled, FDA will announce the date and time via the weblink ''Environmental Impact Statement (EIS) for Certain Sunscreen Drug Products'' on the Agency's web page ''Guidance, Compliance, & Regulatory Information,'' available at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information.*

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 14, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 14, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2021–N–0352 for ''Intent To Prepare an Environmental Impact Statement for Certain Sunscreen Drug Products for Over-the-Counter Use.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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:** Trang Q. Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4139, Silver Spring, MD 20993; 240–402–7945.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of May 13, 2021 (86 FR 26224), FDA published a notice entitled ''Intent To Prepare an Environmental Impact Statement for Certain Sunscreen Drug Products for Over-the-Counter Use,'' which announced the initiation of a public scoping period that would end on June 14, 2021, and noted that comments on scoping would need to be submitted prior to the close of this period. In response to a request submitted to the docket, FDA is reopening the comment period for public scoping on the EIS for an additional 30 days, until July 14, 2021. The Agency believes that a 30-day extension will allow adequate time for interested persons to submit comments without significantly delaying publication of the draft EIS.

## II. Electronic Access

Persons with access to the internet may obtain the notice of intent through the Agency's weblink ''Environmental Impact Statement (EIS) for Certain Sunscreen Drug Products,'' available at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information* or by searching for the above docket number at *https://www.regulations.gov.*

Dated: June 21, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–13568 Filed 6–24–21; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–N–6931]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donation Testing, Donor Notification, and ''Lookback''

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by July 26, 2021.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0116. Also, include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donation Testing, Donor Notification, and ''Lookback''

*OMB Control Number 0910–0116—Revision*

This information collection supports Agency regulations and associated guidance. All blood and blood components introduced or delivered for introduction into interstate commerce are subject to section 351(a) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(a)). Section 351(a) requires that manufacturers of biological products, which include blood and blood components intended for further manufacturing into products, have a license, issued upon a demonstration that the product is safe, pure, and potent and that the manufacturing establishment meets all applicable standards, including those prescribed in the FDA regulations designed to ensure the continued safety, purity, and potency of the product. In addition, under section 361 of the PHS Act (42 U.S.C. 264), by delegation from the Secretary of Health and Human Services, FDA may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.

Section 351(j) of the PHS Act states that the Federal Food, Drug, and Cosmetic Act (FD&C Act) also applies to biological products. Blood and blood components for transfusion or for further manufacturing into products are drugs, as that term is defined in section 201(g)(1) of the FD&C Act (21 U.S.C. 321(g)(1)). Because blood and blood components are drugs under the FD&C Act, blood and plasma establishments must comply with the provisions and related regulatory scheme of the FD&C Act. For example, under section 501 of the FD&C Act (21 U.S.C. 351), drugs are deemed ''adulterated'' if the methods used in their manufacturing, processing, packing, or holding do not conform to current good manufacturing practice (CGMP) and related regulations.

The CGMP regulations (part 606) (21 CFR part 606) and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The public health objective in testing human blood donations for evidence of relevant transfusion-transmitted infections and in notifying donors is to prevent the transmission of relevant transfusion-transmitted infections. For example, the ''lookback'' requirements are intended to help ensure the continued safety of the blood supply by providing necessary information to consignees of blood and blood components and appropriate notification of recipients of blood components that are at increased risk for transmitting human immunodeficiency virus (HIV) or hepatitis C virus (HCV) infection.

The information collection requirements in the CGMP, donation testing, donor notification, and ''lookback'' regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enable FDA to perform meaningful inspections.

The recordkeeping requirements serve preventive and remedial purposes. The third-party disclosure requirements identify various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA's Center for Biologics Evaluation and Research of certain information that may require immediate corrective action.

Respondents to this collection of information are licensed and unlicensed blood establishments that collect blood and blood components, including Source Plasma and Source Leukocytes, inspected by FDA, and transfusion services inspected by Centers for Medicare and Medicaid Services (CMS). Based on submission data, there are approximately 864 licensed Source Plasma establishments and approximately 1,789 licensed blood collection establishments, for an estimated total of 2,653 (864 + 1,789) licensed blood collection establishments. Also, there are an estimated total of 817 unlicensed, registered blood collection establishments for an approximate total of 3,470 collection establishments (864 + 1,789 + 817 = 3,470 establishments). Of these establishments, approximately 856 perform plateletpheresis (777) and leukapheresis (79). These establishments annually collect approximately 73.7 million units of Whole Blood and blood components, including Source Plasma and Source Leukocytes, and are required to follow FDA ''lookback'' procedures. In addition, there are another estimated 4,961 establishments that fall under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (formerly referred to as facilities approved for Medicare reimbursement) that transfuse blood and blood components.

The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and our experience with the information collection. We estimate 53.5 million donations of Source Plasma from approximately 2.5 million donors and estimate 12.3 million donations of Whole Blood and apheresis Red Blood Cells, including an estimated 10,000 (approximately 0.081 percent of 12.3 million) autologous donations, from 9 million donors. Assuming each autologous donor makes an average of 1.1 donations, we estimate there are 9,090 autologous donors (10,000 autologous/1.1 average donations).

We estimate 0.53 percent (56,000 ÷ 10,654,000) of the 77,000 donations that are donated specifically for the use of an identified recipient would be tested under the dedicated donors' testing provisions in § 610.40(c)(1)(ii) (21 CFR 610.40(c)(1)(ii)).

Under § 610.40(g)(2) and (h)(2)(ii)(A), Source Leukocytes, a licensed product that is used in the manufacture of interferon, which requires rapid preparation from blood, is currently shipped prior to completion of testing for evidence of relevant transfusion-transmitted infections. Shipments of Source Leukocytes are approved under a biologics license application and each shipment does not have to be reported to the Agency. Based on a review of data, FDA receives less than one application per year from manufacturers of Source Leukocytes; however, we estimate one annually for this analysis.

Also according to Agency data, there are approximately 15 licensed manufacturers that ship known reactive human blood or blood components under § 610.40(h)(2)(ii)(C) and (D). We estimate each manufacturer would ship an average of 1 unit of human blood or blood components per month (12 per year) that would require two labels: One as reactive for the appropriate screening test under § 610.40(h)(2)(ii)(C) and the other stating the exempted use specifically approved by FDA under § 610.40(h)(2)(ii)(D).

Based on information received from industry, we estimate 7,500 donations that test reactive by a screening test for syphilis and are determined to be biological false positives by additional testing annually. These units would be labeled according to § 610.40(h)(2)(vi).

Human blood or a blood component with a reactive screening test, as a component of a medical device, is an integral part of the medical device; *e.g.,* a positive control for an in vitro diagnostic testing kit. It is the usual and customary business practice for manufacturers to include on the container label a warning statement indicating that the product was manufactured from a donation found to be reactive for the identified relevant transfusion-transmitted infection(s). In addition, on the rare occasion when a human blood or blood component with a reactive screening test is the only component available for a medical device that does not require a reactive component, then a warning statement must be affixed to the medical device. To account for this rare occasion under § 610.42(a) (21 CFR 610.42(a)), we estimate that the warning statement would be necessary no more than once a year.

We estimate 3,100 repeat donors will test reactive on a screening test for HIV. We assume an average of three components was made from each donation. Under § 610.46(a)(1)(ii)(B) and (a)(3) (21 CFR 610.46(a)(1)(ii)(B) and (b)(3)), this estimate results in 9,300 (3,100 × 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 9,300 (3,100 × 3) notifications to consignees of subsequent test results.

We estimate 4,961 consignees will be required under § 610.46(b)(3) to notify transfusion recipients, their legal representatives, or physicians of record an average of 0.35 times per year resulting in a total number of 1,755 (585 confirmed positive repeat donors × 3) notifications. Also, under § 610.46(b)(3), we estimate and include the time to gather test results and records for each recipient and to accommodate multiple attempts to contact the recipient.

Furthermore, we estimate 6,800 repeat donors per year would test reactive for antibody to HCV. Under §§ 610.47(a)(1)(ii)(B) and (a)(3) (21 CFR 610.47(a)(1)(ii)(B) and (a)(3)), collecting establishments would notify the consignee two times for each of the 20,400 (6,800 × 3 components) components prepared from these donations: Once for quarantine purposes and again with additional HCV test results for a total of 40,800 (2 × 20,400) notifications as an annual ongoing burden. Under § 610.47(b)(3), we assume 4,961 consignees notify approximately 2,050 recipients or their physicians of record annually.

Based on industry estimates, approximately 18.15 percent of approximately 14,018,000 million potential donors (2,544,000 donors) who come to donate annually are determined not to be eligible for donation prior to collection because of failure to satisfy eligibility criteria. It is the usual and customary business practice of approximately 2,606 (1,789 + 817) blood collecting establishments to notify onsite and to explain why the donor is determined not to be suitable for donating. Based on such available information, we estimate that two-thirds (1,737) of the 2,606 blood collecting

establishments provided onsite additional information and counseling to a donor determined not to be eligible for donation as usual and customary business practice. Consequently, we estimate one-third, or 869 of the 2,606 blood collecting establishments, would need to provide, under § 630.40(a) (21 CFR 630.40(a)), additional information and onsite counseling to the estimated 848,000 (one-third of approximately 2,544,000) ineligible donors.

We estimate another 0.6 percent of 14,018,000 potential donors (84,108 donors) are deferred annually based on test results. We assume 95 percent of the establishments that collect 99 percent of the blood and blood components notify donors who have reactive test results for HIV, Hepatitis B Virus, HCV, Human T-Lymphotropic Virus, and syphilis as their usual and customary business practice. Consequently, 5 percent of the 2,653 licensed establishments (133) collecting 1 percent (841) of the deferred donors (84,108) would notify donors under § 630.40(a).

As part of their usual and customary business practice, collecting establishments notify an autologous donor's referring physician of reactive test results obtained during the donation process required under § 630.40(d)(1). However, we assume 5 percent of the 1,789 blood collection establishments (89) may not notify the referring physicians of the estimated 2 percent of 10,000 autologous donors with the initial reactive test results (200) as their usual and customary business practice.

We assume 95 percent of recordkeepers, which account for 99 percent of blood donations, have developed standard operating procedures (SOPs) as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model standards developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

Under § 606.160(b)(1)(ix) (21 CFR 606.160(b)(1)(ix)), we assume a total number of annual records based on 2,544,000 ineligible donors and each of the estimated 2,628,108 (2,544,000 + 84,108) donors deferred based on reactive test results for evidence of infection because of relevant transfusion-transmitted infections. Under § 606.160(b)(1)(xi), only the 1,789 registered blood establishments collect autologous donations and, therefore, are required to notify referring physicians. We estimate that 4.5 percent of the 9,090 autologous donors (409) will be deferred under § 610.41 (21 CFR 610.41), which in turn will lead to the notification of their referring physicians.

Under § 610.41(b), we estimate 25 submissions for requalification of donors each requiring 7 hours per submission. In addition, we assume that there would be only three notifications for requalification of donors under § 630.35(b) (21 CFR 630.35(b)), which would also require 7 hours for each submission.

FDA permits the shipment of untested or incompletely tested human blood or blood components in rare medical emergencies and when appropriately documented (§ 610.40(g)(1)). We estimate the recordkeeping under § 610.40(g)(1) to be minimal with one or fewer occurrences per year. The reporting of test results to the consignee in § 610.40(g) is part of the usual and customary business practice of blood establishments.

In the **Federal Register** of February 22, 2021 (86 FR 10582), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. On our own initiative, however, and for efficiency of Agency operations, we are revising the information collection to include and consolidate related information collection found in Agency guidance. The guidance documents were issued consistent with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment at any time.

We are revising the information collection to reference the Agency guidance document entitled ''Bacterial Risk Control Strategies for Blood Collection Establishments and Transfusion Services to Enhance the Safety and Availability of Platelets for Transfusion'' (December 2020), which provides blood collection establishments and transfusion services with recommendations to control the risk of bacterial contamination of room temperature stored platelets intended for transfusion. The guidance is available for download from our website at: *https://www.fda.gov/media/123448/download.*

The guidance recommends blood collection establishments notify transfusion services if a distributed platelet product is subsequently identified as positive for bacterial contamination and that blood establishments communicate to their consignees the type of storage container the platelets are stored in. We assume such notification is a usual and customary business practice for blood establishments and, therefore, estimate no burden estimate for the information collection.

We also developed the guidance entitled ''Labeling of Red Blood Cell Units with Historical Antigen Typing Results'' (December 2018) to provide establishments that collect blood and blood components for transfusion with recommendations for labeling Red Blood Cell units with non-ABO/Rh(D) antigen typing results obtained from previous donations (historical antigen typing results). The guidance is available for download from our website at: *https://www.fda.gov/media/119376/download.*

The guidance recommends disclosing non-ABO/Rh(D) historical antigen typing results on a tie-tag or directly on the container label. We assume such information disclosures would be usual and customary for blood establishments and, therefore, estimate no burden for the information collection, currently approved under OMB control number 0910–0862.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section; activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 606.170(b); [2] Donor or recipient fatality reporting | 81 | 1 | 81 | 20 | 1,620 |
| 610.40(g)(2); Application for approval to ship | 1 | 1 | 1 | 1 | 1 |
| 610.41(b); Request for requalification of donor | 2,653 | 0.0094 | 25 | 7 | 175 |
| 610.40(h)(2)(ii)(A); Application for approval for shipment or use | 1 | 1 | 1 | 1 | 1 |
| 630.35(b); Request for requalification of donor | 2,653 | 0.00113 | 3 | 7 | 21 |
| Total | | | | | 1,818 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR section; activity | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| 606.100(b); [2] Maintenance of SOPs | [5] 422 | 1 | 422 | 24 | 10,128 |
| 606.100(c); Records of investigations | [5] 422 | 10 | 4,220 | 1 | 4,220 |
| 606.110(a); [3] Documentation donor's health permits plateletpheresis or leukapheresis. | [6] 43 | 1 | 43 | 0.5 (30 minutes) | 22 |
| 606.151(e); Records of emergency transfusions | [5] 422 | 12 | 5,064 | 0.08 (5 minutes) | 405 |
| 606.160; [4] Records of collection, processing, compatibility testing, storage, and distribution of each unit of blood and blood components. | [5] 422 | 907.583 | 383,000 | 0.75 (45 minutes) | 287,250 |
| 606.160(b)(1)(viii); HIV consignee notification | 1,789 | 10.4533 | 18,701 | 0.17 (10 minutes) | 3,179 |
| | 4,961 | 3.6537 | 18,126 | 0.17 (10 minutes) | 3,081 |
| 606.160(b)(1)(viii); HCV consignee notification | 1,789 | 22.8060 | 40,800 | 0.17 (10 minutes) | 6,936 |
| | 4,961 | 8.2241 | 40,800 | 0.17 (10 minutes) | 6,936 |
| HIV recipient notification | 4,961 | 0.3538 | 1,755 | 0.17 (10 minutes) | 298 |
| HCV recipient notification | 4,961 | 0.4132 | 2,050 | 0.17 (10 minutes) | 349 |
| 606.160(b)(1)(ix); Donor notification records | 3,470 | 757.380 | 2,628,109 | 0.05 (3 minutes) | 131,405 |
| 606.160(b)(1)(xi); Physician notification records | 1,789 | 0.2286 | 409 | 0.05 (3 minutes) | 20.5 |
| 606.165; Distribution and receipt records | [5] 422 | 907.583 | 383,000 | 0.08 (5 minutes) | 30,640 |
| 606.170(a); Adverse reaction records | [5] 422 | 12 | 5,064 | 1 | 5,064 |
| 610.40(g)(1); Documentation of medical emergency | 3,470 | 1 | 3,470 | 0.5 (30 minutes) | 1,735 |
| 630.15(a)(1)(ii)(B); Documentation required for dedicated donation | 1,789 | 1 | 1,789 | 1 | 1,789 |
| 630.20(c); Documentation of exceptional medical need | 1,789 | 1 | 1,789 | 1 | 1,789 |
| Total | | | | | 495,247 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The recordkeeping requirements in §§ 606.171, 630.5(d), 630.10(c)(1) and (2), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).
[3] The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).
[4] The recordkeeping requirements in §§ 606.110(a)(2), 630.5(b)(1)(i), 630.10(f)(2) and (4), 630.10(g)(2)(i), 630.15(a)(1)(ii)(A) and (B), 630.15(b)(2), (b)(7)(i) and (iii), 630.20(a) and (b), 640.21(e)(4), 640.25(b)(4) and (c)(1), 640.31(b), 640.33(b), 640.51(b), 640.53(b) and (c), 640.56(b) and (d), 630.15(b)(2), 640.65(b)(2)(i), 640.65(b)(2)(i), 640.71(b)(1), 640.72, 640.73, and 640.76(a) and (b), which address the maintenance of various records are included in the estimate for § 606.160.
[5] Five percent of establishments that fall under CLIA that transfuse blood and components and FDA-registered blood establishments (0.05 × 4,961 + 3,470 = 422).
[6] Five percent of plateletpheresis and leukapheresis establishments (0.05 × 856 = 43).

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

| 21 CFR section; activity | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours |
|---|---|---|---|---|---|
| 606.145(c); Notification of bacterial contamination of platelets | 4,961 | 0.2822 | 1,400 | 0.02 (90 seconds) | 28 |
| 606.170(a); Reports of transfusion reaction | [2] 422 | 12 | 5,064 | 0.5 (30 minutes) | 2,532 |
| 610.40(c)(1)(ii); Labeling of donation dedicated to single recipient | 3,470 | 0.0395 | 137 | 0.08 (5 minutes) | 11 |
| 610.40(h)(2)(ii)(C) and (D); Labeling of reactive blood and blood components. | 15 | 12 | 180 | 0.2 (12 minutes) | 36 |
| 610.40(h)(2)(vi); Labeling of reactive blood and blood components | 3,470 | 2.1614 | 7,500 | 0.08 (5 minutes) | 600 |
| 610.42(a); Warning statement for medical devices | 1 | 1 | 1 | 1 | 1 |
| 610.46(a)(1)(ii)(B); Notification to consignees to quarantine (HIV ''lookback''). | 1,789 | 5.1984 | 9,300 | 0.17 (10 minutes) | 1,581 |
| 610.46(a)(3); Notification to consignees of further testing | 1,789 | 5.1984 | 9,300 | 0.17 (10 minutes) | 1,581 |
| 610.46(b)(3); Notification to recipients | 4,961 | 0.3528 | 1,750 | 1 | 1,750 |
| 610.47(a)(1)(ii)(B); Notification to consignees to quarantine (HCV ''lookback''). | 1,789 | 11.4030 | 20,400 | 0.17 (10 minutes) | 3,468 |
| 610.47(a)(3); Notification to consignees of further testing | 1,789 | 11.4030 | 20,400 | 0.17 (10 minutes) | 3,468 |
| 610.47(b)(3); Notification to recipients | 4,961 | 0.4132 | 2,050 | 1 | 2,050 |
| 630.40(a); Notification of donors determined not to be eligible for donation. | 869 | 975.834 | 848,000 | 0.08 (5 minutes) | 67,840 |
| 630.40(a); Notification of donors deferred based on reactive test results. | 133 | 6.323 | 841 | 1.5 | 1,262 |
| 630.40(d)(1); Notification to physician of autologous donor | 89 | 2.247 | 200 | 1 | 200 |
| Total | | | | | 86,408 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Five percent of establishments that fall under CLIA that transfuse blood and components and FDA-registered blood establishments (0.05 × 4,961 + 3,470 = 422).

We have adjusted our burden estimate for this information collection since last OMB review to reflect an overall increase of 79,024 hours annually. We attribute this adjustment to an increase in the number of registered blood establishments over the last 3 years.

Dated: June 21, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–13575 Filed 6–24–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–N–0525]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Marketing; Administrative Procedures, Policies, and Requirements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, we, or Agency) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by July 26, 2021.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0435. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** 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:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Prescription Drug Marketing; Administrative Procedures, Policies, and Requirements—21 CFR Part 203

*OMB Control Number 0910–0435—Extension*

This information collection supports FDA regulations codified at part 203 (21 CFR part 203) implementing the Prescription Drug Marketing Act of 1987 (PDMA) and the Prescription Drug Amendments of 1992. The Federal Food, Drug, and Cosmetic Act, as amended by the PDMA, establishes requirements for the following:

- Reimportation of prescription drugs.
- The sale, purchase, or trade of or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or health care entities or donated to charitable organizations.
- The distribution of prescription drug samples by mail, common carrier, or another means of distribution.
- Applications for reimportation to provide emergency medical care.
- An appeal from an adverse decision by the district office.
- Drug sample storage and handling.
- Fulfillment houses, shipping and mailing services, comarketing agreements, and third-party recordkeeping.
- Donation of drug samples to charitable institutions.

The PDMA was enacted, in part, because insufficient safeguards existed over the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs. The PDMA is intended to ensure that drug products purchased by consumers are safe and effective, and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

The applicable regulations in part 203 include reporting and recordkeeping requirements intended to help achieve the following goals: (1) To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care; (2) to ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample; (3) to limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other healthcare entities at the request of a licensed or authorized practitioner; (4) to require licensed or authorized practitioners to request prescription drug samples in writing; (5) to mandate storage, handling, and recordkeeping requirements for prescription drug samples; and (6) to prohibit, with certain exceptions, the sale, purchase, or trade, or the offer to sell, purchase, or trade, of prescription drugs that were purchased by hospitals or other healthcare entities or that were donated or supplied at a reduced price to a charitable organization.

In the **Federal Register** of March 12, 2021 (86 FR 14128), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section; activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 203.11; reimportation applications | 1 | 1 | 1 | 0.5 (30 minutes) | [2] 1 |
| 203.37(a); falsification of records | 140 | 21.4 | 3,000 | 0.25 (15 minutes) | 750 |
| 203.37(b); loss or theft of samples | 140 | 178.57 | 25,000 | 0.25 (15 minutes) | 6,250 |
| 203.37(c); conviction of representatives. | 1 | 1 | 1 | 1 | 1 |
| 203.37(d); contact person | 20 | 1 | 20 | 0.25 (15 minutes) | 5 |
| Total | | | 28,022 | | 7,007 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the nearest whole number.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR section; activity | Number of recordkeepers | Number of records per recordkeeper [2] | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| **Subpart C: Sales restrictions** | | | | | |
| 203.23(a) and (b); returns | 2,200 | 71.9909 | 158,380 | 0.25 (15 minutes) | 39,595 |
| 203.23(c); documentation of storage of returns. | 2,200 | 71.9909 | 158,380 | 0.08 (~6 minutes) | 12,670 |
| **Subpart D: Samples** | | | | | |
| 203.30–203.39; documentation regarding sample distributions. | 140 | 202 | 28,280 | ~.07–.08 (~4–5 minutes) | 2,121 |
| Total | | | 345,040 | | 54,386 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the nearest whole number.

Based on a review of Agency data, we assume 2,200 respondents may incur burden resulting from the information collection activity associated with the requirements in § 203.23(a) through (c). A total of 140 pharmaceutical companies have submitted information to the Agency on drug sample distribution under part 203. Those same respondents also have recordkeeping requirements under part 203. Our estimate of the burden of the average burden per recordkeeping reflects a cumulative average to cover all applicable requirements. Since our last request for OMB approval, we have adjusted our estimate of the overall burden downward to reflect a decrease of 2,567,713 hours and 64,432,232 records annually. We attribute this adjustment to a more accurate reflection of the number of respondents to the information collection and clarification that burden attributable to requirements of the Drug Quality and Security Act are not included in this information collection.

Dated: June 21, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–13597 Filed 6–24–21; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–N–0492]**

### Watson Laboratories, Inc. et al.; Withdrawal of Approval of 36 Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is withdrawing approval of 36 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**DATES:** Approval is withdrawn as of July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

| Application No. | Drug | Applicant |
|---|---|---|
| ANDA 062142 | Doxycycline Hyclate Capsules, Equivalent to (EQ) 50 milligrams (mg) base and EQ 200 mg base. | Watson Laboratories, Inc. (an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 400 Interpace Pkwy., Building A, Parsippany, NJ 07054. |
| ANDA 062497 | Doxycycline Hyclate Capsules, EQ 50 mg base and EQ 100 mg base. | Teva Pharmaceuticals USA, Inc. 400 Interpace Pkwy., Building A, Parsippany, NJ 07054. |
| ANDA 065152 | Cephalexin Capsules, EQ 250 mg base and EQ 500 mg base. | Yung Shin Pharmaceutical Ind. Co. Ltd., authorized U.S. agent, Carlsbad Technology, Inc./Simon Law, 5922 Farnsworth Ct., Suite 101, Carlsbad, CA 92008. |
| ANDA 070550 | Propranolol Hydrochloride (HCl) Tablets, 40 mg | Watson Laboratories, Inc. |
| ANDA 070551 | Propranolol HCl Tablets, 80 mg | Do. |
| ANDA 070943 | Oxazepam Capsules, 10 mg | IVAX Pharmaceuticals Inc. (an indirect wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 400 Interpace Pkwy., Building A, Parsippany, NJ 07054. |
| ANDA 070945 | Oxazepam Capsules, 30 mg | Do. |
| ANDA 071446 | Temazepam Capsules, 15 mg | Watson Laboratories, Inc. |
| ANDA 071447 | Temazepam Capsules, 30 mg | Do. |
| ANDA 072952 | Oxazepam Capsules, 10 mg | Do. |
| ANDA 073092 | Baclofen Tablets, 10 mg | Do. |

| Application No. | Drug | Applicant |
|---|---|---|
| ANDA 074400 | Diflunisal Tablets, 250 mg and 500 mg | Do. |
| ANDA 074432 | Diclofenac Sodium Delayed Release Tablets, 50 mg and 75 mg. | Pliva, Inc. (an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 400 Interpace Pkwy., Building A, Parsippany, NJ 07054. |
| ANDA 074460 | Piroxicam Capsules, 10 mg and 20 mg | Watson Laboratories, Inc. |
| ANDA 074585 | Indapamide Tablets, 1.25 mg and 2.5 mg | Do. |
| ANDA 074698 | Baclofen Tablets, 10 mg and 20 mg | Do. |
| ANDA 074711 | Mexiletine HCl Capsules, 150 mg, 200 mg and 250 mg | Do. |
| ANDA 074723 | Diclofenac Sodium Delayed Release Tablets, 50 mg | Teva Pharmaceuticals USA, Inc. |
| ANDA 074852 | Diltiazem HCl Extended Release Capsules, 120 mg, 180 mg, and 240 mg. | Actavis Laboratories FL, Inc. (an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 400 Interpace Pkwy., Building A, Parsippany, NJ 07054. |
| ANDA 074865 | Mexiletine HCl Capsules, 150 mg, 200 mg, and 250 mg | Watson Laboratories, Inc. |
| ANDA 074870 | Acyclovir Tablets, 400 mg and 800 mg | Actavis Elizabeth LLC (an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 400 Interpace Pkwy., Building A, Parsippany, NJ 07054. |
| ANDA 075101 | Acyclovir Capsules, 200 mg | Watson Laboratories, Inc. |
| ANDA 076022 | Fluoxetine HCl Capsules, EQ 10 mg base and EQ 20 mg base. | Carlsbad Technology, Inc., 5922 Farnsworth Ct., Carlsbad, CA 92008. |
| ANDA 078345 | Prednisolone Sodium Phosphate Solution, EQ 15 mg base/5 milliliters (mL). | Amneal Pharmaceuticals, 85 Adams Ave., Hauppauge, NY 11788. |
| ANDA 080521 | Isoniazid Tablets, 300 mg | Watson Laboratories, Inc. |
| ANDA 086537 | Nitroglycerin Controlled-Release Capsules, 6.5 mg | Lumara Health, Inc., 1100 Winter St., Suite 3000, Waltham, MA 02451. |
| ANDA 086889 | Disulfiram Tablets, 250 mg | Watson Laboratories, Inc. |
| ANDA 086890 | Disulfiram Tablets, 500 mg | Watson Laboratories, Inc. |
| ANDA 087975 | Nitroglycerin Controlled-Release Capsules, 2.5 mg | Sandoz Inc., 100 College Rd. West, Princeton, NJ 08540. |
| ANDA 087976 | Nitroglycerin Controlled-Release Capsules, 6.5 mg | Do. |
| ANDA 088509 | Nitroglycerin Controlled-Release Capsules, 9 mg | Do. |
| ANDA 090833 | Carbidopa/Levodopa and Entacapone Tablets, 18.75 mg/200 mg/75 mg, 25 mg/200 mg/100 mg, 31.25 mg/200 mg/125 mg, 37.5 mg/200 mg/150 mg, and 50 mg/200 mg/200 mg. | Morton Grove Pharmaceuticals Inc./Wockhardt USA LLC., 6451 Main St., Morton Grove, IL 60053. |
| ANDA 200771 | Irinotecan HCl Injection, 40 mg/2 mL (20 mg/mL) and 100 mg/5 mL (20 mg/mL). | Heritage Pharmaceuticals Inc. d/b/a/Avet Pharmaceuticals Inc. U.S. Agent for Emcure Pharmaceuticals Limited, One Tower Center Blvd., East Brunswick, NJ 08816. |
| ANDA 202063 | Gemcitabine HCl for Injection, EQ 200 mg base/vial; EQ 1 gram base/vial. | Do. |
| ANDA 204437 | Sodium Fluoride 18 Injection, 10–200 millicurie (mCi)/mL | UCSF Radiopharmaceutical Facility, 185 Berry St., Suite 350, San Francisco, CA 94107. |
| ANDA 208444 | Choline C–11 Injection, 4–33.1 mCi/mL | Do. |

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of July 26, 2021. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on July 26, 2021 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: June 21, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–13593 Filed 6–24–21; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Interagency Autism Coordinating Committee.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

*Name of Committee:* Interagency Autism Coordinating Committee.

*Date:* July 21–22, 2021.

*Time:* Wednesday, July 21, 2021—1:00 p.m. to 4:00 p.m. ET, *https://videocast.nih.gov/watch=42326;* Thursday, July 22, 2021—2:00 p.m. to 5:00 p.m. ET, *https://videocast.nih.gov/watch=42327.*

*Agenda:* To discuss business, updates, and issues related to ASD research and services activities.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Cost:* The meeting is free and open to the public.

*Registration:* A registration web link will be posted on the IACC website (*www.iacc.hhs.gov*) prior to the meeting. Pre-registration is recommended.

*Deadlines:* Written/Virtual Public Comment Due Date: Friday, July 2, 2021, by

5:00 p.m. ET. For instructions, see below. Public Comments provided via Live Feedback Form during the meeting: No preregistration required. For instructions, see *https://iacc.hhs.gov/meetings/iacc-meetings/live-feedback.shtml.*

*Contact Person:* Ms. Rebecca Martin, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9669, Phone: 301–435–9269, Email: *IACCPublicInquiries@mail.nih.gov.*

*Public Comments:* The IACC welcomes public comments from members of the autism community. Comments may be submitted in writing via email to *IACCPublicInquiries@mail.nih.gov* or using the web form at: *https://iacc.hhs.gov/meetings/public-comments/submit/index.jsp* by 5:00 p.m. ET on Friday, July 2, 2021. Comments may be addressed to the Interagency Autism Coordinating Committee. A limited number of slots are available for individuals to provide a 2–3-minute summary or excerpt of their comment to the committee live during the virtual meeting using the virtual platform. For those interested in that opportunity, please indicate ''Interested in providing virtual comment'' in your written submission, along with your name, address, email, phone number, and professional/organizational affiliation so that OARC staff can contact you if a slot is available for you to provide a summary or excerpt of your comment via the virtual platform during the meeting. For any given meeting, priority for virtual comment slots will be given to commenters who have not previously provided virtual comments in the current calendar year. This will help ensure that as many individuals as possible have an opportunity to share comments. Commenters going over their allotted 3-minute slot may be asked to conclude immediately to allow other comments and the rest of the meeting to proceed on schedule.

Public comments received by 5:00 p.m. ET on Friday, July 2, 2021, will be provided to the Committee prior to the meeting for their consideration. Any written comments received after 5:00 p.m. ET, Friday, July 2, 2021, may be provided to the Committee either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies. All public comments become part of the public record. Attachments of copyrighted publications are not permitted, but web links or citations for any copyrighted works cited may be provided. For public comment guidelines, see: *https://iacc.hhs.gov/meetings/public-comments/guidelines/.*

Individuals may also submit public comments to the IACC via a Live Feedback Form accessible from the webcast page on the days of the meeting during the time period announced. No pre-registration for Live Feedback comments is required. The link to the form will be accessible on the NIH Videocast website at *https://videocast.nih.gov* and instructions are available on the IACC website: *https://iacc.hhs.gov/meetings/iacc-meetings/live-feedback.shtml.* This format is best suited for brief questions and comments for the committee. Submissions will be provided to the IACC and will become a part of the public record.

*Technical Issues:* If you experience any technical problems with the webcast or conference call, please send an email to *IACCPublicInquiries@mail.nih.gov* or use the Live Feedback form on the NIH Videocast meeting page.

Meeting schedule subject to change.

*Disability Accommodations:* All IACC Full Meetings provide Closed Captioning through the NIH videocast website. Individuals whose full participation in the meeting will require special accommodations (*e.g.,* sign language or interpreting services, etc.) must submit a request to the Contact Person listed on the notice at least seven (7) business days prior to the meeting. Such requests should include a detailed description of the accommodation needed and a way for the IACC to contact the requester if more information is needed to fill the request. Special requests should be made at least seven (7) business days prior to the meeting; last minute requests may be made but may not be possible to accommodate.

*More Information:* Information about the IACC is available on the website: *http://www.iacc.hhs.gov.*

Dated: June 21, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–13528 Filed 6–24–21; 8:45 am]

**BILLING CODE 4140–01–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Outstanding Investigator Award (OIA)—R35.

*Date:* August 4–5, 2021.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 827–7953, *kristen.page@nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze Enabling Technologies.

*Date:* August 18, 2021.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze Product Definition.

*Date:* August 19, 2021.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Early Stage Investigatory (EIA) R35 Review Meeting.

*Date:* August 25, 2021.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–Q, Bethesda, MD 20892–7924, (301) 827–7913, *creazzotl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 21, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–13527 Filed 6–24–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7037–N–02]**

## 60-Day Notice of Proposed Information Collection: Comment Request; Housing Discrimination Claim Form HUD–903.1, HUD–903.1A, HUD–903.1B, HUD–903.1C, HUD–903.1F, HUD–903.1CAM, HUD–903.1KOR, HUD–903.1RUS, HUD–903–1_Somali; OMB Control No.: 2529–0011

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved information collection for HUD Form Series HUD–903.1, HUD–903.1A, HUD–903.1B, HUD–903.1C, HUD–903.1F, HUD–903.1CAM, HUD–903.1KOR, HUD–903.1RUS, and HUD–903–1_Somali will be submitted to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act of 1995. HUD is soliciting comments from all interested parties on the proposed reinstatement of this information collection.

**DATES:** *Comment Due Date:* August 24, 2021.

**ADDRESSES:** Interested persons are invited to submit comments regarding the proposed reinstatement of this information collection. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to Colette Pollard, Departmental Paperwork Reduction Act Officer, QMAC, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 4186, Washington, DC 20410–2000; telephone number (202) 402–3400 (this is not a toll-free number), or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at: 1–(800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Erik A. Heins, Director, Enforcement Support Division, Office of Enforcement, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 5214, Washington, DC 20410–2000; telephone number (202) 402–5887 (this is not a toll-free number), or email at *ERIK.A.HEINS@hud.gov.* Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at: 1–(800) 877–8339.

**SUPPLEMENTARY INFORMATION:** HUD is submitting this proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved information collection to the OMB for review, as required by the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35, as amended].

HUD has revised the previous title of the HUD Form Series HUD–903.1 information collection from ''Housing Discrimination Information Form'' to ''Housing Discrimination Claim Form (''Form'').'' This revised title emphasizes that submitting a Housing Discrimination Claim Form to HUD is *not* equivalent to filing a jurisdictional housing discrimination complaint with HUD. The proposed minor text revisions comply with the procedures described in HUD's Fair Housing Act regulation at 24 CFR part 103, subpart B, Subsections 103.10, 103.15, 103.20, 103.25, 103.30, 103.35, and 103.40. The revised Form also provides a complete list of mailing addresses, email addresses, and fax numbers for HUD's ten (10) Regional Fair Housing and Equal Opportunity (FHEO) Offices.

The proposed minor text revisions to HUD Form Series HUD–903.1 will not increase the information collection burden for aggrieved persons. Both the previous and revised Forms ask an aggrieved person to provide their full name; address; phone and/or email contact information; and alternative contact information. Both Forms also ask the aggrieved person to answer five (5) preliminary questions that may establish HUD's authority (jurisdiction) to file and investigate a Fair Housing Act complaint.

The proposed minor text revisions to HUD Form Series HUD–903.1 will not increase the total annual burden hours for aggrieved persons who submit the Form to HUD via the internet. Therefore, HUD does not believe that the time for completing the online version of the Form will exceed the current 45-minute time limit for internet submissions.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved collection of information concerning alleged discriminatory housing practices under the Fair Housing Act [42 U.S.C. 3601 *et seq.*]. The Fair Housing Act prohibits discrimination in the sale, rental, occupancy, advertising, and insuring of residential dwellings; and in residential real estate-related transactions; and in the provision of brokerage services, based on race, color, religion, sex, handicap [disability], familial status, or national origin. The Fair Housing Act also makes it unlawful to coerce, intimidate, threaten, or interfere with any person who has (1) exercised their fair housing rights; or (2) aided or encouraged another person to exercise their fair housing rights.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that they will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurred or terminated. HUD has designed Housing Discrimination Claim Form HUD–903.1 to promote consistency in the documents that, by statute, must be provided to persons against whom complaints are filed [''*respondents*''], and for the convenience of the general public. Section 103.25 of HUD's Fair Housing Act regulation describes the information that must be included in each complaint filed with HUD. For purposes of meeting the Act's one-year time limitation for filing complaints with HUD, complaints need not be initially submitted on the Form that HUD provides. Housing Discrimination Claim Form HUD–903.1 (English language), HUD–903.1A (Spanish language), HUD–903.1B (Chinese language), HUD–903.1C (Arabic language), HUD–903.1F (Vietnamese language), HUD–903.1CAM (Cambodian language), HUD–903.1KOR (Korean language), HUD–903.1RUS (Russian language), and HUD–903–

1_(Somali language) may be submitted to HUD by mail, in person, by facsimile, by email, or via the internet to HUD's Office of Fair Housing and Equal Opportunity (FHEO). FHEO staff uses the information provided on the Form to verify HUD's authority to investigate the aggrieved person's allegations under the Fair Housing Act.

**A. Overview of Information Collection**

*Proposed Revised Title of Information Collection:* Housing Discrimination Claim Form.

*OMB Control Number:* 2529–0011.

*Type of Request:* Proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved information collection.

*Form Number:* HUD–903.1.

*Description of the need for the information and proposed use:* HUD uses the Housing Discrimination Claim Form HUD–903.1 (Form) to collect pertinent information from persons wishing to file housing discrimination complaints with HUD under the Fair Housing Act. The Fair Housing Act makes it unlawful to discriminate in the sale, rental, occupancy, advertising, or insuring of residential dwellings; or to discriminate in residential real estate-related transactions; or in the provision of brokerage services, based on race, color, religion, sex, handicap [disability], familial status, or national origin. The Fair Housing Act also makes it unlawful to coerce, intimidate, threaten, or interfere with any person who has (1) exercised their fair housing rights; or (2) aided or encouraged another person to exercise their fair housing rights.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that they will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurs or terminates. The Form promotes consistency in the collection of information necessary to contact persons who file housing discrimination complaints with HUD. It also aids in the collection of information necessary for initial assessments of HUD's authority to investigate alleged discriminatory housing practices under the Fair Housing Act. This information may subsequently be provided to persons against whom complaints are filed [''*respondents*''], as required under section 810(a)(1)(B)(ii) of the Fair Housing Act.

*Agency form numbers, if applicable:* Form HUD–903.1 (English), Form HUD–903.1A (Spanish), Form HUD–903.1B (Chinese), Form HUD–903.1C (Arabic), Form HUD–903.1F (Vietnamese), Form HUD–903.1CAM (Cambodian), Form HUD–903.1KOR (Korean), Form HUD–903.1RUS (Russian), and Form HUD–903–1_(Somali).

*Members of affected public:* Individuals or households; businesses or other for-profit, not-for-profit institutions; State, Local, or Tribal Governments.

*Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of responses:* During FY 2020, HUD staff received approximately 21,846 information submissions from persons wishing to file housing discrimination complaints with HUD. Of this total, HUD received 1,298 complaint submissions by telephone. The remaining 20,548 complaint submissions were transmitted to HUD by mail, in-person, by email, and via the internet. HUD estimates that an aggrieved person requires approximately 45 minutes in which to complete this Form. The Form is completed once by each aggrieved person. Therefore, the total number of annual burden hours for this Form is 15,411 hours.

$$20{,}548 \times 1 \text{ (frequency)} \times .45 \text{ minutes } (.75 \text{ hours}) = 15{,}411 \text{ hours.}$$

*Annualized cost burden to complainants:* HUD does not provide postage-paid mailers for this information collection. Accordingly, aggrieved persons choosing to submit this Form to HUD by regular mail must pay the United States Postal Service's (USPS) prevailing First Class Postage rate. As of the date of this Notice, the annualized cost burden per person, based on a one-time submission of this Form to HUD via the USPS's First Class Postage rate, is Fifty-five Cents ($0.55) per person. During FY 2020, FHEO staff received approximately 1,533 submissions of potential complaint information by mail. Based on this number, HUD estimates that the total annualized cost burden for aggrieved persons who submit this Form to HUD by mail is $843.00. Aggrieved persons may also submit this Form to HUD in person, by facsimile, by email, or electronically via the internet.

*Status of the proposed information collection:* Proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved collection of pertinent information from persons wishing to file Fair Housing Act complaints with HUD.

**B. Solicitation of Public Comments**

This Notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed information collection is necessary for the performance of the agency's functions;

(2) Whether the agency's estimate of burdens imposed by the information collection is accurate;

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

(4) Ways to minimize the burdens of the information collection on aggrieved persons, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comments in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

**Erik Heins,**

*Director, Enforcement Support Division, FHEO.*

[FR Doc. 2021–13553 Filed 6–24–21; 8:45 am]

**BILLING CODE 4210–67–P**

---

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7036–N–04]**

## 60-Day Notice of Proposed Information Collection: HOME Investment Partnerships Program, OMB Control No. 2506–0171

**AGENCY:** Office of Community Planning and Development, (HUD).

**ACTION:** Notice of proposed information collection.

**SUMMARY:** HUD is revising its existing HOME Program PRA to reflect additional funding appropriated for the HOME program under the American Rescue Plan Act of 2021 (Pub. L. 117–2) (ARP). HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* August 24, 2021.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Virginia Sardone, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7162, Washington, DC 20410–4500; telephone 202–402–4606 (this is not a toll-free number) or by email at *Virginia.Sardone@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

## A. Overview of Information Collection

*Title of Information Collection:* HOME Investment Partnerships Program.

*OMB Approval Number:* 2506–0171.

*Type of Request:* Revision of Approved Collection.

*Form Number:* SF 1199A, HUD 27055.

*Description of the need for the information and proposed use:* The information collected through HUD's Integrated Disbursement and Information System (IDIS) (24 CFR 92.502) is used by HUD Field Offices, HUD Headquarters, and HOME Investment Partnerships Program (HOME) Participating Jurisdictions (PJs). The project-specific property, tenant, owner, and financial data is used to compile annual reports to Congress required at Section 284(b) of Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. 12721 *et seq.*) (the Act) as well as to make program management decisions about how well PJs are achieving the statutory objectives of the HOME Program. Program management reports are generated by IDIS to provide data on the status of PJs' HOME grants and projects including the commitment and disbursement of HOME funds. These reports are provided to HUD staff as well as to HOME PJs.

Management reports required in conjunction with the Annual Performance Report (24 CFR 92.509) are used by HUD Field Offices to assess the effectiveness of locally designed programs in meeting specific statutory requirements and by Headquarters in preparing the Annual Report to Congress. Specifically, these reports permit HUD to determine compliance with the requirement that PJs provide a 25 percent match for HOME funds expended during the Federal fiscal year (Section 220 of the Act) and that program income be used for HOME eligible activities (Section 219 of the Act), as well as the Women and Minority Business Enterprise requirements (24 CFR 92.351(b)).

Financial, project, tenant and owner documentation are used to determine compliance with HOME Program cost limits (Section 212(e) of the Act), eligible activities (24 CFR 92.205), and eligible costs (24 CFR 92.206), as well as to determine whether PJs are complying with the income targeting and affordability requirements of the Act (Sections 214 and 215 of the Act). Other information collected under Subpart H of Part 92 (Other Federal Requirements) is primarily intended for local program management and is only viewed by HUD during routine monitoring visits. The written agreement with the owner for long-term obligation (24 CFR 92.504) and tenant protections (24 CFR 92.253) are required to ensure that the property owner complies with these important elements of the HOME Program and are also reviewed by HUD during monitoring visits. HUD reviews all other data collection requirements during monitoring to assure compliance with the requirements of the Act and other related laws and authorities.

HUD tracks PJ performance and compliance with the requirements of 24 CFR parts 91 and 92. PJs use the required information in the execution of their program, and to gauge their own performance in relation to stated goals.

HUD is revising its existing HOME Program PRA to reflect additional funding appropriated for the HOME program under the American Rescue Plan Act of 2021 (Pub. L. 117–2) (ARP). ARP provides $5 billion to assist individuals or households who are homeless, at risk of homelessness, and in other vulnerable populations by providing affordable rental housing, rental assistance, supportive services, and non-congregate shelter, to reduce homelessness and increase housing stability across the country. These additional grant funds are known as HOME-American Rescue Plan or HOME-ARP. Usage of these additional grant funds will increase the reporting burden hours for participating jurisdictions. This burden includes collecting new and/or additional information related for new activities funded with HOME-ARP that serve individuals or families who are homeless, as defined in section 103(a) of the McKinney-Veto Homeless Assistance Act (42 U.S.C. 11302(a)); at risk of homelessness, as defined in section 401(1) of the McKinney-Veto Homeless Assistance Act (42 U.S.C. 11360(1)); fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; in other populations where providing supportive services or assistance under section 212(a) of the Act (42 U.S.C. 12742(a)) would prevent the family's homelessness or would serve those with the greatest risk of housing instability. This burden includes making the information available to HUD for monitoring the performance of participating jurisdictions and ensuring compliance with the HOME-ARP implementing notice (the ''HOME-ARP Notice'') and applicable HOME program requirements in 24 CFR part 92.

*Respondents:* State and local government PJs and consortia, including insular areas.

| Reg. section | Paperwork requirement | Number of respondents | Responses per annum | Total annual responses | Burden hour per response | Annual burden hours | Hourly rate | Annual cost |
|---|---|---|---|---|---|---|---|---|
| § 92.61 | Program Description and Housing Strategy for Insular Areas. | 4.00 | 1.00 | 4.00 | 10.00 | 40.00 | $41.78 | $1,671.20 |
| § 92.66 | Reallocation—Insular Areas | 4.00 | 1.00 | 4.00 | 3.00 | 12.00 | 41.78 | 501.36 |
| § 92.101 | Consortia Designation | 36.00 | 1.00 | 36.00 | 5.00 | 180.00 | 41.78 | 7,520.40 |
| § 92.201 | State Designation of Local Recipients | 51.00 | 1.00 | 51.00 | 1.50 | 76.50 | 41.78 | 3,196.17 |
| § 92.200 | Private-Public Partnership | 651.00 | 1.00 | 651.00 | 2.00 | 1,302.00 | 41.78 | 54,397.56 |

| Reg. section | Paperwork requirement | Number of respondents | Responses per annum | Total annual responses | Burden hour per response | Annual burden hours | Hourly rate | Annual cost |
|---|---|---|---|---|---|---|---|---|
| § 92.201 | Distribution of Assistance | 651.00 | 1.00 | 651.00 | 4.00 | 2,604.00 | 41.78 | 108,795.12 |
| § 92.202 | Site and Neighborhood Standards | 651.00 | 1.00 | 651.00 | 2.00 | 1,302.00 | 41.78 | 54,397.56 |
| § 92.203 | Income Determination | 20,001.00 | 1.00 | 20,001.00 | 2.00 | 40,002.00 | 41.78 | 1,671,283.56 |
| § 92.203 | Income Determination | 350,000.00 | 1.00 | 350,000.00 | 0.75 | 262,500.00 | 41.78 | 10,967,250.00 |
| § 92.205(e) | Terminated Projects | 540.00 | 1.00 | 540.00 | 5.00 | 2,700.00 | 41.78 | 112,806.00 |
| § 92.206 | Eligible Costs—Refinancing | 100.00 | 1.00 | 100.00 | 4.00 | 400.00 | 41.78 | 16,712.00 |
| § 92.210 | Troubled HOME-Assisted Rental Projects | 25.00 | 1.00 | 25.00 | 0.50 | 12.50 | 41.78 | 522.25 |
| § 92.251(a) | Property Standards—New Construction | 10,200.00 | 2.00 | 20,400.00 | 3.00 | 61,200.00 | 41.78 | 2,556,936.00 |
| § 92.251(b) | Property Standards—Rehabilitation | 15,300.00 | 2.00 | 30,600.00 | 2.00 | 61,200.00 | 41.78 | 2,556,936.00 |
| § 92.252 | Qualification as affordable housing: Rental Housing. | 3,200.00 | 1.00 | 3,200.00 | 5.00 | 16,000.00 | 41.78 | 668,480.00 |
| § 92.252(j) | Fixed and Floating HOME Rental Units | 3,200.00 | 1.00 | 3,200.00 | 1.00 | 3,200.00 | 41.78 | 133,696.00 |
| § 92.253 | Tenant Protections (including lease requirement). | 20,001.00 | 1.00 | 20,001.00 | 5.00 | 100,005.00 | 41.78 | 4,178,208.90 |
| § 92.254 | Homeownership—Median Purchase Price. | 80.00 | 1.00 | 80.00 | 5.00 | 400.00 | 41.78 | 16,712.00 |
| § 92.254 | Homeownership—Alternative to Resale/recapture. | 100.00 | 1.00 | 100.00 | 5.00 | 500.00 | 41.78 | 20,890.00 |
| § 92.254(a)(5) | Homeownership—Approval of Resale & Recapture. | 2,000.00 | 1.00 | 2,000.00 | 1.50 | 3,000.00 | 41.78 | 125,340.00 |
| § 92.254(a)(5) | Homeownership—Fair Return & Affordability. | 2.00 | 1.00 | 2.00 | 1.00 | 2.00 | 41.78 | 83.56 |
| § 92.254(f) | Homeownership program policies | 651.00 | 1.00 | 651.00 | 5.00 | 3,255.00 | 41.78 | 135,993.90 |
| § 92.300 | CHDO Identification | 651.00 | 1.00 | 651.00 | 2.00 | 1,302.00 | 41.78 | 54,397.56 |
| § 92.300 | Designation of CHDOs | 480.00 | 1.00 | 480.00 | 1.50 | 720.00 | 41.78 | 30,081.60 |
| § 92.300 | CHDO Project Assistance | 651.00 | 1.00 | 651.00 | 2.00 | 1,302.00 | 41.78 | 54,397.56 |
| § 92.303 | Tenant Participation Plan | 12,513.00 | 1.00 | 12,513.00 | 10.00 | 125,130.00 | 41.78 | 5,227,931.40 |
| § 92.351 | Affirmative Marketing | 3,870.00 | 1.00 | 3,870.00 | 5.00 | 19,350.00 | 41.78 | 808,443.00 |
| § 92.354 | Labor | 20,001.00 | 1.00 | 20,001.00 | 2.50 | 50,002.50 | 41.78 | 2,089,104.45 |
| § 92.357 | Debarment and Suspension | 9,765.00 | 1.00 | 9,765.00 | 1.00 | 9,765.00 | 41.78 | 407,981.70 |
| § 92.501 | HOME Investment Partnership Agreement (HUD 40093). | 651.00 | 1.00 | 651.00 | 1.00 | 651.00 | 41.78 | 27,198.78 |
| § 92.502 | Homeownership and Rental Set-Up and Completion. | 8,000.00 | 1.00 | 8,000.00 | 2.00 | 16,000.00 | 41.78 | 668,480.00 |
| § 92.502 | Tenant-Based Rental Assistance Set-Up (IDIS). | 4,400.00 | 1.00 | 4,400.00 | 5.50 | 24,200.00 | 41.78 | 1,011,076.00 |
| § 92.502 | IDIS Access Request form (HUD 27055) | 100.00 | 1.00 | 100.00 | 0.50 | 50.00 | 41.78 | 2,089.00 |
| § 92.502(a) | Required Reporting of Program Income | 651.00 | 1.00 | 651.00 | 12.00 | 7,812.00 | 41.78 | 326,385.36 |
| § 92.504(c) | Written Agreement | 20,001.00 | 1.00 | 20,001.00 | 5.00 | 100,005.00 | 41.78 | 4,178,208.90 |
| § 92.504(d)(2) | Financial Oversight and HOME Rental projects. | 21,700.00 | 1.00 | 21,700.00 | 1.00 | 21,700.00 | 41.78 | 906,626.00 |
| § 92.508 | Recordkeeping—Subsidy Layering and Underwriting. | 3,200.00 | 1.00 | 3,200.00 | 4.00 | 12,800.00 | 41.78 | 534,784.00 |
| § 92.508 | Recordkeeping (Additional) | 30,330.00 | 1.00 | 30,330.00 | 1.00 | 30,330.00 | 41.78 | 1,267,187.40 |
| § 92.509 | Annual Performance Reports (HUD 40107). | 651.00 | 1.00 | 651.00 | 2.50 | 1,627.50 | 41.78 | 67,996.95 |
| § 92.509 | Management Reports—FY Match Report (HUD 40107A). | 651.00 | 1.00 | 651.00 | 0.75 | 488.25 | 41.78 | 20,399.09 |
| § 92.550 | HUD Monitoring of Program | 651.00 | 1.00 | 651.00 | 0.25 | 162.75 | 41.78 | 6,799.70 |
| § 91.525 | Documentation and Activities | | | | | | | |
| | Direct Deposit Sign up form (SF 1199A) | 15.00 | 1.00 | 15.00 | 0.25 | 3.75 | 41.78 | 156.68 |
| | HOME ARP Allocation Plan | 651.00 | 1.00 | 651.00 | 20.00 | 13,020.00 | 41.78 | 543,975.60 |
| | Supportive Services Setup and Completion Activities. | 1,302.00 | 4.00 | 5,208.00 | 5.00 | 26,040.00 | 41.78 | 1,087,951.20 |
| | Non-Congregate Shelter Setup and Completion Activities. | 651.00 | 1.00 | 651.00 | 15.00 | 9,765.00 | 41.78 | 407,981.70 |
| | Totals | 568,984.00 | | | | 1,032,119.75 | | 43,121,963.16 |

Annual cost is based on Actual Burden Hours (1,032,119.75) * the hourly rate for a GS–12 ($41.78).

## B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

## C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Principal Deputy Assistant Secretary for Community Planning and Development, James Arthur Jemison II, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Aaron Santa Anna, who is the Federal Register Liaison for HUD,

for purposes of publication in the **Federal Register**.

**Aaron Santa Anna,**

*Federal Register Liaison, Department of Housing and Urban Development.*

[FR Doc. 2021–13624 Filed 6–24–21; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2021–N163; FXES11140800000–212–FF08EVEN00]**

### Draft Habitat Conservation Plan and Draft Categorical Exclusion for the Vintage Ranch Project; Santa Barbara County, California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan (HCP) and draft categorical exclusion screening form for activities described in an application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended. The ITP would authorize take of a listed species incidental to construction of a residential development in the community of Orcutt within Santa Barbara County, California. The applicants developed the draft HCP in support of their application for an ITP. The Service prepared a draft categorical exclusion screening form in accordance with the National Environmental Policy Act to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicants. We invite public comment on these documents.

**DATES:** Written comments should be received on or before July 26, 2021.

**ADDRESSES:** *To obtain documents:* You may download a copy of the draft HCP and categorical exclusion screening form at *http://www.fws.gov/ventura/,* available in ''Latest News Stories'' under the ''News Room'' tab, or you may request copies of the documents by sending U.S. mail to our Ventura office (address below), or by phone (see **FOR FURTHER INFORMATION CONTACT**).

*To submit written comments:* Please send us your written comments by one of the following methods:

- *U.S. mail:* Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *Email: rachel_henry@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rachel Henry, Biologist, by email, via the Federal Relay Service at 1–800–877–8339 for TTY assistance, or by mail to the Ventura Fish and Wildlife office (by mail; see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan (HCP), and associated draft categorical exclusion screening form, submitted by Vintage Ranch Orcutt, LLC (applicant) with an application for an ITP. The permit would authorize take of the federally endangered Santa Barbara County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) incidental to activities described in the HCP for the construction of an approximately 15-acre residential development within a 33-acre lot in the community of Orcutt within Santa Barbara County, California. The applicant developed a draft HCP as part of their application for an ITP under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The Service prepared a draft categorical exclusion screening form in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicants. We invite public comment on these documents.

#### Background

The Service listed the Santa Barbara County DPS of the California tiger salamander as endangered on September 21, 2000 (65 FR 57242). Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under the ESA, ''take'' is defined to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5)).

#### Applicants' Proposed Activities

The applicant has applied for a 20-year term permit for incidental take of the Santa Barbara County DPS of the California tiger salamander. The take would occur in association with the construction of a residential development and associated activities such as vegetation removal, site grubbing, and grading for proposed development. The proposed development and all associated disturbance areas would be sited on approximately 15 acres of a 33-acre property.

The HCP includes avoidance and minimization measures for the Santa Barbara County DPS of the California tiger salamander and mitigation for unavoidable loss of habitat. As mitigation for habitat loss, the applicant proposes to purchase credits from a Service-approved mitigation bank.

#### Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

#### Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

**Stephen Henry,**

*Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.*

[FR Doc. 2021–13518 Filed 6–24–21; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2021–N010; FXES11130100000C4–212–FF01E00000]**

## Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 77 Species in Oregon, Washington, Idaho, and Hawaii

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of initiation of reviews; request for information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews for 77 species in Oregon, Washington, Idaho, and Hawaii under the Endangered Species Act of 1973. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last reviews.

**DATES:** To ensure consideration in our reviews, we are requesting submission of new information no later than August 24, 2021. However, we will continue to accept new information about any species at any time.

**ADDRESSES:**

*Submitting Information on Species:*

• Columbian white-tailed deer:

*U.S. Mail:* State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266; or

*Email: fw1ofwo@fws.gov.*

• Northern Idaho ground squirrel:

*U.S. Mail:* State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, ID 83709; or

*Email: ifwo@fws.gov.*

• Any of the 75 species occurring in Hawaii:

*U.S. Mail:* Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96850; or

*Email: pifwo_admin@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance. For information about the various species, contact the following people.

• *Columbian white-tailed deer:* Jennifer Siani, Oregon Fish and Wildlife Office, 503–231–6179.

• *Northern Idaho ground squirrel:* Kathleen Hendricks, Idaho Fish and Wildlife Office, 208–378–5243.

• *Any of the 75 species occurring in Hawaii:* Megan Laut, Pacific Islands Fish and Wildlife Office, 808–792–9400.

**SUPPLEMENTARY INFORMATION:**

### Why do we conduct 5-year status reviews?

Under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531, *et seq.*), we maintain lists of endangered and threatened wildlife and plant species (referred to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2) of the Act requires us to review each listed species' status at least once every 5 years. For additional information about 5-year status reviews, refer to our factsheet at *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

### What information do we consider in our review?

A 5-year status review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status reviews, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year status review and will also be useful in evaluating the ongoing recovery programs for these species.

### Which species are under review?

This notice announces our active review of 77 species, including 2 mammals, 6 birds, 7 insects, and 62 plants, as listed in the table below.

| Common name | Scientific name | Status | Known range of species occurrence | Final listing rule and publication date |
|---|---|---|---|---|
| **Animals** | | | | |
| *Mammals:* | | | | |
| Columbian white-tailed deer | *Odocoileus virginianus leucurus* | Threatened | Oregon, Washington. | 68 FR 43647, 10/17/2016. |
| Northern Idaho ground squirrel | *Urocitellus brunneus* | Threatened | Idaho | 65 FR 17780, 4/5/2000. |
| *Birds:* | | | | |
| Iiwi | *Drepanis coccinea* | Threatened | Hawaii | 82 FR 43873, 9/20/2017. |
| Molokai thrush | *Myadestes lanaiensis rutha* | Endangered | Hawaii | 35 FR 16047, 10/13/1970. |
| Small Kauai thrush | *Myadestes palmeri* | Endangered | Hawaii | 32 FR 4001, 3/11/1967. |
| Crested honeycreeper (Akohekohe) | *Palmeria dolei* | Endangered | Hawaii | 32 FR 4001, 3/11/1967. |
| Maui parrotbill | *Pseudonestor xanthophrys* | Endangered | Hawaii | 32 FR 4001, 3/11/1967. |
| Newell's Townsend's shearwater | *Puffinus auricularis newelli* | Threatened | Hawaii | 40 FR 44149, 9/25/1975. |
| *Insects:* | | | | |
| Hawaiian picture-wing fly | *Drosophila differens* | Endangered | Hawaii | 71 FR 26835, 5/9/2006. |
| Hawaiian picture-wing fly | *Drosophila neoclavisetae* | Endangered | Hawaii | 71 FR 26835, 5/9/2006. |
| Crimson Hawaiian damselfly | *Megalagrion leptodemas* | Endangered | Hawaii | 77 FR 57647, 9/18/2012. |
| Flying earwig Hawaiian damselfly | *Megalagrion nesiotes* | Endangered | Hawaii | 75 FR 35990, 6/24/2010. |
| Blackline Hawaiian damselfly | *Megalagrion nigrohamatum nigrolineatum* | Endangered | Hawaii | 77 FR 57647, 9/18/2012. |
| Oceanic Hawaiian damselfly | *Megalagrion oceanicum* | Endangered | Hawaii | 77 FR 57647, 9/18/2012. |
| Pacific Hawaiian damselfly | *Megalagrion pacificum* | Endangered | Hawaii | 75 FR 35990, 6/24/2010. |
| **Plants** | | | | |
| *Flowering Plants:* | | | | |
| No common name | *Abutilon eremitopetalum* | Endangered | Hawaii | 56 FR 47686, 9/20/1991. |
| Kooloaula | *Abutilon menziesii* | Endangered | Hawaii | 51 FR 34412, 9/26/1986. |

| Common name | Scientific name | Status | Known range of species occurrence | Final listing rule and publication date |
|---|---|---|---|---|
| Ahinahina | *Argyroxiphium sandwicense* ssp. *macrocephalum*. | Threatened | Hawaii | 57 FR 20772, 5/15/1992. |
| Kookoolau | *Bidens micrantha* ssp. *kalealaha* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| Kookoolau | *Bidens wiebkei* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Pua ala | *Brighamia rockii* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Awikiwiki | *Canavalia molokaiensis* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Oha wai | *Clermontia oblongifolia* ssp. *brevipes* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Oha wai | *Clermontia oblongifolia* ssp. *mauiensis* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| Oha wai | *Clermontia samuelii* | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| Haha | *Cyanea copelandii* ssp. *haleakalaensis* | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| Haha | *Cyanea dunbariae* (=*Cyanea dunbarii*) | Endangered | Hawaii | 61 FR 53130, 10/10/1996. |
| Haha | *Cyanea gibsonii* (=*Cyanea macrostegia* ssp. *gibsonii*). | Endangered | Hawaii | 56 FR 47686, 9/20/1991. |
| Haha | *Cyanea glabra* | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| Haha | *Cyanea grimesiana* ssp. *grimesiana* | Endangered | Hawaii | 61 FR 53108, 10/10/1996; 78 FR 32013, 5/28/2013. |
| Haha | *Cyanea hamatiflora* ssp. *hamatiflora* | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| Haha | *Cyanea lobata* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| Haha | *Cyanea magnicalyx* | Endangered | Hawaii | 78 FR 32103, 5/28/2013. |
| Haha | *Cyanea mannii* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Haha | *Cyanea mceldowneyi* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| Haha | *Cyanea procera* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Haiwale | *Cyrtandra munroi* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| Naenae | *Dubautia plantaginea* ssp. *humilis* | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| Nohoanu | *Geranium arboreum* | Endangered | Hawaii | 57 FR 20589, 5/13/1992. |
| Nohoanu | *Geranium multiflorum* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| No common name | *Gouania hillebrandii* | Endangered | Hawaii | 49 FR 44753, 11/19/1984. |
| Kokio keokeo | *Hibiscus arnottianus* ssp. *immaculatus* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Awiwi | *Kadua cookiana* (=*Hedyotis cookiana*) | Endangered | Hawaii | 59 FR 9304, 2/25/1994. |
| Kopa | *Kadua cordata* ssp. *remyi* (=*Hedyotis schlechtendahliana* var. *remyi*). | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| Pilo | *Kadua laxiflora* (=*Hedyotis mannii*) | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Cooke's kokio | *Kokia cookei* | Endangered | Hawaii | 44 FR 62470, 10/30/1979. |
| Kamakahala | *Labordia tinifolia* var. *lanaiensis* | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| Kamakahala | *Labordia triflora* | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| No common name | *Lysimachia lydgatei* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| No common name | *Lysimachia maxima* | Endangered | Hawaii | 61 FR 53130, 10/10/1996. |
| Nehe | *Melanthera kamolensis* (=*Lipochaeta kamolensis*). | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| Alani | *Melicope adscendens* | Endangered | Hawaii | 59 FR 62346, 12/5/1994. |
| Alani | *Melicope balloui* | Endangered | Hawaii | 59 FR 62346, 12/5/1994. |
| Alani | *Melicope knudsenii* | Endangered | Hawaii | 59 FR 9304, 2/25/1994. |
| Alani | *Melicope mucronulata* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| Alani | *Melicope munroi* | Endangered | Hawaii | 64 FR 48307, 9/3/1999. |
| Alani | *Melicope ovalis* | Endangered | Hawaii | 59 FR 62346, 12/5/1994. |
| Alani | *Melicope reflexa* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| No common name | *Neraudia sericea* | Endangered | Hawaii | 59 FR 56333, 11/10/1994. |
| Carter's panicgrass | *Panicum fauriei* var. *carteri* | Endangered | Hawaii | 48 FR 46328, 10/12/1983. |
| No common name | *Phyllostegia hispida* | Endangered | Hawaii | 74 FR 11319, 3/17/2009. |
| No common name | *Phyllostegia mannii* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Loulu | *Pritchardia munroi* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Maui remya | *Remya mauiensis* | Endangered | Hawaii | 56 FR 1450, 1/14/1991. |
| No common name | *Sanicula purpurea* | Endangered | Hawaii | 61 FR 53108, 10/10/1996. |
| Lanai sandalwood (=Iliahi) | *Santalum haleakalae* var. *lanaiense* (=*Santalum freycinetianum* var. *lanaiense*). | Endangered | Hawaii | 51 FR 3182, 1/24/1986; 78 FR 32013, 5/28/2013. |
| No common name | *Schiedea haleakalensis* | Endangered | Hawaii | 57 FR 20772, 5/15/1992. |
| No common name | *Schiedea hookeri* | Endangered | Hawaii | 61 FR 53108, 10/10/1996. |
| No common name | *Schiedea lydgatei* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| No common name | *Schiedea sarmentosa* | Endangered | Hawaii | 61 FR 53130, 10/10/1996. |
| No common name | *Silene alexandri* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| No common name | *Stenogyne bifida* | Endangered | Hawaii | 57 FR 46325, 10/8/1992. |
| Pamakani | *Tetramolopium capillare* | Endangered | Hawaii | 59 FR 49860, 9/30/1994. |
| No common name | *Tetramolopium remyi* | Endangered | Hawaii | 56 FR 47686, 9/20/1991. |
| No common name | *Tetramolopium rockii* | Threatened | Hawaii | 57 FR 46325, 10/8/1992. |
| No common name | *Viola lanaiensis* | Endangered | Hawaii | 56 FR 47686, 9/20/1991. |
| *Ferns:* | | | | |
| Ihiihi | *Marsilea villosa* Marsilea villosa | Endangered | Hawaii | 57 FR 27863, 6/22/1992. |

## Request for New Information

To ensure that a 5-year status review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

If you wish to provide information for any species listed in the table, please submit your comments and materials to the appropriate contact in **ADDRESSES**.

## Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Completed and Active Reviews**

A list of all completed and currently active 5-year status reviews addressing species for which our Regional Office has lead responsibility is available at *http://www.fws.gov/pacific/ecoservices/endangered/recovery/5year.html.*

**Authority**

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Hugh R. Morrison,**

*Acting Regional Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2021–13534 Filed 6–24–21; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[212A2100DD/AAKC001030/A0A501010.999900253G]**

### Environmental Impact Statement for the Yahthumb Solar Project on the Moapa River Indian Reservation, Clark County, Nevada

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The Bureau of Indian Affairs (BIA), as lead agency in cooperation with the Moapa Band of Paiute Indians (Moapa Band), Bureau of Land Management (BLM), and other agencies, intend to prepare an Environmental Impact Statement (EIS) that will evaluate the development of the Yahthumb Solar Project (Project) on the Moapa River Indian Reservation (Reservation). This notice announces the beginning of the scoping process to solicit public comments and identify potential issues related to the EIS. The BIA requests comments concerning the scope of the analysis, and identification of relevant information, studies, and analyses. It also announces that two public scoping meetings will be held virtually to identify potential issues, alternatives, and mitigation to be considered in the EIS.

**DATES:** All comments must be received July 26, 2021. The draft EIS is scheduled for December 2021 and the final EIS is scheduled for May 2022 with a Record of Decision in June 2022. The dates of the public scoping meetings will be included in notices to be posted in the *Las Vegas Sun, Las Vegas Review-Journal,* and *Moapa Valley Progress* 15 days before the meetings.

**ADDRESSES:** Send written comments to Mr. Chip Lewis, BIA Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, Arizona 85004. Comments may also be sent via email to *Chip.Lewis@bia.gov* or on the Projects website at *www.YahthumbSolarProjectEIS.com.* Please see the **SUPPLEMENTARY INFORMATION** section of this notice for directions on submitting comments. The public meetings can be joined online through the Projects website at *www.YahthumbSolarProjectEIS.com.*

**FOR FURTHER INFORMATION CONTACT:** Chip Lewis, BIA; telephone: (602) 379–6750; email: *Chip.Lewis@bia.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**I. Proposed Federal Action**

*A. Purpose and Need for the Proposed Action*

The proposed Federal action, taken under 25 U.S.C. 415, is BIA's approval of the solar energy ground lease and related agreements entered into by the Moapa Band with Yahthumb Solar Project, LLC (Applicant). The agreements provide for construction, operation and maintenance (O&M), and decommissioning of a 138-megawatt (MW) alternating current (MWac) solar photovoltaic (PV) electricity generation facility located entirely on the Reservation and specifically on lands held in trust by the United States for the Moapa Band.

In addition, a transmission generation interconnection (gen-tie) line would be constructed to interconnect the Project to the regional electrical grid. Portions of this line would cross lands managed by BLM within a designated utility corridor on the Reservation and BLM land. The BIA and BLM would approve rights-of-way (ROWs) authorizing the construction and operation of the transmission line.

The purposes of the proposed Project are, among other things, to: (1) Help to provide a long-term, diverse, and viable economic revenue base and job opportunities for the Moapa Band; (2) meet the terms of the existing Power Purchase Agreement (PPA) for the output of the Project; (3) help Nevada and neighboring States to meet their State renewable energy needs; and (4) allow the Moapa Band, in partnership with the Applicant, to optimize the use of the lease site while maximizing the potential economic benefit to the Tribe.

*B. Preliminary Proposed Action and Alternatives*

The Applicant plans to develop the Yahthumb Solar Project on the Reservation in Clark County, Nevada. The solar project would generate 138 MWs of solar energy generation, using PV technology, and would incorporate a battery energy storage system (BESS).

The proposed Yahthumb solar generating facility would be constructed on up to 1,400 acres within a lease study area of approximately 1,695 acres of Tribal trust land on the Reservation set aside by the Moapa Band for the Project. The solar field and associated facilities would be in parts of Sections 29, 30, 31, and 32 in Township 15 South, Range 65 East; Section 1 in Township 16 South, Range 64 East; and Section 6 in Township 16 South, Range 65, East Mount Diablo Base Meridian.

Major components of the solar site would include multiple blocks of solar PV panels mounted on single-axis tracking systems, associated inverter and transformer equipment, collection lines, BESS, a Project substation, and O&M facilities. Construction of the Project is expected to take approximately 14 months.

A gen-tie line approximately 8.5 to 10 miles long would interconnect the Project to the regional electrical grid at the existing Reid-Gardner Substation. This line would be built on the Reservation within a designated utility corridor that is managed by BLM, on BLM-managed Federal land, and on private land near the existing substation.

Primary access to the Yahthumb site would be provided via Interstate-15 to the existing Ute Road on the Reservation that would be upgraded as needed. Secondary access would be provided via an existing road within the designated utility corridor that would also be upgraded as needed. The water supply for the Project would be leased from the Moapa Band, drawn from the Band's existing water rights, and delivered to the site via a temporary water pipeline or by truck. Water will be needed during construction for dust control and a minimal amount will be needed during operations for administrative and sanitary water use and panel washings.

The Applicant is expected to operate the energy facility for up to 56 and a half years under the terms of the solar lease with the Moapa Band. The Project is being built to meet the power purchase agreement (PPA) for its output.

The EIS will focus on the Proposed Action as described above at the location on the Reservation selected by the Moapa Band. It will evaluate the Proposed Action and the No Action Alternative. Additional viable alternatives may be identified in response to issues raised during the scoping process.

*C. Summary of Expected Impacts*

Potential impacts to be addressed in the EIS analysis may include, but would not be limited to, impacts on water resources, biological resources, threatened and endangered species, cultural resources, Native American religious concerns, aesthetics, and traffic. In addition to those resource topics identified above, Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BIA's decision on the proposed Projects, are invited to participate in the scoping process to identify additional issues to be addressed.

*D. Anticipated Permits and Authorizations*

In addition to the land lease and ROWs to be approved by BIA and the ROWs to be approved by BLM, the Project would also require other permits and authorizations. These could include a Utility Environmental Protection Act (UEPA) permit from the Public Utilities Commission of Nevada and/or dust control and special use permits from Clark County.

## II. EIS Preparation

*A. Lead and Cooperating Agencies*

BIA will prepare the EIS in cooperation with the Moapa Band, BLM, Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and possibly the National Park Service (NPS), Nevada Department of Wildlife (NDOW), and Nevada Department of Transportation (NDOT). The resulting EIS will aim to (1) provide agency decision makers, the Moapa Band, and the general public with a comprehensive understanding of the impacts of the proposed development of the solar field on the Reservation; (2) describe the impacts of increased development on the Reservation; and (3) identify and propose mitigation measures that would minimize or prevent significant adverse impacts.

*B. Schedule for the Decision-Making Process*

The EIS will provide a framework for BIA and BLM to make determinations and to decide whether to take the aforementioned Federal actions. The Records of Decision (RODs) to be issued by the BIA and BLM are currently scheduled for June 2022.

*C. Nature of Decision To Be Made*

The BIA and the BLM decisions, if approved, would assist in addressing the management objectives in the Energy Policy Act of 2005 (Title II, Section 211) and Secretarial Order 3285A1 (March 11, 2009) that established the development of environmentally responsible renewable energy as a priority for the Department of the Interior.

Because the BIA has a jurisdictional trust responsibility over Indian lands and the BLM has land management responsibilities under FLPMA, the Project is a major Federal action and must comply with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Because most of the Projects would be located on tribal trust lands, the BIA is the lead federal agency. The BIA and BLM will use this EIS to make their respective decisions and the other cooperating parties will use this information to support their analyses and decisions, as needed.

## III. Public Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS.

*A. Public Scoping Meetings*

Two public scoping meetings will be conducted virtually to further describe the Projects and identify potential issues and alternatives to be considered in the EIS. The public meetings can be joined online through the Projects website at *www.YahthumbSolarProjectEIS.com.* Those unable to live stream the presentation would be able to access the meeting presentation on the project website and could join by telephone. Additionally, the live presentation will be recorded and made accessible for viewing throughout the scoping period. During the virtual meetings, a short presentation will be provided and team members will be available to discuss and answer questions. The PowerPoint presentation will be posted to the Project website and printed copies will be made available at the BLM Las Vegas Field Office and the Moapa River Indian Reservation Tribal Hall prior to the meetings. The dates of the public scoping meetings will be included in notices to be posted in the *Las Vegas Sun, Las Vegas Review-Journal,* and *Moapa Valley Progress* 15 days before the meetings.

*B. Directions for Preparing Comments*

Please include your name, return address, and the caption ''EIS, Yahthumb Solar Project,'' on the first page of any written comments. It is important that reviewers provide their comments in such manner that they are useful to the agency's preparation of the EIS. Therefore, please clearly articulate your concerns and contentions. Interested parties are invited to identify potential alternatives, issues to be analyzed, mitigation measures, and other information to be considered in the EIS.

*C. Directions for Submitting Comments*

Please submit comments by the date listed in the **DATES** section of this notice to the address listed in the **ADDRESSES** section of this notice. You may also submit comments at the public scoping meetings.

*D. Public Comment Availability*

Written comments, including names and addresses of respondents, will be available for public review at the BIA Western Regional Office, at the mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone 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.

## IV. Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and the Department of the Interior Regulations (43 CFR part 46) implementing the procedural requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and in accordance with the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by part 209 of the Department Manual.

**Bryan Newland,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2021–13578 Filed 6–24–21; 8:45 am]

BILLING CODE 4337–15–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[21XD4523WS DS64900000 DWSN00000.000000 DP.64916; OMB Control Number 1093–NEW]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; DOI Talent Registration

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Office of the Secretary (OS) is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before July 26, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference OMB Control Number 1093–NEW DOI Talent in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Jeffrey Parrillo by email at *DOI-PRA@ios.doi.gov,* or by telephone at 202–208–7072. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://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 December 27, 2018 (83 FR 66742). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

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

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

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

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* DOI Talent is the Department of the Interior's (DOI) shared services system to maintain and validate training records, manage class rosters and transcripts for course administrators and the student or learner, meet Federal mandatory training and statistical reporting requirements, and manage other programmatic functions related to training and educational programs.

DOI collects personal information from students in order to communicate training opportunities, manage course registration and delivery, validate training records necessary for certification or granting of college credit, process billing information for training classes, and to meet Federal training reporting requirements. Information may also be collected to comply with the Americans with Disabilities Act requirements to address facilities accommodations. Training and learning records are maintained in DOI's web-based learning management system, and bureau and office systems and locations where training programs are managed. DOI bureaus offer training programs which extend to external customers; such as universities, State governments, local governments, not-for-profit organizations, and in some cases, private citizens.

Each year approximately 3,000 external users request to register for training offered by DOI bureau's and offices through DOI Talent. Each registration will require approximately 5 minutes. DOI Talent:

- Creates an authoritative system of record for all training completions;
- Offers a more flexible approach for external training requests and documentation;
- Creates a learning environment that encourages engagement on multiple levels;
- Enhances training delivery options; and
- Creates opportunities to offer world-class instruction and to engage directly with learners through discussion forums and communities of practice.

*Title of Collection:* DOI Talent Registration.

*OMB Control Number:* 1093–NEW.

*Form Number:* None.

*Type of Review:* New collection in use without OMB approval.

*Respondents/Affected Public:* Contractors, students, volunteers, partners, State and local employees, and Federal employees from agencies outside DOI.

*Total Estimated Number of Annual Respondents:* 3,800.

*Total Estimated Number of Annual Responses:* 3,800.

*Estimated Completion Time per Response:* 5 minutes per response.

*Total Estimated Number of Annual Burden Hours:* 317.

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

*Frequency of Collection:* One time.

*Total Estimated Annual Nonhour Burden Cost:* None.

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.*).

**Jeffrey M. Parrillo,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021–13567 Filed 6–24–21; 8:45 am]

**BILLING CODE 4334–63–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNMF010000 L13100000.PP0000 212L1109AF]**

### Notice of Public Meeting, Northern New Mexico Resource Advisory Council, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Northern New Mexico Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The RAC will meet in-person for a field trip to visit the El Malpais National Conservation Area on August 18, 2021, from 9 a.m.–2:00 p.m. The RAC will meet virtually on August 19, 2021, from 9:00 a.m.–3:30 p.m.

**ADDRESSES:** Field trip attendees should meet at the Sky City Travel Center Express off of Interstate 40, Exit 89, east of Grants, N.M. at 9 a.m. on August 18, 2021.

The virtual meeting will be held via the Zoom Webinar Platform on August 19, 2021. To register to participate virtually in the RAC meeting, please visit: *https://blm.zoomgov.com/webinar/register/WN_BmC1KmxDSvKxfqrV0ZKEZg*.

Written comments pertaining to the meeting may be filed in advance at the BLM address listed below or via email to *jgaragon@blm.gov*. Please include ''RAC Comment'' in your submission. Written comments will be presented to the RAC.

**FOR FURTHER INFORMATION CONTACT:** Jillian Aragon, Farmington District Office, Bureau of Land Management, 6251 College Boulevard, Suite A, Farmington, New Mexico 87402; 505–564–7722; *jgaragon@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 12-member Northern New Mexico RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the RAC's area of jurisdiction.

*Planned agenda items include:* Fee discussions for Kasha-Katuwe Tent Rocks National Monument and the Joe Skeen Campground; updates from the BLM Farmington, Taos, and Rio Puerco Field Offices; and a public comment session. The final agenda will be posted online 2 weeks prior to the meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/northern-rac.*

All RAC meetings are open to the public and will be streamed via the Zoom Webinar Platform. All attendees for the field trip will be responsible for their own transportation, as well as their own meals. All attendees should socially distance or wear a mask. The number of agency staff participating will be limited. Members of the public wishing to attend the field trip should notify the BLM to ensure compliance with Federal and State of New Mexico large group guidance.

#### Public Comment Procedures

The BLM welcomes comments from all interested parties. There will be a half-hour public comment period during the August 19 virtual meeting starting at 2:15 p.m. for any interested members of the public who wish to address the RAC. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 43 CFR 1784.4–1.

**Alfred Elser,**

*BLM Farmington District Manager.*

[FR Doc. 2021–13483 Filed 6–24–21; 8:45 am]

BILLING CODE 4310–FB–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0032107; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Appalachian State University, Boone, NC

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** Appalachian State University has completed an inventory of human remains, 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 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 Appalachian State University. If no additional requestors come forward, transfer of control of the human remains to the 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 should submit a written request with information in support of the request to Appalachian State University at the address in this notice by July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dr. Alice Wright, Associate Professor, Appalachian State University, Department of Anthropology, ASU Box 32016, 322 Anne Belk Hall, Boone, NC 28608, telephone (828) 262–6384, email *wrightap2@appstate.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 under the control of Appalachian State University, Boone, NC. The human remains were removed from an unknown location in Mississippi.

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. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by Appalachian State University professional staff in consultation with representatives of the Jena Band of Choctaw Indians; The Chickasaw Nation; and The Choctaw

Nation of Oklahoma (hereafter referred to as ''The Consulted Tribes'').

**History and Description of the Remains**

Sometime before 1995, human remains representing, at minimum, one individual was removed from the State of Mississippi. In the late 1990s, a student at Appalachian State University acquired the human remains through his landlord and donated them to the University. The landlord (now deceased) stated that he ''got it in Mississippi.'' No further information about these human remains is available. No known individual was identified. No associated funerary objects are present.

**Determinations Made by Appalachian State University**

Officials of Appalachian State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- 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 the Alabama-Coushatta Tribe of Texas [previously listed as Alabama-Coushatta Tribes of Texas]; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Jena Band of Choctaw Indians; Miami Tribe of Oklahoma; Mississippi Band of Choctaw Indians; Quapaw Nation [previously listed as The Quapaw Tribe of Indians]; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and The Osage Nation [previously listed as Osage Tribe] (hereafter referred to as ''The Tribes'').

**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 should submit a written request with information in support of the request to Dr. Alice Wright, Associate Professor, Appalachian State University, Department of Anthropology, ASU Box 32016, 322 Anne Belk Hall, Boone, NC 28608, telephone (828) 262–6384, email *wrightap2@appstate.edu,* by July 26, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Appalachian State University is responsible for notifying The Tribes that this notice has been published.

Dated: June 9, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021–13512 Filed 6–24–21; 8:45 am]

**BILLING CODE 4312–52–P**

---

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0032106; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: Oregon State University, Corvallis, OR

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Oregon State University NAGPRA Office, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Oregon State University NAGPRA Office. If no additional claimants come forward, transfer of control of the cultural items 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 claim these cultural items should submit a written request with information in support of the claim to the Oregon State University NAGPRA Office at the address in this notice by July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dawn Marie Alapisco, Oregon State University NAGPRA Office, 106 Gilkey Hall, Corvallis, OR 97331, telephone (541) 737–4075, email *dawnmarie.alapisco@oregonstate.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of Oregon State University, Corvallis, OR, that meet the definition of sacred objects under 25 U.S.C. 3001.

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 cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

Between 1978 and 2001, Dr. Roberta Hall of the Oregon State University Anthropology Department conducted seven excavation seasons at Site 35CS043, which is in the City of Bandon, Coos County, OR. Altogether, five areas, designated A through E, were excavated. The 30 sacred objects are 17 lots of worked lithics; 10 lots of worked bone; one lot of mixed technologies; one broken clay vessel; and one lot of photos of the sacred objects.

Site 35CS043 has a very long occupation history. Radiocarbon dating samples sent to Beta Analytics by Dr. Roberta Hall show occupation as early as 2310–1660 BCE. This site was one of three Coquille villages that made up the Nasomah Complex. All three villages were attacked by miners on January 28, 1854, during the Nasomah massacre; up to 21 tribal individuals were reported killed.

The Coos Bay Indians are the ancestors of the present-day Coquille Indian Tribe. They spoke Miluk, a Penutian dialect, and the Coquille/Tututni dialect of Athabaskan. The split between Miluk (Lower Coquille) and Athapaskan (Upper Coquille) is around Randolph Island on the Coquille River. The Coos Bay Indians (now known as the Coquille Indian Tribe) claimed the territory two miles south of the lower Coquille River in a 1935 case before the U.S. Court of Claims. After its Federal recognition was terminated by an Act of Congress in 1954 (finalized 1956), the Coquille Indian Tribe was officially restored to recognized status in 1989.

Through lengthy consultations with the Tribal Historic Preservation Officer (THPO) for the Coquille Indian Tribe, Oregon State University determined that, based on material, form, and function, the items listed in this notice meet the definition of ''sacred objects.'' The blue schist stone objects originate from ''Grandmother Rock,'' an individual who, according to Coquille oral tradition, was transmogrified into stone. ''Grandmother Rock,'' also known as Tupper Rock, was used to make the Bandon jetty; pieces of her returned to the Tribe are given sacred status. The obsidian and CCS were obtained through trade for ceremonial purposes, as these materials are not local to the Bandon area. All the worked bone was of ceremonial quality and typologies. The clay vessel was ceremonial in

nature, and the photos are of the technologies listed in this notice.

**Determinations Made by Oregon State University**

Officials of Oregon State University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 30 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Coquille Indian Tribe [previously listed as Coquille Tribe 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 claim these cultural items should submit a written request with information in support of the claim to Dawn Marie Alapisco, Oregon State University NAGPRA Office, 106 Gilkey Hall, Corvallis, OR 97331, telephone (541) 737–4075, email *dawnmarie.alapisco@oregonstate.edu,* by July 26, 2021. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to the Coquille Indian Tribe [previously listed as Coquille Tribe of Oregon] may proceed.

Oregon State University is responsible for notifying the Coquille Indian Tribe [previously listed as Coquille Tribe of Oregon] that this notice has been published.

Dated: June 9, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021–13511 Filed 6–24–21; 8:45 am]

**BILLING CODE 4312–52–P**

---

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–NPS0032110; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Sierra Mono Museum and Cultural Center, North Fork, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Sierra Mono Museum and Cultural Center has completed an inventory of human remains, 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 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 should submit a written request to the Sierra Mono Museum and Cultural Center. If no additional requestors come forward, transfer of control of the human remains 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 should submit a written request with information in support of the request to the Sierra Mono Museum and Cultural Center at the address in this notice by July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Christina McDonald, President of the Sierra Mono Museum and Cultural Center, 33103 Road 228 North Fork, CA 93643, telephone (559) 877–2115, email *monomuseum@gmail.com.*

**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 under the control of the Sierra Mono Museum and Cultural Center, North Fork, CA. The human remains were removed from the area of the Kaw River in northeastern Kansas.

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. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made on behalf of the Sierra Mono Museum and Cultural Center by Dr. Chelsey Juarez of California State University Fresno, in consultation with representatives of the Iowa Tribe of Kansas and Nebraska; Kaw Nation, Oklahoma; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; and the Sac & Fox Nation of Missouri in Kansas and Nebraska (hereafter referred to as ''The Tribes'').

**History and Description of the Remains**

Sometime prior to 1980, human remains representing, at minimum, one individual were removed from the area of the Kaw River in northeastern Kansas. In 2019, while moving their collections, the Sierra Mono Museum and Cultural Center discovered these human remains in a box associated with the Tettleton Wildlife Collection, which the museum had acquired in 1982. The box also contained an image of the human remains and the words ''Kaw River'' written on the back of the image.

The human remains belong to an adult, possible female and probably 24–30 years of age. The dental wear is consistent for an individual of Native American ancestry. The remains are probably early historic or prehistoric in date. No known individual was identified. No associated funerary objects are present.

**Determinations Made by the Sierra Mono Museum and Cultural Center**

Officials of the Sierra Mono Museum and Cultural Center have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- 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 The Tribes.

**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 should submit a written request with information in support of the request to Christina McDonald, Sierra Mono Museum and Cultural Center, 33103 Road 228, North Fork, CA 93643, telephone (559) 877–2115, email *monomuseum@gmail.com,* by July 26, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Sierra Mono Museum is responsible for notifying The Tribes that this notice has been published.

Dated: June 9, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021–13514 Filed 6–24–21; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0032109; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: Gilcrease Museum, Tulsa, OK

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Gilcrease Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of both sacred objects and objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Gilcrease Museum. If no additional claimants come forward, transfer of control of the cultural items 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 claim these cultural items should submit a written request with information in support of the claim to the Gilcrease Museum at the address in this notice by July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Laura Bryant, Gilcrease Museum, 1400 N Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Gilcrease Museum, Tulsa, OK, that meet the definition of both sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

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 cultural items. The National Park Service is not responsible for the determinations in this notice.

#### History and Description of the Cultural Items

At an unknown date, five cultural items were removed from a Seneca-Cayuga community. Thomas Gilcrease most likely purchased these items from another collector sometime in the mid-20th century. In 1955, Gilcrease transferred his museum and most of his collection, including these five items, to the City of Tulsa. The five sacred objects and objects of cultural patrimony are three False Faces (accession numbers 84.1699, 84.1701, and 84.1802) and two turtle rattles (accession numbers 93.136 and 93.137).

In 1938, two cultural items were removed from the Seneca Stomp Grounds in Delaware County, OK. These items were made by Red Jacket, a Seneca man, who used them in traditional religious ceremonies. In 1938, Alfred Reed, Jr. purchased the items from Red Jacket. In 1939, Thomas Gilcrease purchased Alfred Reed, Jr.'s collection, including these two items. In 1955, Gilcrease transferred his museum and most of his collection, including these two items, to the City of Tulsa. The two sacred objects and objects of cultural patrimony are one False Face (accession number 84.1700) and one turtle rattle (accession number 93.138).

At an unknown date most likely in the mid-20th century, one cultural item was removed from a Seneca-Cayuga community. This item was acquired by Carol Rachlin and Alice Marriott most likely during their travels and work as anthropologists. In 2014, the Gilcrease Museum received Carol Rachlin's collection, which included this item. The sacred object and object of cultural patrimony is a False Face.

False Faces and the turtle rattles associated with them have been, and still are, used by the Seneca Cayuga people in traditional religious ceremonies and are, therefore, culturally affiliated with the Seneca-Cayuga Nation. These cultural items are needed by present-day adherents of the False Face Medicine Society and cannot be individually owned, as they belong to the Society as a whole.

#### Determinations Made by the Gilcrease Museum

Officials of the Gilcrease Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the eight cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the eight 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.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony and the Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma].

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Laura Bryant, Gilcrease Museum, 1400 N. Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu,* by July 26, 2021. After that date, if no additional claimants have come forward, transfer of control of the sacred objects and objects of cultural patrimony to the Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma] may proceed.

The Gilcrease Museum is responsible for notifying the Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma] that this notice has been published.

Dated: June 9, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021–13513 Filed 6–24–21; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0032105; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Oregon State University, Corvallis, OR

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Oregon State University NAGPRA Office 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 Oregon State University NAGPRA Office. 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 Oregon State University NAGPRA Office at the address in this notice by July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dawn Marie Alapisco, Oregon State University NAGPRA Office, 106 Gilkey Hall, Corvallis, OR 97331, telephone (541) 737–4075, email *dawnmarie.alapisco@oregonstate.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 Oregon State University, Corvallis, OR. The human remains and associated funerary objects were removed from the City of Bandon, Coos County, Oregon.

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 Oregon State University Department of Anthropology and NAGPRA Office professional staff in consultation with representatives of the Confederated Tribes of Siletz Indians of Oregon [previously listed as Confederated Tribes of the Siletz Reservation] and the Coquille Indian Tribe [previously listed as Coquille Tribe of Oregon]. The Burns Paiute Tribe [previously listed as Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon]; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Umatilla Indian Reservation [previously listed as Confederated Tribes of the Umatilla Reservation, Oregon]; Confederated Tribes of the Warm Springs Reservation of Oregon; Cow Creek Band of Umpqua Tribe of Indians [previously listed as Cow Creek Band of Umpqua Indians of Oregon]; and the Klamath Tribes were invited to consult but did not participate. Hereafter, the above listed Indian Tribes are referred to as ''The Consulted and Invited Tribes.''

## History and Description of the Remains

Between 1978 and 2001, Dr. Roberta Hall of the Oregon State University Anthropology Department conducted seven excavation seasons at Site 35CS043, which is located in the City of Bandon, Coos County, OR. Altogether, five areas, designated A through E, were excavated.

In June 2001, human remains representing, at minimum, three individuals were removed from 35CS043 by the Department of Anthropology at Oregon State University (OSU). The exact provenience of these human remains is not fully documented, as the human remains were only labeled Rogge Mill and backfill. This excavation was undertaken in response to a city project that unearthed human remains and associated funerary objects. All three individuals are adults, but their ages and sex could not be ascertained, as the remains were minimal and fragmentary. No known individuals were identified. The three associated funerary objects are one faunal fragmented bone, one lot of faunal remains intermixed with charcoal and shell fragments, and one lot of faunal remains.

In 1988, human remains representing, at minimum, three individuals were removed from 35CS043A by the Department of Anthropology at OSU with the aid of the City of Bandon and the Coquille Indian Tribe. The excavation discovered what appeared to be the partial reburial of an individual who had been partially exhumed during some past construction in the area. This individual (assigned burial number 13) was approximately 25–30 years of age at the time of death and of indeterminate sex indeterminate. A second individual was a sub-adult of indeterminate sex, and a third individual was a fetus or very young infant of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1990, human remains representing, at minimum, seven individuals were removed from 35CS043B by the Department of Anthropology at OSU with the aid of the Coquille Indian Tribe. One of the individuals (assigned burial number 14), a male, was approximately 50 years of age at the time of death. With the approval of the Coquille Indian Tribe, a small bone sample was sent to Beta Analytic for radiocarbon dating with a result of a 95% confidence interval that he died between 550 and 370 BCE. A second individual was a sub-adult of indeterminate sex, and the remaining five individuals could not be aged, sexed, or dated. No known individuals were identified. The 28 associated funerary objects are one clay pipe fragment, one lot of faunal remains, one lot of flakes, one lot of mixed stone and bone technologies, one point, one soil sample, 15 lots of worked bone tools, one lot of worked CCS fragments, and six worked stone tools.

In 1986, human remains representing, at minimum, four individuals were removed from 35CS043C by the Department of Anthropology at OSU at the request of the City of Bandon and the Coquille Indian Tribe. In May of 1986 a City of Bandon construction project to expand underground power lines unearthed human skeletal remains. Three graves were unearthed before the construction crew realized that they had disturbed a burial site. (Human remains from four additional graves found during the OSU-led excavations were reburied by the Coquille Indian Tribe). The human remains of these four individuals were misidentified in the field and were curated at OSU with non-human, archeological materials from the site. One of the individuals is a sub-adult of indeterminate sex, and the other three individuals are of indeterminate age and sex. No known individuals were identified. The seven associated funerary objects are two lots of faunal remains, one lot of mixed wood and stone technology, one lot of shell beads, one soil sample, and two lots of worked bone.

In 1991, human remains representing, at minimum two individuals were removed from 35CS043E by the Department of Anthropology at OSU. One individual (assigned burial number 15) was approximately 23–26 years of age at the time of death and of indeterminate sex. The second individual could not be aged or sexed. No known individuals were identified. The two associated funerary objects are one lot of worked bone tools and one worked bone wedge fragment.

Site 35CS043 has a very long occupation history. Radiocarbon dating samples sent to Beta Analytics by Dr. Roberta Hall show occupation as early as 2310–1660 BCE. This site was one of three Coquille villages that made up the Nasomah Complex. All three villages

were attacked by miners on January 28, 1854, during the Nasomah massacre; up to 21 tribal individuals were reported killed.

The Coos Bay Indians are the ancestors of the present-day Coquille Indian Tribe. They spoke Miluk, a Penutian dialect, and the Coquille/Tututni dialect of Athabaskan. The split between Miluk (Lower Coquille) and Athapaskan (Upper Coquille) is around Randolph Island on the Coquille River. The Coos Bay Indians (now known as the Coquille Indian Tribe) claimed the territory two miles south of the lower Coquille River in a 1935 case before the U.S. Court of Claims. After its Federal recognition was terminated by an Act of Congress in 1954 (finalized 1956), the Coquille Indian Tribe was officially restored to recognized status in 1989.

The Confederated Tribes of Siletz Indians of Oregon are a confederation of more than 30 bands whose ancestral territory ranged along the entire Oregon coast and Coast Range, inland to the main divide of the Cascade Range and southward to the Rogue River watershed. The principal constituents include the Clatsop, Chinook, Klickitat, Molala, Kalapuya, Tillamook, Alsea, Siuslaw/Lower Umpqua, Coos, Coquille, Upper Umpqua, Tututni, Chetco, Tolowa, Takelma or Upper Rogue River, Galice/Applegate, and Shasta. Ancestors of the Confederated Tribes of Siletz Indians of Oregon spoke at least 10 different base languages, many of which had strong dialectic divisions even within the same language. In general, five linguistic stocks—Salish, Penutian, Hokan, Sahaptin, and Athabaskan—are represented by the Tribes confederated at the Siletz Reservation. The Tribes were forcibly removed from their homelands in 1855 by the U.S. Government and placed on the Siletz Reservation. After their Federal recognition was terminated by an Act of Congress in 1954 (finalized 1956), the Confederated Tribes of Siletz Indians of Oregon were officially restored to recognized status in 1977.

### Determinations Made by Oregon State University

Officials of Oregon State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 19 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 40 associated funerary 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 Siletz Indians of Oregon [previously listed as Confederated Tribes of the Siletz Reservation] and the Coquille Indian Tribe [previously listed as Coquille Tribe of Oregon] (hereafter referred to as ''The Tribes'').

### 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 Dawn Marie Alapisco, Oregon State University NAGPRA Office, 106 Gilkey Hall, Corvallis, OR 97331, telephone (541) 737–4075, email *dawnmarie.alapisco@oregonstate.edu,* by July 26, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Oregon State University NAGPRA Office is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: June 9, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021–13510 Filed 6–24–21; 8:45 am]

BILLING CODE 4312–52–P

---

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–NPS0032104; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Tuzigoot National Monument, Clarkdale, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, National Park Service, Tuzigoot National Monument, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Tuzigoot National Monument. If no additional claimants come forward, transfer of control of the cultural items 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 claim these cultural items should submit a written request with information in support of the claim to Tuzigoot National Monument at the address in this notice by July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Lloyd Masayumptewa, Acting Superintendent, Tuzigoot National Monument, P.O. Box 219, Camp Verde, AZ 86322, telephone (928) 567–5276, email *Lloyd_Masayumptewa@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, National Park Service, Tuzigoot National Monument, Clarkdale, AZ, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

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 Superintendent, Tuzigoot National Monument.

### History and Description of the Cultural Items

Tuzigoot Pueblo, Hatalacva Pueblo, and Tuzigoot Extension Pueblo in the Verde Valley of Arizona, were excavated in 1933 and 1934 by University of Arizona graduate students, Louis Caywood and Edward Spicer, when the three sites were on private land owned by the United Verde Copper Company. The three sites were excavated as part of a single project funded through the Civil Works Administration. Excavation notes indicate that several of the human remains excavated during this project were left in-situ or were reburied at the close of the excavation in 1934 without the associated grave goods, which were taken to a private museum in Clarkdale, AZ, or held in private hands. When Tuzigoot National Monument was established in 1939, the artifacts were transferred to Tuzigoot National Monument.

Between 1933–1934, 17 cultural items were removed from Hatalacva Pueblo in

Yavapai County, AZ. The 17 unassociated funerary objects are 13 bowls, one pendent, one cup, one necklace, and one awl.

Between 1933–1934, 7,171 cultural items were removed from Tuzigoot Pueblo in Yavapai County, AZ. The 7,171 unassociated funerary objects are one bow, two basketry fragments, one spindle whorl, two axes, one crystal, one prayer stick, 19 dendrochronology samples, 13 jars, 84 bowls, four miniature bowls, four pitchers, four ladles, one miniature jar, 6,969 beads, 12 pendants, 19 bracelets, three unworked shells, eight projectile points, six necklaces, five rings, four worked shells, one worked sherd, two worked bones, two drills, two unworked bones, and one pigment.

Between 1933–1934, 896 cultural items were removed from Tuzigoot Extension Pueblo in Yavapai County, AZ. The 896 unassociated funerary objects are 19 bowls, one jar, one miniature jar, one ladle, one whistle, one bracelet, one ring, 844 beads, six pendants, 14 projectile points, one crystal, two ground stone artifacts, two knives, and two drills.

Tuzigoot Pueblo is a large pueblo with more than 100 rooms, which is classified by archeologists as Southern Sinagua, Honanki and Tuzigoot phases. Occupation dates range from A.D. 1125–1425. Tuzigoot Extension Pueblo and Hatalacva Pueblo are multi-room pueblos near Tuzigoot National Monument, also classified as Southern Sinagua, Honanki, and Tuzigoot phases.

The Hopi Tribe of Arizona considers all of Arizona to be within traditional Hopi lands or within areas where Hopi clans migrated in the past. Evidence demonstrating continuity between the people that lived at Tuzigoot, Tuzigoot Extension, and Hatalacva and the Hopi Tribe of Arizona includes archeological, anthropological, linguistic, folkloric, and oral traditions. Ceramic vessels made only on the Hopi mesas as well as coiled basketry demonstrate continuity between Tuzigoot Pueblo, Tuzigoot Extension Pueblo, and Hatalacva Pueblo, and the Hopi people. During consultation, Hopi clan members also identified ancestral names and traditional stories about specific events and ancestral people in the Verde Valley.

**Determinations Made by the U.S. Department of the Interior, National Park Service, Tuzigoot National Monument**

Officials of the U.S. Department of the Interior, National Park Service, Tuzigoot National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 8,084 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.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the 8,084 unassociated funerary objects and the Hopi Tribe of Arizona.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Lloyd Masayumptewa, Acting Superintendent, Tuzigoot National Monument, P.O. Box 219, Camp Verde, AZ 86322, telephone (928) 567–5276, email *Lloyd_Masayumptewa@nps.gov,* by July 26, 2021. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Hopi Tribe of Arizona may proceed.

The U.S. Department of the Interior, National Park Service, Tuzigoot National Monument is responsible for notifying the Ak-Chin Indian Community [previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona]; Fort McDowell Yavapai Nation, Arizona; 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; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe [previously listed as Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona]; and the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: June 9, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021–13509 Filed 6–24–21; 8:45 am]

BILLING CODE 4312–52–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1159 (Rescission)]**

## Commission Decision To Institute a Rescission Proceeding; Permanent Rescission of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Rescission Proceeding; Certain Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Therefor

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to institute a proceeding to determine whether to permanently rescind the Commission's limited exclusion order (''LEO'') and cease and desist orders (''CDOs'') issued on February 10, 2021. The Commission has determined to permanently rescind the LEO and CDOs. The rescission proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 4, 2019, based on a complaint filed on behalf of LG Chem, Ltd. of Seoul, Republic of Korea and LG Chem Michigan, Inc. of Holland, Michigan. 84 FR 25858 (June 4, 2019). As a result of a corporate reorganization, the complainants are now LG Chem, Ltd. of Seoul, Republic of Korea, LG Energy Solution, Ltd. of Seoul, Republic of Korea, and LG Energy Solution Michigan, Inc. (collectively, ''complainants'' or ''LG''). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation and sale of

certain lithium ion batteries, battery cells, battery modules, battery packs, components thereof, and processes therefor by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States, under subsection (a)(1)(A) of section 337. The complaint, as supplemented, names SK Innovation Co., Ltd. of Seoul, Republic of Korea and SK Battery America, Inc. of Atlanta, Georgia as the respondents (collectively, ''respondents'' or ''SK''). The Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation.

On February 14, 2020, the administrative law judge issued an initial determination (''ID'') (Order No. 34) finding that the respondents spoliated evidence, and that the appropriate remedy is to find the respondents in default.

On April 17, 2020, the Commission determined to review the ID in its entirety. 85 FR 22,753 (Apr. 23, 2020) (''Notice of Review''). The Notice of Review requested that the parties brief certain issues and sought briefing from the parties, interested government agencies, and any other interested parties on remedy, the public interest, and bonding.

On February 10, 2021, the Commission affirmed the ID's finding of default, thus finding a violation of section 337. The Commission issued an LEO and two CDOs, all of which were tailored to accommodate public interest considerations raised by the parties to the investigation and by non-parties.

On May 24, 2021, SK filed a petition to rescind the LEO and CDOs on the basis of settlement. LG did not oppose the petition, and on June 3, 2021, OUII filed a response in support of the petition. Also, on June 3, 2021, SK filed a supplemental submission that provided a modified public version of the settlement agreement.

The Commission has determined that the petition, as supplemented, complies with Commission rules, *see* 19 CFR 210.76(a)(3), and that there are no extraordinary reasons to deny rescission of the remedial orders. Accordingly, the Commission has determined to institute a rescission proceeding and to permanently rescind the LEO and the CDOs. The rescission proceeding is hereby terminated.

The Commission's vote on this determination took place on June 21, 2021. The LEO and CDOs are permanently rescinded.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 22, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–13574 Filed 6–24–21; 8:45 am]

**BILLING CODE 7020–02–P**

---

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–753, 754, and 756 (Fourth Review)]**

## Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine

### Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on cut-to-length carbon steel plate from China and the termination of the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted these reviews on November 2, 2020 (85 FR 69362) and determined on February 5, 2021 that it would conduct expedited reviews (86 FR 26067, May 12, 2021).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on June 21, 2021. The views of the Commission are contained in USITC Publication 5205 (June 2021), entitled *Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine: Investigation Nos. 731–TA–753, 754, and 756 (Fourth Review).*

By order of the Commission.

Issued: June 21, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–13523 Filed 6–24–21; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

---

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

**[Docket No. 19–18]**

## Robert Wayne Locklear, M.D.; Decision and Order

### I. Procedural History

On March 26, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Robert Wayne Locklear, M.D., (hereinafter, Respondent) of Johnson City, Tennessee. Administrative Law Judge (hereinafter, ALJ) Exhibit (hereinafter, ALJX) 1 (OSC), at 1. The OSC proposed the denial of Respondent's application for a DEA Certificate of Registration, Application Control No. W18124612C, ''pursuant to 21 U.S.C. 824(a)(2) & (a)(5), because [Respondent has] been convicted of a felony related to controlled substances and because [he has] been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.*

Specifically, the OSC alleged that, on October 8, 2014, Judgment was entered against Respondent in the United States District Court for the Eastern District of Tennessee (hereinafter, E.D. Tenn.) ''after [Respondent] pled guilty to: one count of 'Conspiracy to Distribute a Quantity of Cocaine Base,' in violation of 21 U.S.C. 846 & 841(b)(1)(C); and one count of 'Conspiracy to Defraud a Health Care Benefit Program,' in violation of 18 U.S.C. 1347 & 1349.'' *Id.* at 2 (citing *U.S.* v. *Robert Wayne Locklear,* No. 2:14–CR–38 (E.D. Tenn. Oct. 8, 2014)). The OSC alleged that Respondent's conviction of a felony related to controlled substances warrants the denial of Respondent's application pursuant to 21 U.S.C. 824(a)(2).

The OSC further alleged that ''based on [such] conviction, the U.S. Department of Health and Human Services, Office of Inspector General ('HHS/OIG') mandatorily excluded [Respondent] from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a).'' *Id.* The OSC stated that this exclusion took effect on June 18, 2015, and ''runs for a period of ten years,'' and that such exclusion ''warrants denial of [Respondent's] application for DEA registration pursuant to 21 U.S.C. 824(a)(5).'' *Id.*

The Order to Show Cause notified Respondent of the right to request a hearing on the allegations or to submit

a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2–3 (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 3–4 (citing 21 U.S.C. 824(c)(2)(C)).

On April 8, 2019, Respondent timely filed a request for a hearing, in which he affirmed his conviction and stated that he ''developed a severe addiction to cocaine and alcohol'' and that he had been ''clean and sober and active in Recovery since June 27th, 2013.'' ALJX 2 (Request for a Hearing, at 2).

The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney II (hereinafter, the Chief ALJ). On April 10, 2019, the ALJ established a schedule for the filing of prehearing statements. ALJX 3 (Amended Order for Prehearing Statements), at 1–2. The Government filed a Motion for Summary Disposition on April 16, 2019, alleging that there was no genuine issue of material fact and separately filed a Prehearing Statement on the same date. ALJX 4 (hereinafter, Govt MSD) and ALJX 5 (hereinafter, Govt Prehearing). Respondent *pro se* filed a Motion for Continuance requesting a delay in the prehearing while he awaited a response on his Corrective Action Plan.[1] ALJX 7 (Motion for Continuance). The Chief ALJ denied the Motion for Continuance, because ''the filing and pendency of a corrective action plan, standing alone, presents no impediment to proceeding as scheduled or any cognizable justification for a continuance . . . .'' ALJX 8 (Order Denying Respondent's Motion for Continuance). On May 3, 2019, Respondent *pro se* filed his Prehearing Statement. ALJX 9 (hereinafter, Resp Prehearing). The Chief ALJ issued a Prehearing Ruling on May 10, 2019, which, among other things, set out six stipulations[2] already agreed upon and established schedules for the filing of additional joint stipulations and supplemental prehearing statements. ALJX 10 (Prehearing Ruling). On May 17, 2019, Respondent filed a Notice of Appearance of counsel and filed requests for continuance and extension of time as a result of obtaining counsel, which the Chief ALJ considered in amending his prehearing deadlines. ALJX 11–15.

On June 13, 2019, Respondent filed a Response to Government's Statement of Undisputed Material Facts and Statement of Additional Undisputed Material Fact of Respondent Robert Wayne Locklear, M.D., in which he confirmed the previous stipulations, but clarified that ''on the day he was arrested by the Drug Task Force that, although he never sold any, he shared some illegal substances with others that same day.'' ALJX 16, at 2. On that same date, Respondent also filed a Response to Motion for Summary Disposition of Respondent Robert Wayne Locklear, M.D., in which he argued that material facts exist related to why Respondent can be entrusted with his DEA registration, and that Respondent ''is no longer a threat to the public . . . .'' ALJX 17 (Respondent's Response to MSD), at 6–7. Further on that same date, Respondent filed a Second Prehearing Statement of Respondent Robert Wayne Locklear, M.D. (hereinafter, Resp Supp Prehearing). ALJX 18. On June 18, 2019, the Chief ALJ denied the Government's Motion for Summary Disposition, finding that ''the Agency has established that where the Government has met its burden by making a *prima facie* case for sanction, the burden of production then shifts to a respondent to show that, given the totality of the facts and circumstances in the record, denial or revocation [of] the registrant's registration would not be appropriate.'' ALJX 20, at 8 (citations omitted). I have reviewed and agree with the procedural rulings of the Chief ALJ during the administration of the hearing.

The hearing in this matter spanned one day.[3] On August 29, 2019, the Government filed its Proposed Findings of Fact and Conclusions of Law and Respondent filed his Proposed Findings of Fact and Conclusions of Law of Respondent Robert Wayne Locklear, M.D. ALJX 26 (hereinafter, Govt Posthearing); ALJX 25 (hereinafter, Resp Posthearing). The Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge (hereinafter, RD) is dated September 11, 2019. On October 8, 2019, the Chief ALJ transmitted his RD, along with the certified record, to me, and certified that no exceptions were filed by either party. ALJ Transmittal Letter, at 1.[4]

Having considered this matter in the entirety, I find that Respondent has been convicted of a felony related to controlled substances and has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42, and that therefore, there is a basis to deny Respondent's application. *See infra* III. I further find that, given the facts on the record, Respondent has not established sufficient mitigating evidence to assure me that he can be entrusted with a controlled substances registration.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

## II. Findings of Fact

### *A. Stipulations*

1. Respondent's DEA Registration

On November 21, 2018, Respondent filed an application (Application Control No. W18124612C) for a DEA Certificate of Registration as a practitioner in schedules II–V, with a proposed registered location at Recovery Associates Inc., 401 E Main St., Ste 3, Johnson City, Tennessee 37601–4891. Government Exhibit (hereinafter, GX) (Certificate of Non-Registration) 1, at 1; *see also* RD, at 3 (Stipulation (hereinafter, Stip) 1).

[1] Respondent did not introduce the Corrective Action Plan into the record.

[2] The Stipulations included the fact that Respondent voluntarily surrendered for cause his previous DEA registration on July 8, 2013; the fact that Respondent was excluded from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a) effective June 18, 2015; the fact that on October 8, 2014, Respondent was convicted in E.D. Tenn. Of one count of ''Conspiracy to Distribute a Quantity Cocaine Base'' and one count of ''Conspiracy to Defraud a Health Care Benefit Program;'' and the fact that Respondent received a conditional medical license in the State of Tennessee on November 16, 2018. ALJX 10, at 2.

[3] Hearings were held in Knoxville, Tennessee on July 30, 2019.

[4] Respondent filed a Motion to Reopen the Record on January 21, 2021 (hereinafter, Resp Mot to Reopen), which the Chief ALJ denied on January 25, 2021. The Respondent noted in this filing that Respondent should be allowed to reopen the record for the submission of new ''material evidence,'' because the Respondent believed that the Chief ALJ ''took issue with Dr. Locklear's intention to imminently petition the Board for removal of the practice monitoring requirement'' and asserts that despite such removal, Respondent maintains the advocacy of the Tennessee Medical Foundation. Resp Mot to Reopen, at 2. I found evidence in the record transmitted to me on October 8, 2019, that supported the finding that Respondent would be required to maintain the Tennessee Medical Foundation's advocacy in order to maintain his medical license. *See infra* n.12. Specifically, in addition to Respondent's testimony that he would continue to have the Tennessee Medical Foundation's advocacy for life, Tr. 129, the conditions on Respondent's medical license required the maintenance of the ''advocacy of the Tennessee Medical Foundation for the duration of time that [he is] licensed in Tennessee.'' RX 17, at 1. Therefore, although Respondent's proposed evidence may be more current, that finding has already been included in the record. Further, I do not find the continuance of this advocacy or the removal of the practice monitor to ultimately affect my final decision in the matter. As explained in *infra* IV, Respondent has repeatedly evaded accountability measures in the past, and I cannot entrust him with the responsibility of a controlled substances registration.

On July 8, 2013, Respondent submitted a Form DEA–104, Voluntary Surrender of Controlled Substances Privileges, surrendering his previous DEA Registration Control No. BL7274107. GX 2 (DEA–104); *see also* RD, at 3 (Stip 2).

2. Respondent's Conviction

On October 8, 2014, judgment was entered against Respondent in the United States District Court for the Eastern District of Tennessee (hereinafter, E.D. Tenn.) after the Respondent pled guilty to one count of ''Conspiracy to Distribute a Quantity of Cocaine Base,'' in violation of 21 U.S.C. 841(b)(1)(C) & 846, and one count of ''Conspiracy to Defraud a Health Care Benefit Program,'' in violation of 18 U.S.C. 1347 & 1349.'' *U.S.* v. *Robert Wayne Locklear,* No. 2:14–CR–38 (E.D. Tenn. Oct. 8, 2014)). RD, at 3 (Stip 3); *see also* GX 3 (Plea Agreement) and GX 4 (Judgment in a Criminal Case).

3. Respondent's Exclusion

Based on the Respondent's conviction, HHS/OIG mandatorily excluded the Respondent from participation in Medicare, Medicaid, and all federal health care programs under 42 U.S.C. 1320a–7(a). RD, at 4 (Stip 4). The exclusion was effective on June 18, 2015, and runs for a minimum period of ten years. *Id.; see also* GX 5 (Exclusion Letter), at 1.

4. Respondent's State License

The Respondent received a conditional medical license in the State of Tennessee on November 16, 2018. RD, at 4 (Stip. 6); *see also* RX 17 (Letter from the Board of Medical Examiners); RX 18 (Conditional Medical License).

*B. The Government's Case*

The Government's documentary evidence consists primarily of records supporting the stipulated facts. GX 1–6. The Government called one witness, a Diversion Investigator (hereinafter, the DI). RD, at 4; Tr. 17–33. The DI testified that she has been employed by DEA for approximately eleven years and as a DI for over three and a half years. Tr. 18. The DI testified that she became familiar with Respondent due to his answers to the liability questions on the DEA application and she testified as to the basis of the Government Exhibits 2–6. *Id.* at 18–30. The Chief ALJ found, and I agree that the DI's testimony ''was primarily focused on the non-controversial introduction of documentary evidence and her contact with this case'' and ''merits full credibility in these proceedings.'' RD, at 6.

The Government's evidence includes the Plea Agreement in Respondent's criminal case, the stipulated facts of which describe Respondent's conspiracy to defraud a health care benefit program and his interactions with law enforcement regarding his crack/cocaine use, including his conspiracy to distribute. Regarding Respondent's drug charges, the plea agreement stated:

> Between the approximate month of January 2013 and continuing through the month of July 2013, in the Eastern District of Tennessee and elsewhere, conservatively, the defendant did knowingly, intentionally, and without authority, conspire with at least one other person to distribute approximately at least 5.6 but less than 11.2 grams of a mixture and substance containing a detectable amount of cocaine base (''crack''), a Schedule II controlled substance.

GX 3, at 3.

The plea agreement further detailed that Respondent had smoked crack cocaine prior to seeing patients on May 13, 2013. *Id.* at 5. On June 5, 2013, police seized crack cocaine from Respondent, and he admitted that ''he had a drug problem'' and that ''he had been smoking crack a few times a day (before, during and after work).'' *Id.* On June 11, 2013, Respondent was arrested and crack cocaine was seized from his person. *Id.* He admitted that ''a total of $2,000 worth of crack cocaine was purchased that morning and that he and several others smoked some of it'' and that ''he gave the dealer from Knoxville and her friends approximately $200 to $300 worth of crack cocaine to help them out.'' *Id.* at 6–7.

In addition to his drug use, the plea agreement provided details as to Respondent's unlawful actions regarding his conspiracy to defraud a health care benefit program. *Id.* ''The [Respondent] operated two businesses in the Eastern District of Tennessee: Trinity Internal Medicine and Sleep ('TIMS') and Trinity Recover Clinic ('TRC'). TIMS was a primary care medical practice . . . TRC was operated as an office based substance abuse treatment program . . . .'' *Id.* at 3. The Plea Agreement stated that, ''[d]ue primarily to his usage of crack cocaine and alcohol, the defendant was frequently physically absent from the medical practices TIMS and TRC during periods when the medical practices were open for business and providing medical services to patients who were enrolled in health care benefit programs.'' *Id.* at 8. According to the plea agreement, while Respondent was absent, he ''told office staff to see patients and prescribe medications, including Suboxone in his absence,'' even though he ''knew that no employee/medical assistant at his practice was properly licensed or trained to provide these requisite medical services.'' *Id.* Further, the plea agreement states that Respondent ''often did not examine, interview or treat the patients on return visits, was often absent from the practice when the patients returned and thus did not attend to or assess the patients' medical conditions.'' *Id.* at 9.

The plea agreement concluded that Respondent's absence from the office ''caused the pharmacies to submit claims to health benefits programs and receive reimbursement for prescriptions that had been issued outside of the usual course of professional practice and without a finding of medical necessity.'' *Id.* Additionally, ''laboratory service providers [ ] submitted claims to health care benefits programs . . . when in fact, the testing had not been reviewed or directed by [Respondent] for the purpose of diagnosing or treating a medical condition.'' *Id.* Furthermore, ''[o]n numerous occasions, drug screens came back positive for the presence of other scheduled drugs such as marijuana or heroin, but the patients continued to have their Suboxone prescriptions called in anyway.'' *Id.* at 9. The plea agreement provided numerous examples of the claims filed to health care benefits programs and found: ''an approximate total of 150 dates of service where a prescription was issued and [Respondent] was not present to examine the patient;'' ''the total amount of loss to be applied in this case, conservatively, is more than $120,000 but less than $200,000;'' and that ''this offense involved 10 or more victims (health care benefit companies).'' *Id.* at 13.

*C. The Respondent's Case*

Respondent submitted documentary evidence including records related to his conviction, sentencing, probation, treatment for substance abuse, and medical license. *See* Respondent's Exhibits (hereinafter, RX). Respondent also testified on his own behalf and submitted an affidavit signed by himself[5] and testimony of character witnesses, coworkers, and family members. Tr. 33–167; RX 7.

Respondent testified that he attended Duke Medical School. Tr. 50–51. He admitted that ''second year of medical school, [he] began experimenting with

[5] The Chief ALJ noted, and I agree that this affidavit was allowed into the record with the caveat that it would be subject to cross-examination at the hearing. RD, at 15–16 n.43.

crack, and it took [him] down very fast, very quickly.'' *Id.* at 149.

After medical school, Respondent testified that he practiced at Takoma Medical Center from 2002 to 2012 in ''internal medicine.'' *Id.* at 51. Respondent stated, ''I had moved out of my home [in] approximately 2005 because I wanted to—I wanted to drink, drug [6] and womanize. And in 2008, my [wife]—she had had enough . . . and we divorced in 2008. And then my drinking continued to get worse. At this point, I hadn't started back drugging. I had done some drugs back when I was in college, in medical school, but I hadn't started back.'' *Id.* at 52. In 2012, he testified that his employer at Takoma Medical Center ''asked [him] to leave because of [his] erratic behavior with [his] drinking. So [he] went and opened up [his] own practice in 2012, and it wasn't a month after [he] was in private practice that [he] started using drugs again.'' *Id.* Respondent stated that ''a big part of it was at that point [he] had no accountability.'' [7] *Id.*

Respondent further testified that he and his wife reconciled in 2012, when he was ''at the height of [his] drug addiction,'' before he was arrested and that he ''tormented her and put her through H–E double L.'' *Id.* at 55. Since the arrest, he stated that he turned his life around. He said, ''I was completely broken and I wanted to do whatever was recommended so that I could get better. I had a baby on the way, and grown kids, and a—and a woman at this time who was not my wife again, but who loved me, and so I did—I followed the suggestions, went to church, went to meetings, did whatever was recommended I do.'' *Id.* at 56.

Respondent introduced a letter from Talbott Recovery Campus in Atlanta, Georgia (hereinafter, Talbott), which stated that he had ''successfully completed all phases of his treatment program.'' RX 8. He testified that he competed a 90-day inpatient program there, because ''the judge allowed me—offered me to go to rehab if—to get out of jail.'' Tr. 65–66. When asked if there was bail, Respondent stated, ''I was initially given bail and initially released, but I ran the first time.'' *Id.* at 67. He explained that after his arrest, he went to rehab in Alabama at Bradford Health Services (hereinafter, Bradford), where he was for about ''six days,'' but he ''wanted to use drugs,'' and so he escaped and was later ''picked up by a bounty hunter'' after he had been living with other drug addicts for a few days. *Id.* at 69–70. Then Respondent testified that he then went to jail [8] for eleven days and ''unbelievably, the judge allowed me to go—to leave again and go to rehab within 11 days.'' *Id.* at 71. When asked why he went to Talbott instead of Bradford, Respondent stated, ''[w]e didn't want to go back to Bradford, and we told the judge that Bradford wasn't good for me, when it really wasn't Bradford, it was me. But we—it was an angle to go somewhere else.'' *Id.* at 73. Respondent further explained that it was ''an excuse to maybe try something different'' and he did not ''know that Bradford would have even taken [him] back.'' *Id.* at 74.

Respondent submitted his first agreement with the Tennessee Medical Foundation, which memorialized his sobriety date as June 27, 2013, and was signed prior to his admission to Talbott's rehabilitation program on January 26, 2013. *Id.* at 85; RX 12, at 7. After he was released from Talbott on October 6, 2013, Respondent testified that he ''went home, and it was about a year and a half before [he] got sentenced to prison.'' *Id.* at 78; RX 7, at 2; RX 8, at 1. After his year in prison, Respondent was released early and signed up for a halfway house through which he completed another rehabilitation program. *Id.* at 82–84; RX 13.

Respondent testified that he pled guilty in federal court, ''because he was guilty'' and that he was ''[v]ery. Very sorry.'' *Id.* at 34. He testified that he was sentenced to two years in a penitentiary, ''but served only one because [he] completed a drug program in prison.'' *Id.* He stated that after prison, he held various jobs making pizza dough, working as a secretary and a personal trainer, and then in 2016, he ''got a job as a peer counselor in a drug treatment program,'' because he ''felt like it was [his] purpose.'' *Id.* at 35. Respondent stated that he worked at East Tennessee Recovery and for the past two years, he has been working at Recovery Associates. *Id.* at 36.

Respondent stated that he wanted to get his medical license back because he ''was in recovery and wanted to help people.'' *Id.* at 58. To regain his medical license, he had to ''do a competency evaluation,'' which he passed. *Id.* Respondent testified that he is ''closely monitored'' through the Tennessee Medical Foundation and that monitoring includes: Random drug screens that began an average of ''once a week to once every two weeks'' and are now ''about once a month;'' checking in every morning seven days a week to see if Respondent requires a screen that day, and ''on occasion, they ask [him] to do a nail sample;'' going to ''a Caduceus [9] meeting once a week;'' and, ''[he has] [10] to go to three—at least three other 12-step recovery meetings a week outside of that, so at least four meetings a week.'' *Id.* at 38. Further, Respondent testified that he ''meet[s] with a supervisor every three months who reports to the Tennessee Medical Foundation. We have to participate in a retreat once a year.'' Respondent added that he has to meet with a counselor and ''licensed addictionologist once a quarter to be evaluated,'' and the addictionologist is a psychiatrist and also monitors his depression. *Id.* at 60. He stated that if he did not meet the requirements of the Tennessee Medical Foundation, ''they would report me—report me immediately to the board and my license would be revoked.'' *Id.* at 60–61. Respondent introduced into evidence his second agreement [11] with the Tennessee Medical Foundation, which was executed on January 11, 2016, and expires 5 years after its date of execution. RX 16, at 2. Respondent further submitted a letter, dated October 12, 2018, from the Tennessee Board of Medical Examiners, which granted him a conditional medical license, and among other things, required a practice monitor for six months and the maintenance of the ''advocacy of the Tennessee Medical Foundation for the duration of time that [he is] licensed in Tennessee.'' [12] RX 17, at 1.

[6] It is noted that this is inconsistent with what Respondent said a few sentences later, that he ''hadn't started back drugging.'' Tr. 52.

[7] It is unclear what Respondent meant by this statement. The record demonstrates that as a result of this behavior, he lost his practice, medical license and was arrested and went to jail. Additionally, he had previously almost been removed from medical school, been divorced and been required to leave his job at Takoma Medical Center due to his addiction. I disagree with the statement that he had no accountability—it instead appears that he did not regard these consequences as important at the time.

[8] Respondent testified that he lost his bail, and he could not remember how much it was, but his wife could probably remember. Tr. 70–71. Later, when asked about whether there was bail after his time at Talbott, he stated, ''It's fuzzy. I think there might have been, Judge. Honestly, I don't know.'' *Id.* at 78.

[9] A Caduceus meeting is ''a meeting for physicians and other health care professionals in recovery, a peer support group.'' Tr. 38.

[10] The Chief ALJ asked Respondent if it was ''mandated to go to Caduceus plus the three other 12-step recovery'' every week, and Respondent answered affirmatively. Tr. 40

[11] This agreement, as well as the first agreement, included a provision to which Respondent agreed stating, ''I will not seek employment or work in pain medicine, addiction medicine, or any medication assisted treatment (MAT) center for a minimum of the first 2 (two) years under the [ ] contract.'' RX 16, at 6; RX 12, at 6.

[12] Respondent testified that when his five years expired with the Tennessee Medical Foundation, he would enter a new contract and that he and the

Continued

Respondent also submitted a letter from the Tennessee Medical Foundation, which was written at the request of his malpractice insurance that states that Respondent is ''in compliance with all of the requirements of his monitoring contract.'' RX 15, at 1; Tr. 97–101. The purpose of Respondent's controlled substances registration, Respondent testified, would be to work in addiction medicine at Recovery Associates, and also to open up a practice with his wife, based on direct primary care ''where patients pay a certain fee a month to get unlimited access to the physician,'' because Respondent is excluded from federal health care programs. Tr. 103–05.

Respondent testified that his supervisor at Recovery Associates Dr. H.[13] ''has a terminal illness and that's why he's not able to be here today. And he's been very supportive and encouraging for me.'' *Id.* at 47. Respondent stated that Dr. H. was scheduled to testify, but he has ''end stage myeloma, and he is bedridden at the moment.'' *Id.* at 138. When asked on cross examination how Dr. H. is ''effectively monitoring'' his practice if he is ill, Respondent stated that ''he has been monitoring me up to this point, but there's other doctors there that are also involved'' and that Dr. H. was onsite ''about a week and a half ago.'' *Id.* at 140. Respondent responded affirmatively to the follow up of whether the Tennessee Medical Board knows that Dr. H. is too ill to be on site monitoring his practice. *Id.* Then he said, ''Well, let me—let me rephrase that. I don't—I haven't said anything to the Tennessee Medical Board, and at this point I don't practice.'' *Id.* at 141. Respondent admitted that he is required to have a practice monitor by the medical board and Dr. H. is that practice monitor.[14] *Id.* He then shifted his position and stated that when Dr. H. is not there, ''then what I do—I occasionally see patients individually, and then I give the patient charts to the doctor, but then they see the patient themselves individually.'' *Id.* at 142. The Chief ALJ asked whether Dr. H. was ''not there 50 percent of the time now, and he's not going to be there 50 percent of the time if he has end stage multiple myeloma, right?'' *Id.* at 145. Respondent answered, ''He has been—he's been around for a while. He's had—he's had it for 10 years, 11 years. He's just not there to—right now.'' *Id.*

Regarding Respondent's plans for his controlled substances registration, Respondent stated that his ''training is internal medicine, so what [he'd] be doing . . . [he'd] be treating adults for medical issues, anything from diabetes, to COPD, to congestive heart failure to hypertension.'' *Id.* at 48. When asked how he plans to work with drug addicts, he stated that he ''feel[s] confident that [he has] a strong support system in place.'' Tr. 128–29.

Respondent testified that he accepts responsibility and is remorseful for both the felony and the exclusion. Tr. 134–35. When asked why he believes he can be a responsible DEA registrant, Respondent answered, ''I think that the same—it's the same reasons I can be—I'm responsible with the—with the things that I've been given so far. The last thing I want to do—I—I'm not the same person I was. I've been rehabilitated. The last thing I want to do is hurt someone.'' *Id.* at 136. When asked whether ''working with patients who are being treated for substance abuse puts [him] at increased risk for relapse [him]self,'' he admitted that ''[t]here are times it can be a trigger, yes.'' *Id.* at 137. He testified, ''I work in an environment—I make sure I work in an environment that's recovery-oriented, that most[15] of the people there are in active recovery, so they not only—I'm not only accountable to my support system outside of work, I'm accountable at work.'' *Id.*

The Chief ALJ asked Respondent about his previous rehabilitation efforts and Respondent admitted that ''second year of medical school, [he] began experimenting with crack, and it took [him] down very fast, very quickly.'' *Id.* at 149. When asked by the Chief ALJ, he admitted that at the time, he had started the clinical portion and was ''in and out of a support role in patient care,'' while he was experimenting with crack. *Id.* at 149–50. Respondent admitted that he was ''directed to rehab by the faculty at Duke'' after he ''went to the emergency room'' and he had to go to inpatient rehab for 30 days and then was sober for five years. *Id.* at 151. Respondent testified

> I was being monitored by the medical school and the residency program, so as soon as that monitoring was lifted—but all along, I had it in the back of my head that I could drink. I still thought I could drink. I knew I couldn't do drugs, but I thought I could drink successfully. But I couldn't drink while I was being monitored, so as soon as the five years was up and I no longer had any supervision, I had it in my head I was going to drink, and I did.''

*Id.* at 152.

He then stated that he had to leave Takoma Hospital because of a ''culmination of events related to [his] drinking,'' including ''not showing up for work, being erratic, outbursts'' and he was sent to the Tennessee Medical Foundation for an evaluation, during which he ''lied, and Tennessee Medical Foundation recommended some inpatient programs or some retreats for [his] depression and trauma issues, but [he] never followed through.'' *Id.* at 154. He stated that he was asked to leave Takoma because of the refusal to complete rehabilitation and ''inappropriate behavior'' and he sometimes showed up to work in an ''incapacitated status.'' *Id.* at 155. But then he retracted and clarified that he was not under the influence at Takoma and that it was really the inappropriate behavior in texting a colleague that

foundation ''both agreed that [he] need[s] to be on a lifetime contract.'' Tr. 129. Although the Chief ALJ had noted that Respondent's agreement was expiring shortly, RD, at 36, I find that the record supports that even if certain restrictions, such as the practice monitoring were lifted, Respondent would likely continue to have some sort of accountability monitored through the Tennessee Medical Foundation for the duration of his medical license. The language in his conditional license was clear that this would be a requirement for ''the duration of time that [he is] licensed in Tennessee.'' RX 17, at 1. Therefore, I find that the record support that Respondent will maintain the Tennessee Medical Foundation's advocacy for the duration of his practice of medicine. I also have found below that even with the full accountability measures in place, Respondent has not demonstrated that he can be entrusted with a controlled substances registration. *See supra* IV.

[13] Respondent also testified that his conditional medical license ''means that I can only practice for a certain physician [Dr. H].'' Tr. 121.

[14] Respondent's conditional medical license required reporting from his practice monitor every month for six months, which started on the effective date of November 14, 2018; therefore, six months had likely passed before Dr. H. became bedridden before this hearing on July 30, 2019; however, the letter from the Board states that Respondent must ''petition for an Order of Compliance to have the monitoring requirements lifted.'' RX 17, at 1. Respondent testified that he was going to ask for the conditions on his license to be removed, ''as soon as [he] can get the paperwork in'' and ''imminently.'' Tr. 133. Therefore, although the period of six months had elapsed, the conditions on his medical license leave open the question of whether Respondent might have been required to have a practice monitor at the time that Dr. H. became ill. This raises a concern, because Respondent testified that he had not notified the Board or the Tennessee Medical Foundation about Dr. H.'s inability to monitor him. *Id.* at 141. Ultimately, as explained below, Respondent's other egregious behavior is more compelling in deciding a sanction in this case, but both Respondent's change in answers regarding this topic and his lack of communication with the Board or the Tennessee Medical Foundation certainly raise concerns about my ability to trust him.

[15] Respondent noted that 100 percent of the patients are being treated with buprenorphine and that the typical course of treatment time is ''at least two years'' and that when someone gets off buprenorphine, ''[t]hey usually just don't show back up.'' Tr. 125–26. Later, he stated, ''They don't come back, so they're discharged, but we don't know why they're not coming back, oftentimes.'' *Id.*

precipitated his departure from Takoma. *Id.* at 156.

Respondent admitted that during the time leading up to his arrest, he was not showing up to work, and that as a result, ''there were other people making decisions about controlled substances who weren't qualified to do that'' and doing so was ''extremely'' dangerous and ''[he] put them at risk, as well as the patient.'' *Id.* at 160. He said that he believed that he was successful at Talbott's rehabilitation program because he ''was in jail long enough'' and ''because [he] had the right mindset by that point.'' *Id.* at 164.

Regarding Respondent's credibility, the Chief ALJ found that:

> As the witness with the most at stake at the hearing, the Respondent is certainly imbued with the largest motive to embellish and fabricate. Additionally, it cannot escape notice that the Respondent has a lengthy history of convincing responsible, experienced professionals of his sincerity. He has convinced medical school administrators, rehabilitation professionals, physicians, a judge and family members that he has periodically been rehabilitated.

RD, at 18. The Chief ALJ further noted ''internal inconsistencies in the Respondent's testimony. . . .'' For example, he found that Respondent testified at first that his TMF monitor was unavailable to testify because he was bedridden, and when asked whether he had notified the TMF that his monitor was unable to monitor him, Respondent stated that he had not, ''then said (contrary to prior testimony) that monitoring was unnecessary because he was not practicing.'' *Id.* The Chief ALJ also noted that Respondent admitted to lying to Takoma Hospital and TMF, *id.* (citing Tr. 154), and lying so that a District Court Judge would send him to a different rehabilitation facility, *id.* The Chief ALJ concluded that ''there were biographical elements and other areas where the Respondent's testimony could be credited. However, where the Respondent's testimony conflicts with objective, established facts of record, other evidence and testimony in the record, and common sense, that testimony must be viewed with robust skepticism.'' *Id.* at 18–19. I agree with the Chief ALJ, and although I appreciate Respondent's honesty about his previous incidents of lying to a Judge to get what he wanted, it makes it very difficult for me to be able to trust that he is not being honest now as an angle to manipulate my decision. *See* RD, at 18. I also find that there were additional moments of inconsistency, such as when he discussed the reasons for his dismissal from Takoma—at first he stated that he had erratic behavior, such as outbursts and not showing up to work, Tr. 154, but then he insisted that he was never impaired at Takoma and that he was really dismissed because of his inappropriate texting, *id.* at 156. I find it unlikely given the ''erratic'' behavior and tardiness that he was never impaired at work.

Respondent's wife, S.L., testified on his behalf. Tr. 170–190. She testified that she has known Respondent since middle school. Tr. 170–71. S.L. testified that she is an addiction counselor and that she and Respondent were divorced in 2008 and remarried in 2018. *Id.* S.L. believes Respondent that he has not used drugs or alcohol in the last six years, because she has ''been there, and also because there's a lot of things in place to ensure that he doesn't.'' *Id.* at 172–73. When asked why she trusts Respondent, she said, ''I didn't start out, you know, trusting him, you know, when he first came out of recovery. But you know, over the years, I've definitely come to trust him. I wouldn't have remarried him if I—if I didn't.'' *Id.* at 173. She testified about his previous rehabilitation efforts in medical school and stated, that ''I think it was a situation where he came out and he did really well when he had some—you know, he was going to meetings. He was doing everything that he needed to do. From that standpoint—stayed sober. I can't remember how many years.'' *Id.* at 184. But then she stated, ''When he stopped going to meetings, when he stopped doing the things that were the basis of recovery, I was a little wary, you know.'' *Id.* However, she followed, ''[a]nd that's why I'm hoping like this time, for me—you know, there's a lot of things that are put in place that—to hold him accountable, and that's been good for me in knowing—you know, it's not on me to keep an eye and try to predict, you know, our behavior, because we can't. We can't.'' *Id.* When the Chief ALJ asked her if the difference is that there are safeguards in place now, she agreed, but also added that ''his general well-being is better. His mental health is better.'' *Id.* at 186.

The Chief ALJ found, and I agree, that ''[n]otwithstanding the obvious reality that [S.L.] has a vested interest in the issuance of a COR to her husband so that they can bring their joint practice plans to fruition, she presented as a generally candid witness whose testimony bore sufficient detail, internal consistency, and plausibility to be afforded credibility in these proceedings.'' RD, at 20.

Respondent next presented the testimony of Dr. G., who is an ''addiction medicine specialist'' [16] and who has known Respondent ''nine years, probably since 2010.'' Tr. 191–211. Dr. G. testified that he knew Respondent before and after his recovery, and that before, they were ''colleagues in the sense that [Respondent] saw some patients that had some substance use disorders, and it's a small-knit group of people in recovery. . . .'' *Id.* at 192. Dr. G. testified that he took over the care of some of Respondent's patients during his addiction. *Id.* at 193. Now, Dr. G. sees Respondent ''once a week, every week, for the past six years'' as part of a recovery meeting for medical professionals, where they are peers. *Id.* at 194. Dr. G. testified that Respondent has never been impaired at one of those meetings. *Id.* at 201, 206. Dr. G. also described that impression of the difference between Respondent now and his previous acquaintance with Respondent in 2012 as ''day and night.'' *Id.* at 206. He further testified that Respondent has been doing all of the things that are important for recovery. *Id.* at 206–07. He further stated that ''[t]he wonderful thing about [the Tennessee Medical foundation contract] is I know [Respondent] every day has to pick up a phone, and he's got to punch in a number and he's got to see if he's being drug screened, seven days a week.'' *Id.* at 208. He further stated, ''It made me think about that when you said would I be able to tell if [Respondent] was doing something. Well, there's not only me, there is the Tennessee Medical Foundation that has advocated for [Respondent], that—he is under their monitoring.'' *Id.* Dr. G. also testified that he feels Respondent has been rehabilitated and when asked if he would trust his judgment in taking care of patients, he said, ''Absolutely.'' *Id.* at 210.

The Chief ALJ found, and I agree, that some of Dr. G.'s testimony was ''likely more broad and optimistic than his objective bases for those positions would justify. . . . [it] was sufficiently detailed, plausible, and internally consistent to be deemed credible in these proceedings.'' RD, at 24.

The next witness to testify on behalf of Respondent was M.C., who is a licensed clinical social worker and a peer [17] colleague of Respondent for

[16] Respondent's attorney moved to qualify Dr. G. as an expert witness, but the Chief ALJ found, and I agree, that there had not been adequate notice that Respondent would call upon Dr. G. as an expert. Tr. 202–04.

[17] Respondent testified initially that M.C. is charged with monitoring him as he is ''the head counselor at the program, which is part of

Continued

about six years and sees him ''anywhere from two to four times a week in person'' at work. Tr. 212–13. M.C. testified that he would be able to tell if Respondent ever had come into work impaired, because he is ''a recovering drug addict [himself], so [he] know[s] what it looks like, what it smells like, what it tastes like, what it acts like,'' and he has never seen Respondent impaired. *Id.* at 214–15. M.C. described Respondent as ''transparent,'' because as he stated, ''in recovery, if a person's going to get clean, stay clean, they have to get honest.'' *Id.* at 215. He further stated that he would trust his clinical judgment, although he has never observed him with patients, because he is ''behind closed doors.'' *Id.* at 225–26. The Chief ALJ found, and I agree, that ''[w]hile the depth of his knowledge of the Respondent's suitability to discharge the duties of a DEA registrant is extremely limited, M.C. presented testimony that was sufficiently cogent, detailed, plausible, and internally consistent to be considered generally credible.'' RD, at 25.

Another of Respondent's co-workers, W.J., who is a certified peer specialist and has known Respondent for three and a half years testified on his behalf. Tr. 228–30. He testified that Respondent became his first sponsor, but they became such close friends that he is no longer his sponsor. *Id.* at 233. He said he has never seen Respondent impaired and that he trusts Respondent ''with [his] life.'' *Id.* at 230, 233. The Chief ALJ found, and I agree, that although Respondent's assistance to W.J. is ''undoubtedly commendable,'' ''there was very little presented through [W.J.] that can be objectively considered as helpful in determining whether the Agency can have confidence that Respondent can/will discharge his duties as a DEA registrant.'' RD, at 26.

Respondent's son, C.L., also testified on his father's behalf. He stated that he is studying experimental biological psychology to conduct ''addiction and pharmacological research.'' Tr. 237. He testified that he was interested in the subject because of his parents' work and ''the things that we've experienced as a family . . .'' *Id.* at 238. When asked about his relationship with his father, he stated, ''Today, it's fantastic.'' He further stated that he believes his father is sober, because ''he was just an entirely different person, but you know, it's—hasn't been anything like that in a very long time. . . .'' *Id.* at 239. He also testified that he and his father had built trust and that he trusted his father now, but there was a time when he did not, ''because there was no—there was no sort of stability.'' *Id.* at 243.

Respondent's oldest son, R.L., also testified on his father's behalf. *Id.* at 244–55. He testified that he is a youth minister in North Carolina and working on a master's degree in cultural studies. *Id.* at 247. When asked if he trusts his father, he stated, ''I trust that he is—he is moving in—you know, moving in the right direction, and so it's just been, you know exciting and just encouraging for me to see, so yeah. Yes, I do, I trust him.'' *Id.* at 248–49. He testified that he has seen his father mature, and control his anger. *Id.* at 249–50. When asked if he believes his father has been sober for six years, he said, ''I've never seen any evidence of it, never heard any—of anything from my parents, or sisters, or anybody, and continuing to see him grow, so yeah, I believe him.'' *Id.* at 250.

With respect to both of Respondent's sons, the Chief ALJ found, and I agree, that C.L. and R.L. presented as ''loving'' sons, ''seeking to support [their] father and family.'' RD, at 21. He found that their testimony was ''internally consistent, plausible, and based on the questions [they were] asked, adequately detailed.'' However, he ultimately found, and I agree, that ''there was very little practical value added'' by these witnesses as ''to a determination of whether the issuance of a [registration] would be in the public interest.'' *Id.* at 21–22.

Respondent also presented the testimony of the Reverend at his church, where Respondent teaches Sunday school and has ''a significant role.'' Tr. 258. He testified that he has known Respondent for about three years and that he trusts Respondent and described him as reliable—''if he says something, he's going to do that.'' *Id.* at 260. The Chief ALJ concluded, and I agree, that in part due to the limitations on the time and context that the Reverend has known the Respondent, the Reverend ''presented as a responsible dedicated pastor whose testimony however believable, added only minimally to an objective determination of whether the Respondent should be entrusted with a DEA COR.'' RD, at 27.

## III. Discussion

In this matter, as already discussed, the OSC calls for my adjudication of the application for registration based on the charge that Respondent has been convicted of a felony related to controlled substances and that he was excluded from participation in a program pursuant to section 1320a–7(a) of Title 42. OSC, at 1–4; *supra* sections II.A and II.D. Both of these are bases for revocation or suspension or a controlled substances registration under 21 U.S.C. 824(a)(2) & (a)(5). The OSC does not allege that granting Respondent's application would be inconsistent with the public interest based on consideration of the factors in 21 U.S.C. 823(f)(1) through (5) (hereinafter, the public interest factors). The Government raised the public interest factors in its Posthearing Brief; however, the Chief ALJ found that they were ''unavailable as a basis for sanction in these proceedings,'' due to the late stage in which they were raised. *See* RD, at 28 n.65. Accordingly, the OSC's specific substantive bases for proposing the denial of Registrant's registration application are his felony conviction and his mandatory exclusion under 21 U.S.C. 824(a)(2) & (a)(5). OSC, at 1–4.

Prior Agency decisions have addressed whether it is appropriate to consider a provision of 21 U.S.C. 824(a) when determining whether or not to grant a practitioner registration application. For over forty-five years, Agency decisions have concluded that it is.

In *John R. Amato, M.D.,* 40 FR 22852 (1975), the Agency issued an Order to Show Cause regarding Dr. Amato's application on November 6, 1974. *Id.* The Order to Show Cause referenced a medical license revocation issued by the New Jersey Board of Medical Examiners. *Id.* The Agency's analysis began by citing, and agreeing with, Administrative Law Judge Parker's conclusion, ''as a matter of law,'' that the state dispensing authority requirement of section 823(f) ''must logically give the Administrator the authority to deny a registration if the practitioner is not authorized by the State to dispense controlled substances.'' [18] *Id.* The Administrator agreed, stating ''[t]o hold otherwise would mean that all applications would have to be granted only to be revoked the next day under 21 U.S.C. 824(a)(3).'' *Id.* The Administrator also stated that ''[t]his agency has consistently held that where a registration can be revoked under section 824, it can, *a fortiori,* be denied under section 823.'' *Id.* The Administrator stated that he accepted Judge Parker's recommendation that the application be denied because Dr. Amato lacked authority in New Jersey

[Respondent's] job role.'' Tr. 145. However, later he clarified that the ''person who does the direct monitoring is Dr. H.'' *Id.* at 146. It was clear from M.C.'s testimony that he does not monitor Respondent's patient care or ''supervise [him] in any way.'' *Id.* at 226.

[18] Section 303(f) states that the Attorney General shall register practitioners if they have authority to ''dispense . . . controlled substances under the laws of the State in which . . . [they] practice[ ].'' 21 U.S.C. 823(f).

''to administer, dispense or prescribe controlled substances.'' *Id.*

Other Agency decisions from the 1970s and 1980s similarly concluded that a provision of section 824 may be the basis for the denial of a practitioner registration application. *See, e.g., Arthur R. Black, D.O.,* 49 FR 33183, 33183 (1984) (denying practitioner registration application for ''two lawful grounds'': A federal felony conviction and material falsification of the application); *Brady Kortland Fleming, D.O.,* 46 FR 45841, 45842 (1981) (denying practitioner registration application due to past controlled substance-related federal felony conviction); *Thomas W. Moore, Jr., M.D.,* 45 FR 40743, 40743–44 (1980) (denying practitioner registration application due to past controlled substance-related federal felony convictions); *Raphael C. Ciliento, M.D.,* 44 FR 30466, 30466 (1979) (denying practitioner registration application due to past controlled substance-related state felony conviction and applicant's decision not to attend the hearing he requested and show why denial is not appropriate).

I agree with the results of all of these Agency decisions.

An Agency decision from the 1990s, when the practitioner portions of sections 823 and 824 looked more like they do today than when the Agency decided the above-cited decision, likewise concluded that a practitioner registration application may be denied based on a provision of section 824. *Dinorah Drug Store, Inc.,* 61 FR 15972 (1996). *Dinorah* is the adjudication of a practitioner registration application by a retail pharmacy. *Id.* at 15972. The Order to Show Cause referenced 21 U.S.C. 823(f) as well as 21 U.S.C. 824(a)(5) (mandatory exclusion from federal health care programs). *Id.*

The parties disagreed on whether a provision of section 824 could be the basis for the denial of a pharmacy's registration application. *Id.* at 15973. The Government's position was that section 824(a)(5) ''is to be construed as not only grounds for the suspension or revocation of a DEA registration, but also as a basis for the denial of an application for a DEA registration.'' *Id.* The pharmacy's position was that section 824(a)(5) is ''limited to the revocation or suspension of already existing registrations.'' *Id.*

According to the Agency's decision in *Dinorah:*

> To reject 21 U.S.C. 824(a)(5) as a basis for the denial of DEA registration makes little sense. The result would be to grant the application for registration, only to possibly turn around and propose to revoke or suspend that registration based on registrant's exclusion from a Medicare program. A statutory construction which would impute a useless act to Congress will be viewed as unsound and rejected. *South Corp.* v. *United States*, 690 F.2d [1369], 1374 (Fed. Cir. 1982).

*Id.* In other words, the basis for the decision's conclusion is statutory construction as articulated by the Federal Circuit. *Id.* The decision thus concluded that ''21 U.S.C. 824(a)(5) may serve as a basis for the denial of a DEA registration.'' *Id.*

*Dinorah* is also instructive for its analysis of the application and its conclusion to grant the application despite the mandatory exclusion. *Id.* at 15973–74. The decision, citing the ALJ, agreed that ''[s]ince denial of registration under Section 824(a)(5) is discretionary, the factors listed in Section 823(f) may be considered in determining whether the granting of [the] Respondent's application is inconsistent with the public interest.'' *Id.* at 15973. The decision analyzed each of the public interest factors, finding each of them relevant. *Id.* at 15973–74; 21 U.S.C. 823(f). The Deputy Administrator's analysis of the public interest factors was favorable to the pharmacy, while he explicitly stated that he did not ''condone'' the fraudulent activity in which the pharmacy and its owner had engaged. 61 FR at 15974. Accordingly, the Deputy Administrator approved the pharmacy's registration application. *Id.* I agree with my predecessor's conclusion that a provision of section 824 may be the basis for the denial of a practitioner registration application and that allegations related to section 823 remain relevant to the adjudication of a practitioner registration application when a provision of section 824 is involved.

Accordingly, when considering an application for a registration, I will consider any allegations related to the grounds for denial of an application under 823 and will also consider any allegations that the applicant meets one of the five grounds for revocation or suspension of a registration under section 824. *See id.* at 15973–74.

*i. 21 U.S.C. 823(f): The Five Public Interest Factors*

Pursuant to section 303(f) of the CSA, ''[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Section 303(f) further provides that an application for a practitioner's registration may be denied upon a determination that ''the issuance of such registration . . . would be inconsistent with the public interest.'' *Id.* In making the public interest determination, the CSA requires consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

In this case, it is undisputed that Respondent holds a valid state medical license and is authorized to dispense controlled substances in the State of Tennessee where he practices. RX 17, 18. The Government did not allege that Respondent's registration would be inconsistent with the public interest pursuant to section 823 in the OSC and did not advance any arguments or present any evidence under the public interest factors in its case at hearing. *See* OSC; Govt Prehearing. Instead, the Government based its initial case in section 824 alleging that Respondent's conviction of a felony related to controlled substances and his mandatory exclusion from federal health programs merit the denial of his registration under 21 U.S.C. 824(a)(2) & (a)(5). *See* OSC; Govt Prehearing. Because the Government has not alleged that Respondent's registration is inconsistent with the public interest under section 823, I will not deny Respondent's application based on section 823, and although I have considered 823, I will not analyze Respondent's application under the public interest factors. Therefore, in accordance with prior agency decisions, I will move to assess whether the Government has proven by substantial evidence that one or more grounds for revocation exist under 21 U.S.C. 824(a).

*ii. 21 U.S.C. 824(a)(2) & (a)(5)*

Each subsection of section 824(a) provides an independent ground to impose a sanction on a registrant. *Arnold E. Feldman, M.D.,* 82 FR 39614, 39617 (2017); *see also Gilbert L. Franklin, D.D.S.,* 57 FR 3441 (1992) (''[M]andatory exclusion from participation in the Medicare program constitutes an independent ground for revocation pursuant to 21 U.S.C. [§ ]

824(a)(5).''). Pursuant to 824(a)(2), the Attorney General is authorized to suspend or revoke a registration ''upon a finding that the registrant . . . has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States . . . relating to any substance defined in this subchapter as a controlled substance or a list I chemical.'' 21 U.S.C. 824(a)(2). The ground in 21 U.S.C. 824(a)(5) requires that the registrant ''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' 42 U.S.C. 1320a–7(a) provides a list of four predicate offenses for which exclusion from Medicare, Medicaid, and other federal health care programs is mandatory and sets out mandatory timeframes for such exclusion. *Id.*

Here, there is no dispute in the record that Respondent is mandatorily excluded pursuant to Section 1320a–7(a) of Title 42 and, therefore, that a ground for the revocation or suspension of Registrant's registration exists. 21 U.S.C. 824(a)(5). There is also no dispute in the record that Respondent has been convicted one count of ''Conspiracy to Distribute a Quantity of Cocaine Base,'' in violation of 21 U.S.C. 841(b)(1)(C) & 846, which constitutes a felony conviction ''relating to'' controlled substances as those terms are defined in 21 U.S.C. 824(a)(2). *William J. O'Brien, III, D.O.,* 82 FR 46527, 46529 (2017).

Where, as here, the Government has met its *prima facie* burden of showing that two grounds for revocation exists, the burden shifts to the Registrant to show why he can be entrusted with a registration. *See Jeffrey Stein, M.D.,* 84 FR 46968, 46972 (2019).

## IV. Sanction

Where, as in the instant case, the Government has established grounds to deny a registration, I will review any evidence and argument the respondent submitted to determine whether or not the respondent has presented ''sufficient mitigating evidence to assure the Administrator that [he] can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21931, 21932 (1988)). '' 'Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.' '' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Samuel S. Jackson, D.D.S.,* 72 FR at 23853; *John H. Kennnedy,* M.D., 71 FR 35705, 35709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62884, 62887 (1995). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

In evaluating the degree required of a respondent's acceptance of responsibility to entrust him with a registration, in *Mohammed Asgar, M.D.,* the Agency looked for ''unequivocal acceptance of responsibility when a respondent has committed knowing or intentional misconduct.'' 83 FR 29569, 29572 (2018) (citing *Lon F. Alexander, M.D.,* 82 FR 49704, 49728). Here, Respondent pled guilty to one count of ''Conspiracy to Distribute a Quantity of Cocaine Base,'' in violation of 21 U.S.C. 841(b)(1)(C) & 846, and one count of ''Conspiracy to Defraud a Health Care Benefit Program,'' in violation of 18 U.S.C. 1347 & 1349. *U.S.* v. *Robert Wayne Locklear,* No. 2:14–CR–38 (E.D. Tenn. Oct. 8, 2014)). I will, therefore, look for a clear acceptance of responsibility from Respondent.

Respondent took concrete actions to accept responsibility for his misconduct while his criminal case was ongoing. He did so by pleading guilty to the charges in Federal Court. Respondent testified that he pled guilty in federal court ''because he was guilty'' and that he was ''[v]ery. Very sorry.'' Tr. at 34. However, after his arrest, he was given the option of entering an inpatient rehabilitation program in lieu of incarceration, and after only six days, he escaped, because he ''wanted to use drugs.'' *Id.* at 67–68. By his own admission, it was not until he had been ''in jail long enough,'' that he was fully ready to accept rehabilitation. *Id.* at 167. It is difficult to credit Respondent's guilty pleas as full acceptance of responsibility given his behavior after his arrest.

Regarding Respondent's acceptance of responsibility for the health care benefit fraud, the Chief ALJ found, and I agree that:

> During his testimony, the Respondent complacently agreed that allowing unqualified administrative staff personnel to hand out controlled substance prescriptions while he was absent from his office due to his drug and alcohol abuse was ''[e]xtremely dangerous.'' Tr. 160. He even allowed that he ''put [his staff] at risk, as well as the patient,'' but his demeanor conveyed no indication that he regretted his actions or even recognized the monetary and safety ramifications of those actions. The message his nonchalant testimonial demeanor conveyed was that it happened, he got caught, and his actions merited no further reflection.

RD, at 32. I defer to the Chief ALJ's assessment of Respondent's demeanor. Because the Administrative Law Judge has had the opportunity to observe the demeanor and conduct of hearing witnesses, the factual findings regarding demeanor set forth in his recommended decision are entitled to significant deference. *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951); *Jeffery J. Becker, D.D.S., and Jeffery J. Becker, D.D.S., Affordable Care,* 77 FR 72387, 72403 (2012). I find the Chief ALJ's characterization of Respondent's reaction in making these statements to be important in this case, particularly because the illegal conduct involved the prescribing of controlled substances—the very responsibility with which Respondent now seeks to be entrusted. Furthermore, the magnitude of the offense is staggering—the plea agreement included 150 dates of service where a prescription was issued and Respondent was not present to examine the patient. GX 3, at 13. The offense therefore, warranted much more attention and focus from Respondent in accepting responsibility. This crime did not just affect federal health care programs, but also the patients, who were not receiving adequate medical care, and Respondent's staff, who as Respondent noted, he put at risk for malpractice and even potential criminal liability. The plea agreement also noted that ''[o]n numerous occasions, drug screens came back positive for the presence of other scheduled drugs such as marijuana or heroin, but the patients continued to have their Suboxone prescriptions called in anyway.'' GX 3, at 9. Additionally, Respondent admitted that he saw patients after smoking crack cocaine. *Id.* at 5. This behavior is directly related to his controlled substance registration—and I find that the magnitude of the harm that he caused and could have caused merited more than a ''nonchalant'' admission.[19]

[19] There is no mention at all of the conduct related to prescribing in the affidavit Respondent submitted, *see* RX 7, and he submitted no testimony

Regarding Respondent's acceptance of responsibility for his felony conviction for Conspiracy to Distribute a Quantity of Cocaine Base, he testified that he accepts responsibility and is remorseful. Tr. 134–35. Although he made these overall statements, in the affidavit he submitted, he stated that he ''admitted on the day [he] was arrested by the Drug Task Force that, although [he] never sold any illegal substances, [he] shared some crack cocaine with others that same day.'' RX 7. Respondent seems to assume that the act of sharing somehow would improve my view of his actions, when in truth the fact that he distributed an illegal substance to others is serious misconduct in considering whether he can be entrusted with a controlled substance registration, irrespective of whether he did so as a gift or for payment. In sharing crack cocaine, he endangered the lives of these individuals and brought them further into the same spiral of addiction in which he was swirling. This statement, which qualifies what he did not do, appears to be aimed at minimizing the egregiousness of his conduct, which the Agency has previously weighed against a finding of acceptance of full responsibility. *See Ronald Lynch, M.D.,* 75 FR 78745, 78754 (2010) (Respondent did not accept responsibility noting that he ''repeatedly attempted to minimize his [egregious] misconduct''; *see also Michael White, M.D.,* 79 FR 62957, 62967 (2014) (finding that Respondent's ''acceptance of responsibility was tenuous at best'' and that he ''minimized the severity of his misconduct by suggesting that he thinks the requirements for prescribing Phentermine are too strict.'').

As to his demeanor in his acceptance of responsibility for the felony charge, the Chief ALJ remarked that Respondent ''cooly related'' the events leading up to his arrest. RD, at 33. He further stated that:

> If the Respondent understands that doling out crack cocaine in a hotel room, particularly when committed by one who had been entrusted with a DEA registration, was reprehensible, that understanding was reflected in neither his language nor his tone during the hearing. In his testimony, he described his actions with no more emotion than if he were recounting an uneventful shopping trip to a local mall.

RD, at 34.

I also find it of significance in evaluating Respondent's acceptance of responsibility that he did not seem to be aware of the full extent of the harm that he caused. For example, when the Chief ALJ asked him what happened to his bail when he escaped from Bradford, Respondent testified that it was ''lost,'' and he could not remember how much it was, but his ''wife could probably tell you for sure.'' Tr. 70–71; *supra* n.8. And, again, when asked about whether he posted bail after Talbott, he answered that it was ''fuzzy,'' and ''I think there might have been.'' *Id.* at 78. The fact that he did not fully understand the financial impact on his family and left the responsibility of that knowledge to his wife, does not demonstrate full acceptance of responsibility for his misconduct.

Further, the Chief ALJ noted, and I agree, that Respondent ''was repeatedly successful in convincing persons in authority to afford him the benefit of rehabilitation.'' *Id.* at 35; *see* Tr. 152–53 (Duke Medical School); Tr. 153–59 (Takoma Medical Center); Tr. 162 (District Court Judge who sent him to Bradford); Tr. 168–69 (District Court Judge sent him to Talbott after he escaped from Bradford); Tr. 78–79 (released after Talbott). Like the Chief ALJ, I find Respondent's admission that he described his statements to a District Court Judge that he could not go back to Bradford Rehabilitation as ''an angle to go somewhere else,'' *id.* at 73, to be of particular concern, s*ee* RD, at 36. Although I credit his retrospective honesty, in deciding whether I can trust him, I cannot ignore the fact that he has successfully angled to obtain trust repeatedly, and repeatedly abused that trust.

The Agency has decided that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases). The Agency has also considered the need to deter similar acts by a respondent and by the community of registrants. *Id.* In this case, there is no doubt that the Respondent's felonies and past behavior are egregious. His acts related to his controlled substances registration—instructing unqualified staff to issue controlled substances prescriptions on his behalf and without properly considering contrary urine drug screens, I find to be particularly egregious. Further, as the Chief ALJ stated, ''intentionally and volitionally distributing crack cocaine is a grave departure from even the most minimal standard of responsibility to guard against diversion that is expected of a DEA registrant. It is not that he just came up short in preventing drug diversion, he intentionally diverted crack cocaine.'' RD, at 39.

As the Chief ALJ noted, although the Agency has permitted registrants to maintain or obtain registrations based on demonstrated unequivocal acceptance of responsibility and ''concrete, sincere efforts at rehabilitation,'' many of these cases involved no harm to anyone beyond the respondent and no grounds for revocation under Section 824; whereas, in this case, the ''record reflects the distribution of crack to others, the placement of his patients in extreme danger, professional (even criminal) exposure inflicted on his office staff, and monetary damages to various health care providers who submitted reimbursement claims.'' RD, at 38 (citing *Ronald F. Lambert, D.D.S.,* 78 FR 62662, 62664 (2013); *Kimberly Maloney, N.P.,* 76 FR 60922, 60927–28 (2011); *John J. Cienki, M.D.* 63 FR 52293, 52296 (1998) (parentheticals omitted)).

Generally, I find Respondent's recovery to be commendable given his lengthy and difficult battle with addiction. Respondent cited the support of his friends and family numerous times as being essential to his recovery. Tr. 128–29, 136, 137. Although the testimony of his network of family and friends who support him is important to understanding their opinions about the status of his recovery, I find that overall, their opinions are not the best evidence for me to use to determine my ability to be entrust Respondent with a controlled substances registration. *See Raymond A. Carlson,* 53 FR 7425 (1988) (finding that none of the character ''witnesses was in a position to make an adequate assessment of [r]espondent's ability to properly handle controlled substances.''). Further, I find that the record evidence of Respondent's egregious controlled substance dispensing-related violations is relevant to my evaluation and outweighs all of the record evidence from his family, friend, colleague, and minister that he has been generally trustworthy and reliable since his recovery. *See George Pursley, M.D.* 85 FR 80162, 80180 (2020).

In addition to acceptance of responsibility, the Agency also gives consideration to both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74810 (2015). Specific deterrence is the DEA's interest in ensuring that a registrant complies with the laws and regulations governing controlled substances in the future. *Id.* General deterrence concerns the DEA's responsibility to deter conduct similar to the proven allegations against the

on his own about this specific matter. The Chief ALJ had to ask him about the controlled substances prescriptions in the plea agreement. Tr. 160.

respondent for the protection of the public at large. *Id.* In this case, I agree with the Chief ALJ that ''the absence of a sanction where a DEA registrant has been convicted of actually intentionally distributing crack cocaine would send a powerful message to the regulated community that even the most blatant intentional diversion will carry no consequences.'' RD, at 40.

In Respondent's favor, Respondent has been held accountable for his criminal behavior—having been sentenced to prison and temporarily losing his medical license. He has met the requirements for rehabilitation and for obtaining a conditional medical license. However, based on the facts of this case, I find it difficult to find that this accountability will have a deterrent effect on the potential for Respondent's relapse, because he has faced serious consequences many times in his life—losing his wife and family, getting expelled from medical school, losing his job, getting arrested, going to jail, etc.—and none of those things seemed to deter him from repeating his behavior until now.

Although Respondent testified extensively about the accountability to which he is held pursuant to his agreement with the Tennessee Medical Foundation, and many of his character witnesses testified about how much that accountability comforted them, I cannot find that accountability necessarily to be a sufficient deterrent from abuse of his controlled substances registration due to his history of repeatedly ignoring accountability measures,[20] even at the risk of incarceration. Therefore, in spite of his commendable sobriety thus far, I have reason to doubt his claim that he would always be a compliant registrant. *See George R. Smith, M.D.,* 78 FR 44972, 44980 (2013). Particularly, I remain concerned that if he relapsed, which the record has demonstrated previously occurred on several occasions, while entrusted with a controlled substances registration, he could harm himself and others too quickly for detection by this Agency or his monitoring. Ensuring that a registrant is trustworthy to comply with all relevant aspects of the CSA without constant oversight is crucial to the Agency's ability to complete its mission of preventing diversion within such a large regulated population. *Jeffrey Stein, M.D.,* 84 FR at 46974.

As discussed above, to receive a registration when grounds for denial exist, a respondent must convince the Administrator that his acceptance of responsibility and remorse are sufficiently credible to demonstrate that the misconduct will not reoccur and that he can be entrusted with a registration. Having reviewed the record in its entirety, I find that Respondent has not met this burden. Accordingly, I will order the denial of Respondent's application for a certificate of registration.

## Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the pending application for a Certificate of Registration, Control Number W18124612C, submitted by Robert Wayne Locklear, M.D., as well as any other pending application of Robert Wayne Locklear, M.D. for additional registration in Tennessee. This Order is effective July 26, 2021.

**D. Christopher Evans,**

*Acting Administrator.*

[FR Doc. 2021–13525 Filed 6–24–21; 8:45 am]

**BILLING CODE 4410–09–P**

[20] There is also evidence on the record that at the time of the hearing that Respondent might not have been in compliance with his monitoring requirements due to his monitor's illness and that he did not inform the state board or the Tennessee Medical Foundation of the lapse in monitoring. *See supra* n.14. I find that this lapse is mitigated by its circumstances, but that it is further evidence that Respondent has repeatedly demonstrated disregard for accountability measures.

---

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

**[Docket No. 18–50]**

## Carol Hippenmeyer, M.D.; Decision and Order

On August 20, 2018, a former Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Carol Hippenmeyer, M.D. (hereinafter, Respondent). Administrative Law Judge Exhibit (hereinafter, ALJX) 1 (OSC), at 1. The OSC proposed the revocation of Respondent's DEA Certificates of Registration BH3877733, FH2922119, FH2922121, FH2922133, FH2922157, and FH2922169, on the ground that her ''continued registrations are inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 823(f) and 824(a)(4)).

### I. Procedural History

The OSC alleged that Respondent ''violated Federal and Arizona state law by issuing controlled substance prescriptions outside the usual course of professional practice and for other than a legitimate medical purpose'' to three patients between February 3, 2017, and December 6, 2017. *Id.* at 3–5 (citing violations of 21 U.S.C. 841(a)(1), 21 CFR 1306.04(a), and Ariz. Rev. Stat. Ann. § 32–1401(27)). The OSC alleged that Respondent issued these prescriptions ''without performing an adequate physical exam, without taking a sufficient patient history, without determining the frequency and intensity of the patient's pain, without arriving at a legitimate diagnosis, and without maintaining adequate medical records.'' *Id.* at 5. The OSC also alleged that Respondent issued these prescriptions ''despite the fact that all three of these individuals had manifested one or more 'red flags' for abuse and/or diversion.'' *Id.* at 5. The OSC stated that by issuing these prescriptions, Respondent committed ''numerous acts of unlawful prescribing, any one of which could independently establish the sort of intentional diversion . . . that would justify the revocation of [her] DEA registrations.'' *Id.* at 6.

The OSC notified Respondent of her right to request a hearing on the allegations or to submit a written statement while waiving her right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 6 (citing 21 CFR 1301.43). Applicant timely requested a hearing by letter dated September 19, 2018. ALJX 3 (Order for Prehearing Statements), at 1 (interpreting ALJX 2 (Request for Hearing)).

The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Administrative Law Judge Charles Wm. Dorman (hereinafter, the ALJ). On September 25, 2018, the ALJ established a schedule for the filing of prehearing statements. Order for Prehearing Statements, at 1. The Government filed its Prehearing Statement on October 5, 2018, and its Supplemental Prehearing Statement on October 30, 2018. ALJX 4 (Government's Prehearing Statement) and 7 (Government's Supplemental Prehearing Statement), respectively. Respondent filed her Prehearing Statement on October 19, 2018, and her Supplemental Prehearing Statement on October 30, 2018. ALJX 5 (Respondent's Prehearing Statement) and 8 (Respondent's Supplemental Prehearing Statement), respectively.

On October 23, 2018, the ALJ issued a Prehearing Ruling that, among other things, set out the thirteen stipulations already agreed upon and established schedules for the filing of additional joint stipulations and supplemental

prehearing statements.[1] ALJX 6 (Prehearing Ruling) at 1–2.

The hearing in this matter spanned three days and took place in Tucson, Arizona. *See generally* Transcript of Proceedings in the Matter of Carol Hippenmeyer, M.D. (hereinafter, Tr.). Both parties filed posthearing briefs.[2] *See* ALJX 23 (Government's Proposed Findings of Fact, Conclusions of Law, and Argument (hereinafter, Govt Posthearing)), and ALJX 22 (Respondent's Proposed Findings of Fact and Conclusions of Law (hereinafter, Resp Posthearing)). Then, on March 29, 2019, the ALJ issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (hereinafter, RD). The Government filed exceptions to the RD. *See* Government's Exceptions to the Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Govt Exceptions).

Having considered the record in its entirety, I find that Respondent issued two hundred and nine prescriptions beneath the applicable standard of care in Arizona and outside of the usual course of the professional practice, in violation of federal and state law. I disagree with the RD's recommended sanction of a three-month suspension followed by registration restrictions. RD, at 127–28. Rather, I find that revocation is the appropriate sanction. I make the following findings of fact.

## II. Findings of Fact

### *A. DEA Registration*

The parties stipulated that Respondent is registered with DEA as a practitioner in Schedules II through V under DEA registration number BH3877733, at 6530 N Calle Lottie, Tucson, AZ 85718–190.[3] This registration was set to expire on October 31, 2020, but Agency Records show that Respondent submitted a renewal application on September 16, 2020.[4] Respondent was previously registered with the DEA as a practitioner in Schedules II through IV under DEA registration numbers FH2922169, FH2922157, FH2922133, FH2922121, and FH2922119. [5] According to Agency Records, registration number FH2922169 expired on October 31, 2020, and Respondent did not submit a renewal application. The remaining three DEA registrations—FH2922157, FH2922133, FH2922121, and FH2922119—were retired on July 22, 2020.

### *B. The Investigation*

DEA's investigation of Respondent began in approximately December 2017, when a detective from the Pima County Sheriff's Department received an anonymous complaint that Respondent was ''prescribing controlled substances without a legitimate purpose or outside the scope of her practice.'' Tr. 66–67. The Diversion Investigator assigned to this matter (hereinafter, DI) and the detective (hereinafter, Investigators) interviewed Respondent on December 19, 2017, at DEA's office in Tucson, Arizona (hereinafter, 2017 Interview). *Id.* at 32, 68–69; Government Exhibit (hereinafter, GX) 3 (Audio recording of the Interview); GX 4 (Transcript of the Interview).

During the Interview, Investigators asked Respondent about prescriptions that she had issued to M.D., a former intimate partner who had lived with Respondent until about eight months before. GX 4, at 2–8, 12–13, 17–20. Investigators asked Respondent whether M.D. was a ''patient at [Respondent's] practice'' or ''kind of an on the side thing,'' and Respondent said she ''would call it more on the side.'' *Id.* at 5. Respondent told Investigators that M.D. had many problems, including alcohol problems, endometriosis, gastric issues, anxiety, and a shoulder issue. *Id.* Respondent said that she had treated M.D., but ''[o]nly in an effort to get her treatment,'' and ''not for alcohol related stuff.'' *Id.*

Investigators asked Respondent how many patients she treated out of her home. Although she offered various estimates during the Interview—ranging from ''[m]aybe a dozen [patients], if that,'' to probably less than five—Respondent eventually confirmed that she only treated M.D. and one other individual, H.D., from her home. *Id.* at 8, 14–15, 28, 30. Investigators asked Respondent whether the people that she was ''treating out of [her] home'' were ''patients of [her] practice location,'' and Respondent said they were ''[m]ore friends.'' *Id.* at 11.

Investigators questioned Respondent about a prescription that Respondent had received from S.P., a neurosurgery nurse practitioner. GX 4, at 33–34. Respondent did not recall having received the prescription. *Id.* Although S.P. was discussed at the Interview, Respondent did not tell Investigators that she had prescribed controlled substances to S.P. Tr. 77–79.

Investigators asked Respondent several times whether she maintained medical records for M.D., H.D., or the other patients that she treated at home. Each time, Respondent confirmed that she did not.[6] However, approximately 6 months after the Interview, Respondent produced medical records for H.D., M.D., and S.P. in response to a DEA subpoena dated July 26, 2018. GX 6 (M.D. medical record), GX 7 (H.D. medical record), GX 8 (S.P. medical record), GX 10 (subpoena). Respondent sent Investigators a letter dated August

[1] The parties subsequently agreed to two additional stipulations concerning the Respondent's registered addresses. The fifteen final stipulations are set out on pages 26 and 27 of the ALJ's Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, and I hereby incorporate them in this Decision.

[2] I have reviewed and agree with the procedural rulings of the ALJ during the administration of the hearing, including his decision to grant Respondent's unopposed request for a three-week extension to file Posthearing Briefs. *See* ALJX 20 (Order Granting Respondent's Motion for Extension of Time and Order Scheduling Telephonic Conference); *see also* ALJX 12 (Order Granting Respondent's Motion for Leave to File Affidavit Out of Time and Order to Government); ALJX 13 (Amended Notice of Hearing); ALJX 14 (Letter Enclosing Subpoenas); ALJX 16 (Joint Stipulated Protective Order); ALJX 17 (Order Amending Post-Hearing Briefing Schedule); ALJX 20 (Order Granting Respondent's Motion for Extension of Time and Order Scheduling Telephonic Conference); ALJX 21 (Order Correcting the Transcript).

[3] The parties stipulated that the registered address for BH3877733 is 1800 East Florence Blvd., Casa Grande, AZ 85123. *See* RD, at 26 (Stipulation No. 1); *see also* Government Exhibit (hereinafter, GX) 1, at 5. However, Agency Records list the registered address as 6530 N. Calle Lottie, Tucson, AZ 85718–190.

[4] Respondent's registration was ''automatically [ ] extended'' when she submitted a renewal application 45 days before her registration was due to expire. 21 CFR 1301.36(i).

[5] The parties stipulated that each of Respondent's DEA registrations authorized her to handle controlled substances in Schedules II through V. RD, at 26 (Stipulation No. 1). However, according to Agency Records and Government Exhibit 1, registration numbers FH2922169, FH2922157, FH2922133, FH2922121, FH2922119, and BH3877733 do not include Schedule V authority. *See* GX 1, at 1–4, 6. The parties stipulated that the registered addresses for these registrations were 5301 E. Grant Road, Tucson, AZ 85712–2874 (registration number FH2922157); 333 Camino Josephina, Rio Rico, AZ 85648 (registration number FH2922133); 901 Rex Allen Drive, Willcox, AZ 85643 (registration number FH2922121); 2023 W. Relation Street, Safford, Arizona 85546 (registration number FH2922119). *See* RD, at 26 (Stipulation Nos. 1–3). The parties stipulated that the registered address for FH2922169 was 185 S. Mulberry Street, Florence, Arizona, 85132. However, Agency Records list the registered address as 4545 N Hunt Highway, Florence, AZ 85132.

[6] *See* GX 4, at 8 (confirming that she does not have ''a medical file for [M.D.] at [her] home''); *id.* at 8 (confirming that she does not keep medical records for the people she treats at home); *id.* at 13 (confirming that she did not ''have a medical file at all'' for Patient M.D.); *id.* at 13 (confirming that ''there's no medical record'' for M.D. ''that shows . . . like the diagnostic exam . . . and all that''); *id.* at 15–16 (confirming that ''there['s] no record of, like . . . current medical record or, um, like vital signs taken or . . . any of that'' for M.D. or H.D.); *see also* Tr. 32 (Respondent's trial testimony confirming that she told Investigators during the Interview that she did not have medical records for H.D. and M.D.).

1, 2018, explaining the contents of the medical records. GX 9. The letter explained that each record has ''a brief introduction and discussion of care'' and a narcotic log ''reflect[ing] the trends and management of these patients.'' *Id.* Respondent generated these documents after being interviewed by DEA based on her ''recall of encounters with patients.'' *Id.* The letter explained that the medical records also include ''pathological, surgical and laboratory data [that] was reviewed at the time it was generated.'' *Id.*

Investigators attempted to interview H.D., M.D., and S.P. during the investigation. Tr. 74. They opted not to be interviewed, but they wrote letters about Respondent's treatment of them, which were provided to DEA. Tr. 74–75, 94; GX 12. The letters emphasized that Respondent treated them for legitimate medical conditions and they did not abuse the medication that she prescribed. GX 12.

DEA also received a letter from Respondent's attorney on August 22, 2018, aimed at ''correct[ing] the apparent misperceptions about [Respondent's] medical practice which have developed from her initial interview by the DEA.'' GX 13, at 1. Among other things, the letter stated that Respondent's ''standard practice has always been to prioritize patient care and safety'' and emphasized that Respondent established valid doctor-patient relationships with H.D., M.D., and S.P. and treated them for legitimate medical conditions. *Id.* at 1–5.

*C. The Government's Case*

The Government's documentary evidence consisted primarily of patient files, prescription records, and data from the Arizona Controlled Substance Prescription Monitoring Program (hereinafter, Arizona PMP) [7] for H.D., M.D., and S.P., the three individuals who received controlled substances prescriptions from Respondent between January 2013 and December 2017. *See* GX 5–8, 18. The Government's evidence also included Arizona opioid prescribing guidelines; an audio recording and transcript of Respondent's 2017 Interview with Investigators; a subpoena requesting medical records; and letters submitted by H.D., M.D., S.P., and Respondent's attorney. *See* GX 3–4, 9, 10, 12, 14–16. Finally, the Government's evidence included copies of Respondent's DEA Certificates of Registration and a Curriculum Vitae for the Government's expert witness. *See* GX 1–2. The Government called three witnesses to testify at the hearing: Respondent (whose testimony is summarized in the Respondent's case, *see infra* II.D), DI, and the Government's expert, Dr. Lynch.

DI testified about her investigation-related actions, including her role in interviewing Respondent and obtaining evidence. Tr. 64–163; *see also* RD, at 8–9. Having read and analyzed all of the record evidence, I agree with the RD that DI testified in a ''professional, candid, and straightforward manner'' and that her testimony was ''sufficiently objective, detailed, plausible, and internally consistent.'' RD, at 9. Although the ALJ concluded that DI ''was an unnecessary witness,'' ''other than identifying documents,'' I credit DI's testimony about the Agency's investigation and about aspects of the December 2017 Interview that were not captured in the audio recording or transcript.[8] *Id.*

Dr. Lynch testified about his professional and educational background. Tr. 166–69; *see also* RD, at 10; GX 2 (Curriculum Vitae of Dr. Lynch). After completing medical school, he completed an internship in surgery and anesthesiology at New York University and a fellowship in pain management at Texas Tech Health Sciences Center. Tr. 167; GX 2, at 10. He has been board certified in anesthesiology for twelve years and in pain management for eleven years. Tr. 168–69. He is licensed to practice medicine in Arizona, Nevada, California, Oregon, Colorado, Texas, and Florida, and he has treated patients for pain since he became a physician in 2002. *Id.* at 167, 169. Dr. Lynch is the Chief Medical Officer at Pain Doctor, Inc., a pain management practice in Scottsdale, Arizona. *Id.* at 166–67. For the last ten years, he owned a practice called Arizona Pain Specialists, which has pain clinics throughout Arizona and provides consulting services. *Id.* at 166. Dr. Lynch has managed pain management practices in about 15 states. Tr. 167. He has also served as an assistant professor of anesthesiology and pain management at the Mayo Clinic. *Id.* Dr. Lynch is a member of the American Society of Interventional Pain Physicians, the American Society of Anesthesiology, and the Spinal Injection Society. *Id.* at 334–35.

Dr. Lynch was qualified as an expert medical witness in Arizona, with an emphasis in pain management. *Id.* at 171. Respondent's counsel did not object to Dr. Lynch being recognized as an expert. *Id.* Dr. Lynch's remaining testimony covered the standard of care in Arizona and his professional opinion that Respondent failed to meet the standard of care with regard to all of the prescriptions at issue in this case. *See infra* II.E, II.F; Tr. 171–383; RD, at 10–17, 27–42.

With regard to credibility, the ALJ found that ''[a]lthough Dr. Lynch's education, training, and work experience qualify him as an expert,'' he did not find all of Dr. Lynch's testimony to be ''straightforward and internally consistent.'' RD, at 13. The ALJ identified five portions of Dr. Lynch's testimony that he believed were ''confusing or inconsistent.'' RD, at 13–14. First, the ALJ found that Dr. Lynch's testimony that a physician must document a patient's treatment in order to establish a valid doctor-patient relationship was based on Dr. Lynch's ''inference,'' not the standard of care. RD, at 14 (referencing Tr. 232, 354, 379, 381). The ALJ determined that ''as far as [he could] tell from Dr. Lynch's testimony, neither the Arizona medical community nor Arizona authorities have reached a settled definition of a doctor/patient relationship.'' *Id.* (citing Tr. 233–35). Therefore, the ALJ concluded that ''the Government has not proved that to establish a legitimate doctor/patient relationship in Arizona, a doctor must have medical documentation of the treatment provided to the patient.'' *Id.* As discussed below, *see infra* II.E.1, I find that Dr. Lynch's testimony about the requirements for establishing a valid doctor-patient relationship is consistent with the Arizona standard of care and is supported by Arizona courts' interpretation of Arizona state law. Therefore, I do not find that Dr. Lynch's testimony on this issue detracted from his credibility as a witness.

Second, the ALJ found that ''Dr. Lynch had a difficult time explaining the terminology of substance use, substance abuse, substance misuse, and alcoholism.'' RD, at 14. The ALJ identified several instances where he felt that Dr. Lynch's testimony was inconsistent or confusing. For example, Dr. Lynch testified that ''substance use disorder'' and ''substance abuse disorder'' are ''pretty much the same thing,'' and then he proceeded to offer distinct definitions of ''use'' and ''abuse.'' Tr. 257–59; RD, at 14–15. The

[7] The Arizona PMP is a ''program administered by the State of Arizona Board of Pharmacy that collects the data from pharmacies for all controlled substance prescriptions filled at pharmacies in Arizona.'' Tr. 95.

[8] I agree with the ALJ that DI was not qualified to opine on the requirements of a valid doctor-patient relationship in Arizona. RD, at 9 (referencing Tr. 87, 90, 130–31, 134). Therefore, to the extent that the record contains testimony by DI that could be construed as opinion testimony, I will not consider that testimony in my standard of care analysis.

ALJ also found that Dr. Lynch's characterizations of different abuse patterns were confusing; for example, that a binge drinker is not necessarily an alcoholic, that a patient who abuses a drug does not necessarily have a substance use disorder, and that there are different definitions of an alcoholic. RD, at 15 (citing Tr. 306, 329–30). The ALJ also found that Dr. Lynch misstated the Arizona Department of Health Services' (hereinafter, Arizona DHS) and the Arizona Medical Board's positions on prescribing opioids to individuals with substance abuse disorders. RD, at 15–16. Finally, the ALJ noted that Dr. Lynch is not an addiction psychiatrist. RD, at 10 (citing Tr. 329–30).

I agree with the ALJ that Dr. Lynch over-stated the Arizona DHS's [9] and the Arizona Medial Board's [10] guidance on prescribing to individuals with substance use disorders. Therefore, to the extent that Dr. Lynch's testimony conflicts with the guidelines, I will reference the guidelines directly and disregard Dr. Lynch's testimony about them. But aside from Dr. Lynch's testimony on the guidelines, I found his testimony about substance abuse disorders to be helpful, internally consistent, credible, and supported by other record evidence. For example, Dr. Lynch's testimony that M.D. ''has a clear history of alcoholism, [and] potentially other substance abuse disorders as well'' was supported by Respondent's statements to Investigators in 2017 that Respondent had ''tried to get M.D. to go to rehab,'' because she had an alcohol ''addiction.'' Tr. 198 (Dr. Lynch's testimony); GX 4, at 5, 7, 21 (Respondent's statements to Investigators); *see also* Tr. 293, 306–07, 327–32, 357. Although the ALJ found that Dr. Lynch's characterization of various abuse patterns was confusing, Dr. Lynch explained that the language in addiction medicine is nuanced. Tr. 258–59. Therefore, I have no reason to discredit that testimony.

I also decline to discredit Dr. Lynch's views on substance abuse issues simply because he is not an addiction specialist. Tr. 329–30. Dr. Lynch was qualified as ''an expert medical witness in the State of Arizona, with an emphasis in Pain Management,'' *see id.* at 171, and pain management physicians must be vigilant about monitoring for substance abuse disorders. The Arizona DHS Guidelines provide that ''before initiating opioid treatment,'' a physician should conduct ''a comprehensive medical and pain related evaluation that includes assessing for substance use'' and the physician should ''assess for risk of misuse, addiction, or adverse effects.'' GX 16, at 8. Similarly, the Arizona Medical Board Guidelines provide that an ''initial evaluation'' should include ''[a]ssessment of the patient's personal and family history of alcohol or drug abuse.'' GX 14, at 7. Additionally, Dr. Lynch testified that he has studied alcoholism. Tr. 332.

Third, the ALJ found that Dr. Lynch's testimony that it was ''below the standard of care'' to ''prescrib[e] opioids to someone with whom the prescriber has a personal relationship over a long period of time'' conflicted with ''the bulk of Dr. Lynch's testimony'' that prescribing to friends and family members was an ethical issue, not a standard of care issue. RD, at 16 (*comparing* Tr. 355 *with* Tr. 185–86, 204, 285, 351–53). I agree with the ALJ's assessment of Dr. Lynch's testimony. Therefore, I do not give any weight in my public interest analysis to Dr. Lynch's testimony that long-term prescribing to someone with whom you are in a close personal relationship is a violation of the standard of care.

Fourth, the ALJ disagreed with Dr. Lynch's testimony during cross examination about whether Respondent was prescribing low or moderate-dose therapy. *See* RD, at 16–17. I find that this testimony is irrelevant to Dr. Lynch's overall opinions because Dr. Lynch testified that he does not believe that Respondent prescribed narcotics in excessive quantities, Tr. 254, and he agreed that the low doses of controlled substances that Respondent prescribed to M.D. were a mitigating factor. *Id.* at 294. I do not find that this testimony detracts from Dr. Lynch's credibility as a witness.

Fifth, the ALJ found that Dr. Lynch's testimony that it was a violation of the standard of care in Arizona to prescribe opioids and benzodiazepines concurrently conflicted with his later testimony that ''it's hard to say it's below the standard of care'' because it ''still continues to happen.'' RD, at 17 (*comparing* Tr. 275 *with* Tr. 371). The ALJ found that this inconsistency ''undermine[d] Dr. Lynch's credibility on the issue of co-prescribing.'' *Id.* I agree with the ALJ that this testimony was inconsistent, but I do not find that this inconsistency detracted from Dr. Lynch's credibility on co-prescribing because he later clarified. Tr. 370–71; *see also id.* at 244–45 (agreeing that the Arizona DHS Guidelines do not ban co-prescribing, they just ''strongly recommend[] that docs not do it''). Additionally, I found that Dr. Lynch's testimony on the standard of care for co-prescribing benzodiazepines was consistent with other record evidence, including guidelines from the Arizona DHS, the Arizona Medical Board, and the Centers for Disease Control and Prevention (hereinafter, CDC). *See infra* II.E.4.

The ALJ concluded that ''[d]espite these concerns, in general [he] found Dr. Lynch to be a highly qualified expert in the area of pain management who testified in a professional, candid, and objective manner.'' RD, at 17. The ALJ also concluded that Dr. Lynch's testimony was ''detailed, plausible, and, with a few exceptions, internally consistent.'' *Id.* Finally, the ALJ noted that Dr. Lynch's testimony was unrebutted. *Id.* Therefore, the ALJ concluded that he would ''merit most of Dr. Lynch's testimony as credible in this Recommended Decision.'' Having read and analyzed all of the record evidence, I agree with the ALJ's conclusions regarding credibility and I merit Dr. Lynch's testimony as credible in this Decision.

*D. Respondent's Case*

Respondent's documentary evidence consisted of Curriculum Vitae for Respondent, H.D., M.D., and S.P.; Arizona PMP data for M.D. and S.P.; a prescription that Respondent obtained from S.P.; and an affidavit of John M. Reid, the Medical Director at Carondolet Holy Cross Hospital, where Respondent worked since 2014. *See* Respondent's Exhibits (hereinafter, RX) 1–5, 8, 11, 13. Respondent testified and called three witnesses: H.D., M.D., and S.P.

H.D. testified about his background as an internal medicine and emergency room physician. Tr. 385–86. Although H.D. is a doctor, he was not offered as a medical expert. *Id.* at 387. H.D.

[9] Dr. Lynch testified that the Arizona DHS says it is an absolute contraindication to give controlled substances to a patient with an active substance abuse issue. Tr. 181. The RD finds that Dr. Lynch's testimony ''slightly mischaracterizes the Arizona Health Department's guidance on this issue,'' because it ''ma[kes] it appear that the Arizona Health Department has issued a blanket prohibition against prescribing any controlled substance to any patient with active substance abuse problems regardless of whether the patient is receiving treatment.'' RD, at 15 (citing Tr. 181, 261, 307). The RD finds that ''[t]he Arizona Health Department's recommendation is narrower than portrayed by Dr. Lynch'' because it states that it is an absolute contraindication to prescribe chronic opioid therapy to an individual with a ''[d]iagnosed substance use disorder (SUD) not in remission and/or active treatment.'' RD, at 15 (citing GX 16, at 12). I agree with the RD's interpretation of Dr. Lynch's testimony.

[10] Dr. Lynch testified that the Arizona Medical Board has not issued guidance on prescribing to patients with active substance abuse problems. Tr. 181. This is incorrect. The Arizona Medical Board Guidelines provide that ''[p]atients who have an active substance use disorder should not receive opioid therapy until they are established in a treatment/recovery program or alternatives are established such as co-management with an addiction professional.'' GX 14, at 7.

testified about his friendship with Respondent, *id.* at 389; his first encounter with Respondent near the end of 2012, including the examination that she performed on him, *id.* at 390–94, 424–428, 440–43; and offered lay opinions about the quality of care that Respondent provided, *id.* at 393, 396, 419–20. *See also* RD, at 18–19, 42–49. The ALJ concluded that H.D. ''presented his testimony in a professional, candid, and straightforward manner.'' RD, at 19. The ALJ noted that ''[a]lthough H.D.'s answers seemed vague and general when responding to some questions, especially questions about the physical examinations [Respondent] performed, he provided more detail when pressed by counsel, and overall his testimony was sufficiently objective, plausible, and internally consistent.'' *Id.* Therefore, the ALJ concluded that H.D.'s testimony was credible. *Id.*

Having read and analyzed all of the record evidence, I agree with the ALJ's conclusions about H.D.'s testimony. However, I find that H.D.'s testimony has limited probative value because it was based on his memory of examinations and encounters that happened many years before, and his testimony was often vague. I also find that his testimony has limited probative value because he has a strong incentive to provide testimony that supports that Respondent's prescribing to him was lawful and legitimate. This is especially true because he is a medical professional operating in a regulated profession. Additionally, H.D.'s lay opinions about the quality of care that Respondent provided him were not grounded in the Arizona standard of care.[11] Dr. Lynch observed H.D.'s testimony and testified that it did not change any of his opinions about Respondent's compliance with the standard of care. Tr. 739. Thus, I give H.D.'s testimony limited weight in this Decision.

M.D. testified about her background as an emergency room nurse, her intimate relationship with Respondent, her patient encounters with Respondent, and her discussions with Respondent about her medical conditions and alcohol problems. *Id.* at 446–527; *see also* RD, at 19–21, 49–57. M.D. also testified that she accepted a loan from Respondent in order to pay for her own attorney in connection with this proceeding. Tr. 487.

Regarding M.D.'s credibility, the ALJ concluded that ''M.D.'s testimony about physical examinations seemed vague and general, but she provided more detail when pressed by counsel.'' RD, at 21. The ALJ found it ''noteworthy, however, that M.D. was unable to recall certain information, such as when she testified that she could not recall whether [Respondent] ever asked her for medical records from past providers, and that she did not pay attention to whether [Respondent] took notes during her examinations.'' *Id.* (citing Tr. 468, 488, 489–93, 502). The ALJ found that ''[t]hose answers did not seem entirely forthcoming'' and ''they detract slightly from M.D.'s credibility.'' *Id.* The ALJ did not believe that the loan that M.D. received ''discredit[ed] her testimony because there [was] no evidence before [him] that receiving the loan was contingent on her testifying in a certain way.'' *Id.* at 21. Overall, the ALJ found that M.D.'s testimony was ''objective, plausible, and internally consistent, and she presented her testimony in a professional, straightforward, and candid manner in all other respects.'' *Id.* Therefore, he merited M.D.'s testimony as credible.

Having read and analyzed all of the record evidence, I agree with the ALJ's conclusions about M.D.'s testimony. However, I find that M.D.'s testimony has limited probative value for the same reasons discussed with H.D. Dr. Lynch observed M.D.'s testimony and testified that it did not change any of his opinions about Respondent's compliance with the standard of care. Tr. 738. Thus, I give M.D.'s testimony limited weight in this Decision.

S.P. testified that she is a full-time neurosurgery nurse practitioner at Banner University Medical Center. *Id.* at 529. S.P. testified about her intimate relationship with Respondent and about the medical treatment that they provided to each other. *Id.* at 531–612; *see also* RD, at 21–24, 57–62. S.P. also testified about medical records that she provided to Respondent in 2018 and throughout the course of Respondent's treatment of her. Tr. 604–06, 609–11.

The ALJ identified two minor concerns with S.P.'s testimony. RD, at 23–24. First, the ALJ was confused by S.P.'s testimony about the medical records that she provided to Respondent in 2018, after DEA had begun its investigation.[12] *Id.* Second, the ALJ found that S.P. became defensive when she was questioned about controlled substances that she received from providers other than Respondent. RD, at 23. When Respondent's counsel asked S.P. if she could recall ''off the top of [her] head'' which providers on her PMP were delegates of her primary care physician, S.P. replied that it would be ''completely inaccurate in every way'' to say that she has multiple doctors or is doctor shopping. *Id.* (citing Tr. 534–36). The ALJ found that this testimony came across as ''advocacy rather than an objective, unbiased testimony,'' because nobody had accused S.P. of doctor shopping. *Id.* at 24. However, ''[d]espite those minor issues,'' the ALJ concluded that S.P. ''presented her testimony in a professional and straightforward manner,'' and that her testimony was ''sufficiently objective, plausible, and internally consistent.'' *Id.* Therefore, the ALJ merited S.P.'s testimony as credible.

Having read and analyzed all of the record evidence, I agree with the ALJ's conclusions about S.P.'s testimony.[13] However, I find that S.P.'s testimony has limited probative value for the same reasons discussed with H.D. and M.D. Dr. Lynch observed S.P.'s testimony and testified that it did not change any of his opinions about Respondent's compliance with the standard of care. Tr. 739. Thus, I give M.D.'s testimony limited weight in this Decision.

[11] For example, H.D. testified that he did not have any concerns about the medical examination that Respondent performed or the medical history that she took. Tr. 396. He also testified that he felt that he had established a valid doctor-patient relationship with Respondent. *Id.* at 419. Finally, he testified that he did not feel that Respondent had harmed him or put his life at risk with her treatment. *Id.* at 419–20. H.D.'s concerns and feelings about Respondent's prescribing do not have any bearing on whether Respondent's prescribing was consistent with the applicable standard of care in Arizona. Additionally, even if H.D.'s lay opinions had been couched in terms of the standard of care, they would not be given any weight where they conflict with Dr. Lynch's expert testimony. *See Zvi H. Perper, M.D.,* 77 FR 64131, 64140 (2012) (citing *Ross* v. *Gardner,* 365 F.2d 554 (6th Cir. 1966)) (''When an administrative tribunal elects to disregard the uncontradicted opinion of an expert, it runs the risk of improperly declaring itself as an interpreter of medical knowledge.''); *Cf. Jacobo Dreszer, M.D.,* 76 FR 19,386 (2011) (finding that respondent's counsel's posthearing argument that respondent's medical records were ''satisfactory'' constituted a ''lay evaluation of standards applicable to the nuanced and sophisticated science that is the practice of medicine,'' and it could not ''supplant the unrefuted view of an accepted expert witness'').

[12] S.P. initially testified that she did not remember which documents she gave to Respondent in 2018. Tr. 605–06. S.P. then testified that she provided Respondent with ''everything that [she] had of [Respondent's] care of her'' in 2018. *Id.* at 611–12. S.P. later testified that she gave Respondent copies of the records that she ''had immediately available'' in 2018. *Id.* at 612. Finally, S.P. testified that she is unsure whether she has more records related to Respondent's care of her that she did not provide. *Id.*

[13] In addition to the two minor concerns identified by the ALJ, I found that S.P.'s frequent use of the word ''extensively'' when discussing the conversations that she had with Respondent about her treatment made her testimony seem less neutral. *See, e.g.,* Tr. 543 (testifying that she and Respondent ''discussed side effects extensively'' and Respondent ''talked to her extensively about other options''); *see also id.* at 547–48, 561, 573–74. I also found that S.P.'s testimony that that she ''always saw [Respondent] writing'' when they met was not supported by other record evidence, which showed that Respondent did not maintain contemporaneous medical records for S.P. Tr. 599.

Respondent testified that she is currently employed as an independent contractor for an emergency department group, Sound Physicians. *Id.* at 30, 635. Respondent began practicing emergency medicine in 1998 and she currently practices internal medicine and emergency medicine. *Id.* Respondent testified about her education, training, and background, and the 2017 Interview. *Id.* at 30–31, 58, 61, 622–36.

Respondent testified about her relationships with M.D., H.D., and S.P. *Id.* at 47–51, 57, 629. Respondent was intimately involved with M.D. from approximately late 2012 or early 2013 until approximately the end of 2015. *Id.* at 47–48. Respondent testified that they lived together from approximately 2014 to 2016. *Id.* at 48. Respondent has known H.D. since 2008 or 2009. *Id.* at 50. Respondent stated that they are friends, but they rarely socialize. *Id.* at 51. Respondent testified that she and S.P. are currently friends, but they were intimately involved from approximately 1998 to 2005. *Id.* at 57, 629. Respondent testified about her treatment of H.D., M.D., and S.P. *See Id.* at 636, 643–44, 653–91, 709–14, 729 (M.D.); *id.* at 628–29, 636, 642–43, 646–47, 691–92, 694, 696, 705–06, 718, 722 (S.P.); *id.* at 636, 646–47, 695, 717–18 (H.D.); *see also* RD, at 24–26, 49–67. Respondent testified that she believes that she entered into a valid doctor-patient relationship with each individual. *Id.* at 639. Finally, Respondent testified about the contents of her medical records for M.D., H.D., and S.P. *Id.* at 33–54.

With regard to credibility, the RD concludes that Respondent ''demonstrated a commanding grasp of the medical issues of H.D., M.D., and S.P.'' ''[e]ven without the benefit of having medical records to review,'' and that ''[Respondent's] understanding of M.D.'s medical issues was especially strong.'' RD, at 25–26. The RD finds that Respondent ''gave detailed, thorough, and objective testimony of the medical care she provided to H.D., M.D., and S.P.'' and ''[s]he also candidly acknowledged the deficiencies in her medical records.'' *Id.* at 8, 26. The RD concludes that Respondent ''testified in a professional, candid, and straightforward manner,'' and ''her testimony was sufficiently objective, detailed, plausible, and internally consistent.'' *Id.* Therefore, the RD ''merit[s] Respondent's testimony as credible in [the] Recommended Decision.'' *Id.*

Having read and analyzed all of the record evidence, I cannot agree with all of the RD's characterizations of Respondent's testimony. For example, I cannot agree that Respondent demonstrated a commanding grasp of the medical issues of S.P. or H.D., because Respondent offered very little testimony about her treatment of them.[14] Additionally, Respondent's testimony about H.D. was not always supported by other record evidence. For example, Respondent testified that she began treating H.D. in ''approximately 2013,'' but the narcotics log that she generated after the 2017 Interview showed that she had prescribed opioids to H.D. at least as early as January 2011. *Compare* Tr. 636 *with* GX 7, at 5 (showing that Respondent issued at least 11 controlled substance prescriptions to H.D. prior to 2013) *and* GX 7, at 1 (H.D.'s letter confirming that Respondent began treating him in 2011). Additionally, Respondent testified that she prescribed triazolam [15] to H.D. for shift work disorder, but there is no mention of shift work disorder in H.D.'s medical record.[16] GX 7.

Respondent testified in greater detail about her treatment of M.D. Although I agree with the ALJ that Respondent had a strong grasp on M.D.'s medical issues, I found that Respondent was occasionally limited in her ability to recall details of her treatment of M.D., because she did not have contemporaneous medical records to reference. For example, when Respondent was asked about a particular laboratory result in M.D.'s medical file, she did not recall with certainty who had generated the record or why M.D. had gone to that provider. Tr. 683–85 (discussing GX 6, at 16). Respondent initially testified that M.D. went to the clinic ''[i]n an attempt to establish primary care,'' and then clarified that ''[s]he may have also gone there in addition to that if she had a different intercurring [sic] clinical experience that [Respondent] didn't feel was consistent with her current stable chronic medical problems.'' *Id.* at 683–84. Additionally, Respondent testified that when M.D. returned sick from Africa, she referred M.D. to another provider, because she was concerned that she might have an infection. Tr. 686. Respondent was vague in answering whether she had modified her treatment of M.D. based on the hydrocodone that M.D. had received from the other provider. Tr. 687. She testified that ''it would depend on whether she received a significant quantity of that medication or what her symptoms were.'' *Id.*

I defer to the RD's assessment that Respondent ''testified in a professional, candid, and straightforward manner'' and I agree that Respondent's hearing testimony was ''plausible[ ] and internally consistent.'' RD, at 8, 26. However, I identified several inconsistencies between Respondent's hearing testimony and her statements to Investigators during the investigation. First, when Investigators asked Respondent in December 2017 whether the people that she treated out of her home were ''patients of [her] practice location,'' Respondent replied, ''More friends, I guess.'' GX 4, at 11. Investigators also asked Respondent whether M.D. was a ''patient at [Respondent's] practice'' or ''kind of an on the side thing,'' and Respondent replied, ''I would call it more on the side.'' *Id.* at 5. However, Respondent testified at the hearing that she entered into valid doctor-patient relationships with H.D., M.D., and S.P. Tr. 639.

Second, Respondent told Investigators during the 2017 Interview that she did not maintain medical records for the patients that she treated out of her home. *See* GX 4, at 8, 13, 15. However, after the Interview, Respondent produced medical records for M.D. and S.P. that contained documents that she testified were in her possession at the time of the Interview. *See* Tr. 34–40, 53; GX 6, 8. When Government counsel

[14] Based on a review of Respondent's Prehearing Statement, I believe that Respondent intended to testify in greater detail about her treatment of S.P. than she did at the hearing. *See* Resp Prehearing, at 8–10. After Respondent testified extensively about her treatment of M.D., *see* Tr. 653–92, Respondent's counsel began questioning Respondent about S.P. *Id.* at 692. However, this line of questioning was interrupted, and Respondent's counsel shifted his questioning to H.D. *Id.* at 691–94. At that point, Respondent had offered very little testimony about her treatment of S.P., other than testifying about their personal relationship and the triazolam prescriptions that she issued to S.P. for shift work disorder. *See Id.* at 55–57, 629, 636, 643, 646–47. While it is unfortunate that Respondent did not complete her testimony, I am confident that my conclusions about the legality of Respondent's prescribing to S.P. would not be impacted by any additional testimony that Respondent might have provided. As found herein, Respondent committed numerous violations of the Arizona standard of care and Arizona state law in her treatment of S.P. and she did not maintain any medical records justifying her prescribing decisions. *See infra* II.F.3. Additionally, I find that revocation would be warranted based solely on the unlawful prescriptions that Respondent issued to M.D. and H.D. *See infra* II.F.1, II.F.2 (concluding that Respondent issued one hundred and eighty-five prescriptions to M.D. and H.D. outside the usual course of professional practice and beneath the standard of care in Arizona). The Government can meet its prima facie burden for revocation by proving ''only a few instances of illegal prescribing.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 464 (2009).

[15] The parties stipulated that ''Halcion is a brand name for triazolam, a Schedule IV controlled substance.'' RD, at 27 (Stipulation No. 11).

[16] H.D. testified at the hearing that Respondent prescribed triazolam to him for shift work disorder. Tr. 398. However, the letter that H.D. prepared before the hearing did not mention shift work disorder as one of the conditions that Respondent treated. GX 7, at 2. It mentioned diabetes, hypertension, and chronic pain. *Id.*

asked Respondent why she initially told Investigators that she did not have medical records, she testified that she misspoke and thought they were referring to electronic medical records, because ''the current climate in healthcare is exclusively focused on electronic health records.'' *Id.* at 58, 62, 648. However, Investigators did not mention electronic medical records during the Interview and their questions were general enough to cover any type of medical records that Respondent might have maintained. GX 4; *see also* Tr. 61, 92–93, 707. For example, Investigators asked Respondent whether she ''ha[d] a medical file at all for M.D.,'' whether she had file for M.D. ''that shows . . . like the diagnostic exam . . . and all that,'' and whether she had a ''current medical record . . . like vital signs taken or . . . any of that.'' GX 4, at 13, 15–16. Respondent confirmed that she did not. *Id.*

Despite the inconsistency, I credit Respondent's testimony that the medical records that she produced to Investigators after the Interview were in her possession at the time of the Interview. Respondent did not have advance notice of the topics that would be discussed during the Interview and some of the records pertained to treatment that had happened years before. *See* Resp Posthearing, at 4. Thus, Respondent may not have remembered that she possessed records related to these patients' treatment.[17] Additionally, because the records that Respondent subsequently produced were primarily generated by other physicians, not Respondent, Respondent may have thought that these records were not encompassed by the Investigators' questions.

Third, Respondent told investigators in December 2017 that triazolam is a detox drug that is used for alcohol withdrawal. GX 4, at 21–22; Tr. 73. At the hearing, however, Respondent testified that she ''would never use triazolam for alcohol withdrawal, nor does anyone else that [she's] aware of.'' Tr. 723; *see also id.* at 643–44 (testifying that she prescribed triazolam for sleep, not for alcohol withdrawal). Government counsel asked Respondent what she had told Investigators in December 2017 about the purpose of triazolam. *Id.* at 723. Respondent testified that there had been a lot of ''cross-talk and people talking over each other,'' and that investigators ''show[ed] [her] a piece of paper with other prescriptions on it,'' including diazepam,[18] at the same time they were asking her about triazolam. *Id.* at 723. Respondent testified that she was referring to diazepam when she said the drug was for alcohol withdrawal. *Id.* However, the transcript and audio recording from the Interview clearly capture DI's question, ''Triazolam, I don't see that a whole lot; is that also sort of like an antianxiety?'' GX 3, at 24:00–24:25; GX 4, at 21. Respondent replied, ''It's, uh, no; yes, it's a, it's a, uh alcohol withdrawal.'' *Id.* DI asked, ''[d]o they use it a lot like they would with valium?'' GX 4, at 22. Amidst the cross talk, Respondent confirmed, ''it's more like . . . it's a . . . detox drug.'' *Id.* DI testified that she understood that Respondent was referring to triazolam when she spoke about a detox drug. Tr. 141 (''I mean, the words are speaking for themselves. She's saying that it's a detox drug.'').

Fourth, Respondent testified at the hearing that she ''didn't have any significant reason to utilize [the PMP] because [she] knew each time [the patients] were receiving [controlled substances] from somebody else.'' Tr. 733. However, when Respondent was interviewed by Investigators in December 2017, she did not seem to be aware that M.D. frequently receives controlled substances from other providers. *See* GX 4, at 20–21. At the Interview, Investigators asked Respondent whether she knew if M.D. was receiving treatment from any other providers, and Respondent said she had ''look[ed] her up one time, [ ] because with the endometriosis and stuff . . . she did get some narcotics . . . from that person . . . who did the surgery.'' *Id.* at 20. Respondent said that she had not checked the PMP in a while, but she thought that ''those [prescriptions] kinda went away.'' *Id.* Respondent continued, ''[S]he got some from her gynecologist . . . or something, and then they kinda disappeared. So, I . . . don't think that she's getting em' from anybody else.'' *Id.* at 20. Respondent also said that she did not get the sense that M.D. was being treated by another doctor for these issues. *Id.* at 20–21.

However, Arizona PMP data shows that M.D. received controlled substances from four different practitioners other than Respondent in the 12 months before the interview. GX 18, at 2–3. These practitioners included: (1) D.B., an emergency room physician who treated M.D. for acute alcohol intoxication, Tr. 516–17, 525; (2) A.B., a nurse practitioner at Tucson Family Medicine who treated M.D. for an ulcer and H. pylori, *id.* at 516; (3) K.T., another provider at Tucson Family Medicine who diagnosed M.D. with pyelonephritis, *id.* at 523; and (4) C.L., an oral surgeon, *id.* at 521. GX 18, at 2–3. M.D. received controlled substances from twelve additional practitioners on seventeen separate occasions from January 2013 to December 2017. GX 18, at 1–8.

Fifth, Investigators asked Respondent in the 2017 Interview how many individuals she was prescribing to from her home. Although Respondent offered various estimates throughout the interview,[19] she ultimately confirmed that she was only prescribing controlled substances for two patients: H.D. and M.D. GX 4, at 15, 30. Respondent did not tell Investigators that she had prescribed controlled substances to S.P., even though S.P. was discussed during the Interview. *See id.* at 34–35. According to the Arizona PMP, Respondent issued twenty-four controlled substances prescriptions to S.P. from January 2013 to July 2017. GX 18, at 16–20. Although Respondent's most recent prescription to S.P. was issued approximately five months before the Interview—meaning that Respondent was not actively prescribing to S.P. at the time of the Interview—Respondent had regularly prescribed controlled substances to S.P. for at least the last four years and she testified that she had been involved in S.P.'s care for approximately fifteen years. Tr. 636 (testifying that she had treated S.P. from the ''early 2000s, [ ] until the end of 2017'').

At the hearing, Respondent testified that she had not told Investigators about S.P. because ''she thought . . . they were referring to opiate therapy,'' and she had not prescribed opioids to S.P. since 2013. *Id.* at 642–43; *see also id.* at 699 (''I thought they were referring to more active patients in terms of opiates.''). This testimony was not supported by the record. First, Respondent had prescribed tramadol, an opioid,[20] to S.P. in March 2015,

[17] Respondent also testified that she felt under ''increasing duress'' during the Interview and was confused by some of the questions. Tr. 643.

[18] The parties stipulated that ''Valium is [sic] brand name for diazepam, a Schedule IV controlled substance.'' RD, at 27 (Stipulation No. 8).

[19] *See, e.g.,* GX 4, at 4 (''maybe a dozen [patients], if that''); *Id.* at 14 (''a handful, maybe''); *Id.* at 28 (''less than 5, probably'').

[20] The RD took official notice that tramadol is an opioid. *See* RD, at 102 n.61 (citing Diversion Control Division, Drug & Chemical Evaluation Section, Tramadol, *https://www.deadiversion.usdoj.gov/drug_chem_info/tramadol.pdf* (October 2018) (''Tramadol is an opioid analgesic and opioid activity is the overriding contributor to its pharmacological effects.'')). Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding.'' U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA

according to the Arizona PMP. *See* GX 18, at 18. Second, Investigators were clear with Respondent that they were not only concerned with opioids. So clear, in fact, that Respondent told Investigators that she may have prescribed antibiotics for ''somebody's kid.'' GX 4, at 15. Investigators explained that they did not have ''jurisdiction over antibiotics,'' and asked whether she had prescribed ''benzos [21] or . . . pain meds . . . or anything . . . '' for any other individuals from home. *Id.* Respondent replied, ''I really don't think so,'' ''no.'' *Id.* Investigators asked, ''So, you think just probably [H.D.] and [M.D.] for the controlleds written out of your house?'' *Id.* Respondent replied, ''Mm hm.'' GX 3, at 16:23–16:37; GX 4, at 15. Investigators asked Respondent again, approximately 15 minutes later, whether there was anybody else that she was ''writing controlleds for.'' GX 4, at 30; GX, at 36:20–35. Respondent said, ''I mean, there might be . . . an occasional antibiotic for someone,'' but she confirmed that ''[t]here's nobody else'' that she was writing controlled substances prescriptions for other than M.D. and H.D. *Id.*

Respondent argues that her failure to tell Investigators that she had prescribed to S.P. was not ''an affirmative attempt to mislead the investigators,'' but rather was ''a failure to volunteer information regarding a subject not discussed in an interview.'' Resp Posthearing, at 6. I disagree with Respondent's contention that this topic was not discussed during the Interview. The primary topic of discussion during the Interview was Respondent's treatment of patients from her home, and Investigators asked Respondent several times how many patients she treated from home. *See, e.g.,* GX 4, at 4, 14, 28. And although Investigators did not specifically ask Respondent whether she had ever prescribed controlled substances to S.P., S.P. was a topic of discussion during the interview. *See id.* at 34–35.

However, I agree with Respondent that the record does not support a finding that she affirmatively attempted to mislead Investigators. I found that Respondent was sincere and cooperative during the Interview, and I found Respondent's hearing testimony to be thorough and credible, despite the inconsistencies outlined above. Therefore, I generally merit Respondent's testimony as credible in this Decision, except as noted herein, and except where her testimony conflicts with Dr. Lynch's credible expert testimony.

*E. The Applicable Standard of Care in Arizona*

According to the Controlled Substances Act (hereinafter, CSA), ''[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to . . . distribute, . . . dispense, or possess with intent to . . . distribute[ ] or dispense, a controlled substance.'' 21 U.S.C. 841(a)(1). The CSA's implementing regulations state, among other things, that a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a).

Respondent is licensed as a physician in the State of Arizona. Tr. 624. Dr. Lynch, the Government's medical expert, presented unrebutted expert testimony about the applicable standard of care in Arizona for prescribing controlled substances. Dr. Lynch testified that he considered the following materials in forming his opinions: (1) Ariz. Rev. Stat. Ann. §§ 32–1401(2) and 32–1401(27)(e), defining adequate medical records; (2) The Arizona Medical Board's Reference for Physicians on the Use of Opioid Analgesics in the Treatment of Chronic Pain, in the Office Setting (GX 14; hereinafter, the Arizona Medical Board Guidelines); (3) The CDC's Guideline for Prescribing Opioids for Chronic Pain—United States, 2016 (GX 15; hereinafter, the CDC Guidelines); and (4) The Arizona DHS's November 2014 Arizona Opioid Prescribing Guidelines, (GX 16; hereinafter, the Arizona DHS Guidelines). Tr. 216–20; 366–68.[22] Dr. Lynch testified that the guidelines are meant to influence the standard of care, but ''there's an art to medicine beyond guidelines,'' and the ''Arizona standard of care trumps all these documents.'' *Id.* at 217; 265–67. Dr. Lynch testified that the ''ultimate guide'' for the standard of care is ''what [ ] physicians are doing in the marketplace'' and what Arizona physicians ''believe . . . is right.'' *Id.* at 267; *see also id.* at 217 (explaining that the standard of care is determined by ''what the community does based on all the doctors and how they work together''). Dr. Lynch testified that all of his opinions at the hearing were based on the minimum standard of care in Arizona ''and the documented regulations from the Arizona Medical Board and the Department of Health.'' *Id.* at 216.

There was significant disagreement at the hearing and in the parties' posthearing briefs on a number of issues: (1) Whether a physician must maintain medical records in order to establish a valid doctor-patient relationship, (2) whether the Arizona standard of care requires physicians to conduct urine drug screens and query the Arizona PMP while prescribing controlled substances, and (3) whether it is a violation of the standard of care to prescribe benzodiazepines and opioids concurrently. In accordance with Dr. Lynch's uncontroverted expert testimony and the record as a whole, I make the following findings regarding the applicable standard of care in Arizona.

1. The Record Evidence Supports a Finding That the Applicable Standard of Care in Arizona Requires Physicians To Perform a Physical Examination or Otherwise Establish a Valid, Documented Doctor-Patient Relationship Prior to Prescribing Controlled Substances

Dr. Lynch testified that the applicable standard of care in Arizona requires a physician to conduct a physical examination before prescribing controlled substances. Tr. 176–77. Dr. Lynch's opinion is supported by Arizona statute, which states that it is ''unprofessional conduct'' to ''[p]rescrib[e], dispens[e] or furnish[ ] a prescription medication . . . to a person unless the [doctor] first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship.'' [23] Ariz. Rev. Stat. Ann. § 32–1401(27)(ss) (2017).

Dr. Lynch testified that the Arizona Medical Board and the Arizona DHS typically recommend that physicians do ''a complete physical exam as part of prescribing opioids, but [a physician] can do more limited exams.'' Tr. 177, 196–97. A physical examination can include ''anything from a focused exam on a painful area to a complete exam . . . [of] all the systems, including

and DEA's regulations, Registrant is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). The RD notified the parties of this right, and advised them that they ''may address whether tramadol is not an opioid in any exceptions they may file to this Recommended Decision.'' *Id.* Neither party filed exceptions addressing this issue, so I adopt the RD's finding.

[21] The term ''benzos'' was used interchangeably with ''benzodiazepines'' at the hearing. *See, e.g.,* Tr. 170.

[22] Respondent did not object to the admission of any of these exhibits.

[23] Physicians are excused from complying with this statute under certain circumstances, such as in an emergency medical situations. *See* Ariz. Rev. Stat. Ann. § 32–1401(27)(ss)(i)–(ix). There is no evidence that any of these circumstances were present in this case.

neurologic, cardiac, pulmonary, et cetera.'' *Id.* at 177. Dr. Lynch's testimony is consistent with the Arizona Medical Board's and the Arizona DHS's Guidelines on prescribing opioids for chronic pain. The Arizona DHS provides that a practitioner should complete ''a comprehensive medical and pain related evaluation'' that includes a ''pain focused physical exam.'' GX 16, at 11. The Arizona Medical Board provides that a practitioner should complete an ''initial work-up'' of every patient that includes ''a systems review and relevant physical examination.'' GX 14, at 7. Dr. Lynch testified that the results of the physical examination should be recorded in the patient's medical record. Tr. 196–97 (referencing GX 12).

Dr. Lynch testified about the requirements for establishing a valid doctor-patient relationship. Dr. Lynch testified that a valid doctor-patient relationship is not established unless the physician documents the treatment of the patient. *Id.* at 233, 379, 381. Dr. Lynch testified that the Arizona Medical Board does not define a doctor-patient relationship, but it ''goes to great lengths to define how [doctors] should document.'' *Id.* at 235. Therefore, he has ''always inferred'' that documentation and the doctor-patient relationship are ''very similar things.'' *Id.*[24] Dr. Lynch identified additional aspects of a doctor-patient relationship—that the treatment is ''done in an office setting'' and ''in the normal course of medical practice that occurs [ ] in Arizona every day.'' Tr. 232–35.

There was disagreement at the hearing about the requirements for forming a valid doctor-patient relationship. The ALJ discredited Dr. Lynch's testimony that documentation is required for a valid doctor-patient relationship, because he found that this testimony was based on Dr. Lynch's ''inference,'' not the standard of care.[25] RD, at 14 (referencing Tr. 232, 235, 354, 379, 381). The ALJ determined that ''as far as [he could] tell from Dr. Lynch's testimony, neither the Arizona medical community nor Arizona authorities have reached a settled definition of a doctor/patient relationship.'' *Id.* (citing Tr. 235). Therefore, the ALJ concluded that ''the Government has not proved that to establish a legitimate doctor/patient relationship in Arizona, a doctor must have medical documentation of the treatment provided to the patient.''[26] *Id.*

I disagree with the ALJ's conclusions on this issue. I find that Dr. Lynch's testimony on this issue is consistent with Arizona's interpretation of the requirements for establishing a valid doctor-patient relationship. In *Golob* v. *Arizona Med. Bd.,* 217 Ariz. 505 (2008), the Arizona Court of Appeals evaluated the establishment of the doctor-patient relationship in the context of a physician who was prescribing medication over the internet. *Id.* at 508. Although Dr. Golob conceded that she had not performed physical examinations, she argued that she fulfilled the requirements of Ariz. Rev. Stat. Ann. § 32–1401(27)(ss) because she created ''a previously established . . . doctor-patient relationship'' with each individual by accepting a consultation fee, reviewing responses to a questionnaire, and occasionally directing an operator to ask the individuals additional questions. *Id.* at 510. The court wholly rejected Dr. Golob's argument and upheld the state board's finding that Dr. Golob deviated from the standard of care because she prescribed medication over the internet without establishing an appropriate physician-patient relationship. *Id.* at 508–09. The court found that the state board's interpretation of Ariz. Rev. Stat. Ann. § 32–1401(27)(ss) was aligned with the *American Medical Association's Guidance for Physicians on Internet Prescribing,* which states that in order to establish a ''valid patient-physician relationship,'' a physician ''shall'' do the following: (i) Obtain a reliable history and perform a physical examination, (ii) have a sufficient dialogue with the patient about the risks and benefits of treatment, (iii) follow up with the patient to assess therapeutic outcomes, as appropriate, (iv) maintain a contemporaneous medical record, and (v) include a copy of the electronic prescription in the record. *Id.* at 511 (*citing American Medical Association's Guidance for Physicians on Internet Prescribing,* H–120.949 (June 2003)).

The Arizona Court of Appeals rejected Dr. Golob's argument that the phrase ''previously established doctor-patient relationship'' was impermissibly vague, noting that the phrase pertains to ''trained professionals'' who are ''expected to be knowledgeable about their profession and the context of the rule.'' *Id.* at 513–14 (citing *Brighton Pharmacy, Inc.* v. *Colorado State Pharmacy Board,* 160 P.3d 412, 419–20 (Colo. App. 2007)) (internal quotations omitted); *see also Low Cost Pharmacy, Inc.* v. *Arizona State Bd. of Pharmacy,*

[24] *See also* Tr. 233 (testifying that the Arizona legislature and the Arizona Medical Board mandate that physicians document, so by not documenting, there is no valid doctor-patient relationship); *id.* at 379 (testifying that it is possible to treat a patient without documentation, but ''the fact that [Respondent is] not documenting it makes it not . . . an adequate doctor-patient relationship); *id.* at 381 (''My opinion is medical documentation is an important aspect of a doctor-patient relationship and if you don't have that it's hard for me to believe it is appropriate medical doctor-patient relationship.'')

[25] The ALJ also found that Dr. Lynch's opinion on doctor-patient relationships conflicted with a previous Agency Decision. RD, at 14. The ALJ asked Dr. Lynch whether a physician who prescribed controlled substances to ''his or her minor child . . . over a continued period of time'' without evidence that he had performed a physical examination or a medical history had formed a doctor-patient relationship with the child. Tr. 359–60. Dr. Lynch testified that the physician had not formed a doctor-patient relationship and it was ''completely outside the standard of care to treat your own children with [controlled substances].'' Tr. 359. The ALJ found that this testimony was ''contrary to the Administrator's finding in *Belinda R. Mori, N.P.,* 78 FR 36582, 36587–88 (2013).'' RD, at 14. However, *Belinda* involved a New Mexico practitioner and explored the confines of a valid doctor-patient relationship under New Mexico law. *Belinda R. Mori,* 78 FR at 36588 (''As for whether her failure to create a patient record is, by itself sufficient to establish that she prescribed without a valid practitioner-patient relationship under New Mexico law, I conclude that that was a matter for state authorities.''). ''The CSA . . . generally looks to state law and standards of practice to determine whether a doctor and patient have established a legitimate doctor-patient relationship.'' *Bobby D. Reynolds, N.P., Tina L. Killebrew, N.P., & David R. Stout, N.P.,* 80 FR 28643, 28662 (2015) (internal citation omitted). Thus, I need not assess whether Dr. Lynch's opinion is consistent with the Agency's decision in *Belinda.* I need only assess whether Dr. Lynch's opinion is consistent with Arizona law. As discussed below, I find that Dr. Lynch's testimony that the physician did not form a valid doctor-patient relationship in the ALJ's hypothetical is consistent with my finding that Arizona law requires physicians to maintain contemporaneous medical records to establish a valid doctor-patient relationship. I also find that Dr. Lynch's testimony that it is outside the standard of care for a physician to prescribe controlled substances to his minor child is consistent with Arizona law, which prohibits prescribing to family members. *See* Ariz. Rev. Stat. Ann. § 32–1401(27)(h) (2014) (defining ''unprofessional conduct'' to include ''[p]rescribing or dispensing controlled substances to members of the physician's immediate family'').

[26] The RD states: ''Dr. Lynch agreed that a doctor and patient establish a legitimate doctor/patient relationship when (1) the 'doctor and patient agree that the patient wishes the doctor to examine them'; (2) the patient and doctor agree that 'the doctor should diagnose what [the patient's] medical problems are'; and (3) the 'doctor agrees to treat a patient and the patient agrees to be treated.' '' RD, at 118 (citing Tr. 233–235). I disagree with the ALJ's assessment of Dr. Lynch's testimony. Dr. Lynch agreed that these elements are indicative of, and consistent with, a valid doctor-patient relationship, but he did not testify that a valid doctor-patient is established if these three elements are met. Tr. 233–235. Dr. Lynch agreed that a doctor-patient relationship ''is a gray area to try to define,'' but he reiterated his position that he has always inferred that documentation and a doctor-patient relationship are ''very similar things'' because the ''medical Board goes to great lengths to define how [doctors] should document.'' *Id.* at 235. Neither Respondent nor the ALJ provided support for the ALJ's definition of a doctor-patient relationship in Arizona law or the Arizona standard of care. The ALJ argues that this definition aligns with DEA's understanding of a doctor-patient relationship, as articulated in *Patrick W. Stodola, MD.,* 74 FR 20727, 20729 (2009). However, *Stodola* is not applicable because it involves an Illinois practitioner and does not address Arizona law.

No. 1 CA–CV 07–0547, 2008 WL 2154793, at *6 (Ariz. Ct. App. May 20, 2008) (''[A] previously established doctor-patient relationship is one that a licensed physician, who is expected to be knowledgeable about his or her profession in the context of the rule, should reasonably understand.''). Although *Golob* dealt with internet prescribing, the court stated that physicians who prescribe over the internet are held to the ''very same standard of care that is required of all physicians.'' *Id.* at 514. Thus, I find that *Golob* is consistent with my finding, based on Dr. Lynch's unrebutted and credible expert testimony, that physicians must maintain contemporaneous medical records in order to establish a valid doctor-patient relationship in Arizona.[27]

After *Golob* was decided, the Arizona Medical Board published a Substantive Policy Statement providing physicians with additional guidance on Internet prescribing. *See* Arizona Medical Board Substantive Policy Statement # 12 on Internet Prescribing, Adopted Dec. 6, 2006, available at *https://www.azmd.gov/Files/LawsRules/SPS_12_PolicyStmt.pdf* (herinafter, the Statement). The Statement references the legislature's requirement that a physician conduct a physical examination or have previously established a physician-patient relationship prior to prescribing medications. *Id.* at 2 (citing Ariz. Rev. Stat. Ann. § 32–1401(27)(ss)). The Board notes that the nature of the examination will ''depend on the patient and condition being treated,'' but emphasizes that a documented patient evaluation is required: ''Prior to providing treatment, including issuing prescriptions, . . . a physician must document a patient evaluation, including taking a history and conducting a physical examination adequate to establish the diagnoses and identify underlying conditions and/or contraindications to the treatment recommended or provided.'' *Id.* Although the Statement is ''advisory only,'' and ''does not impose additional requirements or penalties on regulated parties,'' it provides further support for my finding that documentation is required in Arizona to establish a valid doctor-patient relationship. *Id.* at 1.

Therefore, based on Dr. Lynch's unrebutted and credible expert testimony, as supported by evidence in Arizona law and policy, I conclude that in Arizona, a physician must perform a physical examination or otherwise establish a valid doctor-patient relationship prior to prescribing a prescription medication. I also conclude that a valid doctor-patient relationship is not formed unless a physician maintains contemporaneous medical records documenting the treatment of the patient.

2. The Record Evidence Supports a Finding That the Applicable Standard of Care in Arizona Requires Physicians To Take a Medical History and Conduct a Review of Past Relevant Medical Records Prior to Prescribing Controlled Substances

Dr. Lynch testified that the applicable standard of care in Arizona requires that a physician take a medical history before prescribing controlled substances. Tr. 176, 239–40. The purpose of the medical history is to ''define the disease state.'' *Id.* at 176, 239–40. Dr. Lynch testified that a medical history should explore ''when the condition started, what's happened since, what makes it better, what makes it worse, what's been tried, what's failed, [and] what works.'' *Id.* at 176. Dr. Lynch's testimony is supported by the Arizona DHS Guidelines, which state that physicians should complete an evaluation that includes ''a medical, pain-related, and social history.'' GX 16, at 11. The medical history should be documented in the patient's medical records. GX 14, at 12.

Dr. Lynch testified that a physician also must conduct a ''full review of prior records'' in order to ''understand the condition'' and evaluate the effectiveness of past treatments. Tr. 183–84. For example, if a patient is being treated for shoulder pain, a physician should review past medical records in order to understand the following: ''Has there been an MRI or X-rays? Have they seen a surgeon? What was the documentation? What is the diagnosis? Have they been to physical therapy? If so, did it work? If not, you know, what else have they tried?'' *Id.* at 183–84. Dr. Lynch testified that it would not be sufficient for the physician to simply review an MRI or laboratory results. *Id.* at 184. Dr. Lynch's testimony that past medical records must be reviewed is supported by guidance from the Arizona Medical Board and the Arizona DHS. The Arizona Medical Board provides that ''[r]eports of previous evaluations and treatments should be confirmed by obtaining records from other providers, if possible.'' GX 14, at 7. The Arizona DHS provides that ''[c]linicians treating patients with opioids for chronic pain should obtain and review past medical records when possible.'' GX 16, at 8. Dr. Lynch testified that the minimum standard of care in Arizona requires that the review of past medical records be documented in the medical record. Tr. 196–97 (referencing GX 14). Therefore, based on the unrebutted and credible expert testimony of Dr. Lynch, as supported by Arizona guidance, I find that the standard of care in Arizona requires physicians to take a medical history and document that medical history in the patient's medical record before prescribing controlled substances. I also find that a physician must conduct a review of the patient's past relevant medical records prior to prescribing.

3. The Record Evidence Supports a Finding That the Applicable Standard of Care in Arizona Requires Physicians To Perform Periodic Urine Drug Screens and Regularly Query the Arizona PMP, and Document Those Results in the Medical Record

Dr. Lynch testified that the applicable standard of care in Arizona requires that a physician query the Arizona PMP on a regular basis and document the results in the medical record. Tr. 181–82. He testified that regular PMP monitoring became ''strong standard in care'' in 2014 when the Arizona DHS Guidelines were published. *Id.* at 181. Dr. Lynch's testimony is supported by the Arizona DHS Guidelines, which provide that ''[a]ppropriate monitoring for [chronic opioid therapy] includes, at a minimum, . . . periodic query of the [Arizona PMP].'' GX 16, at 8. Dr. Lynch's testimony is also supported by the Arizona Medical Board Guidelines, which recommend that physicians

[27] The ALJ found that the Government ''place[d] too much weight on *Golob's* lone reference to 'a contemporaneous medical record' '' in a ''lengthy block quote of the AMA's policy.'' RD, at 120. He found that the holding in *Golob* is much narrower than the Government asserts—it is merely that a physician may not ''prescrib[e] medication via the internet . . . based exclusively on the results of an internet questionnaire.'' *Id.* I find that *Golob* has more weight than the ALJ concludes. Although the block quote in *Golob* may be lengthy, the length of the quote does not minimize the importance of the five critical components of medical treatment that it highlights. Each component is identified by the Arizona Medical Board and the Arizona DHS as critical to safe prescribing. *See generally* GX 14, 16. The ALJ also finds that ''the Government's reliance on *Golob* conflicts with the testimony of its own expert witness that there's nowhere you can find the definition of a valid doctor/patient relationship.'' RD, at 121. I disagree. Consistent with Dr. Lynch's testimony, the court in *Golob* acknowledges that the Arizona legislature does not define the phrase ''previously established doctor-patient relationship.'' *See Golob,* 217 Ariz. at 513. Finally, the ALJ concludes that the Agency's decision in *Patrick W. Stodola, M.D.,* 74 FR 20727, 20734–45 (2009)—which assessed the establishment of a doctor-patient relationship according to ''many state authorities''—is more on point than *Golob.* RD, at 119–20. However, as stated above, I do not find that *Stodola* informs my decision in this case because it involves an Illinois practitioner and it does not address Arizona law.

query the PMP and document the results in the record. GX 14, at 8.

According to the Arizona DHS Guidelines, the frequency with which a practitioner checks the PMP should be based on the patient's risk of misuse. GX 16, at 13–14. The PMP should be checked ''yearly or more often as indicated'' for low-risk patients, ''every [six] months or more often as indicated'' for moderate-risk patients, and ''every [three] months or more often as indicated'' for high-risk patients. GX 16, at 13–14, 16; *see also* Tr. 277–80.[28] Risk factors include a ''personal or family history of addiction'' and ''[a]berrant drug-related behaviors,'' such as ''obtaining opioids from multiple sources.'' GX 16, at 13.

The Arizona Medical Board states that it will consider the failure to ''mak[e] use of available tools for risk mitigation,'' such as the PMP, as ''inappropriate management of pain'' and a ''departure from best clinical practices.'' GX 14, at 3–4. The Board also states that ''[t]o be within the usual course of professional practice, . . . the prescribing or administration of medications should be . . . accompanied by careful follow-up monitoring of the patient's response to treatment as well as his or her safe use of the prescribed medication.'' *Id.* at 5.

Dr. Lynch testified that physicians should also perform ''periodic urine drug screening'' on patients receiving chronic opioid therapy to ''make sure that [the patients are] compliant with therapy.'' Tr. 182–83, 238–39, 262–63, 271–72. He testified that this requirement is based on guidance from the Arizona DHS and the Arizona Medical Board. *Id.* at 182–83, 238. The Arizona DHS Guidelines provide that ''[a]ppropriate monitoring for [chronic opioid therapy] includes, at a minimum, . . . periodic completion of [urine drug screens].'' GX 16, at 8. The Arizona Medical Board Guidelines state that ''[p]eriodic drug testing may be useful in monitoring adherence to the treatment plan, as well as in detecting the use of non-prescribed drugs.'' GX 14, at 10. Dr. Lynch testified that ''there's disagreement on how often'' urine drug screens should be performed,'' but they should be performed ''at some interval.'' Tr. 198. Dr. Lynch testified that the frequency of drug testing is based on the risk score of the patient. *Id.* at 238. The Arizona DHS recommends that drug testing be conducted with the same frequency as PMP checks, as determined by the patient's risk factors. GX 16, at 13.

Dr. Lynch testified that if a doctor learns that a patient is receiving controlled substances from other providers, the doctor must discuss it with the patient to understand why the patient is receiving controlled substances from other providers and make sure that the doctor is ''okay with it.'' Tr. 281, 323. The doctor must document those discussions in the record, as well as the patient's reason for receiving controlled substances from multiple providers. *Id.*

Notwithstanding this testimony, the ALJ concluded that neither PMP checks nor urine drug screens were required by the minimum standard of care in Arizona. *See, e.g.,* RD, at 88. The ALJ reached this conclusion primarily because he found that the documents that Dr. Lynch referenced as requiring urine drug screens—the Arizona DHS Guidelines and the Arizona Medical Board Guidelines—do not establish the standard of care. RD, at 27–28, 35–36, 88. The ALJ quotes disclaimers that the guidelines ''do[ ] not replace or constrain the Arizona Medical Board's determination of standard of care in individual cases'' and ''should not be used to establish any standard of care.'' RD, at 27–28 (citing GX 14, at 1; GX 16, at 2). The ALJ also references Dr. Lynch's testimony that the guidelines influence the standard of care, but they do not establish it. *Id.* (citing Tr. 217, 265, 267).

Although I agree with the ALJ's assessment of Dr. Lynch's testimony that the guidelines do not independently establish the standard of care, I decline to discredit Dr. Lynch's testimony merely because he referenced the guidelines in formulating his opinions.[29] Dr. Lynch testified that all of his opinions at the hearing were based on the minimum standard of care in Arizona. Tr. 216. He testified that the ''ultimate guide'' for the standard of care is ''what [ ] physicians are doing in the marketplace,'' *id.* at 267, and physicians began conducting urine drug screens in 2011 when ''the CDC started releasing data showing that 19 to 40 percent of patients were abusing or misusing'' the drugs that they were prescribed. *Id.* at 271. Dr. Lynch testified repeatedly that urine drug screens are part of the minimum standard of care in Arizona. *Id.* at 182–83, 238–39, 262–63, 271–72. Dr. Lynch also testified that regular PMP monitoring became ''strong standard in care'' in 2014. *Id.* at 181. Therefore, based on the uncontroverted testimony of the expert witness as supported by state guidance, I conclude that the minimum standard of care in Arizona requires that physicians prescribing opioids regularly query the PMP and periodically conduct urine drug screens.[30]

4. The Record Evidence Supports a Finding That the Applicable Standard of Care in Arizona Requires Physicians to Document Their Justification for Prescribing Opioids and Benzodiazepines Concurrently, and to Avoid Prescribing This Combination If Possible

Dr. Lynch testified about the applicable standard of care in Arizona for prescribing opioids and benzodiazepines concurrently. Tr. 178–80, 244–45, 275, 299, 300–02, 370–72. He referred to this practice as ''co-prescribing.'' *Id.* at 245. Dr. Lynch testified that ''about 1 in 500 patients who take a pain pill will overdose and die every year, which is a very high death rate.'' *Id.* at 182. When opioids and benzodiazepines are combined, the death rate increases by nine times. *Id.* at 180, 302. Dr. Lynch testified that the ''second biggest predictor'' of overdose and death is ''concomitant benzodiazepine use.''[31] *Id.* at 244. In 2014, the Arizona DHS reported that benzodiazepines were involved in thirty to sixty percent of opioid overdose deaths. *Id.;* GX 16, at 19.

Dr. Lynch testified that benzodiazepines are like ''alcohol in a pill form,'' because they ''hit the same receptors in the brain'' as alcohol. Tr. 176. He stated, ''[They] will make you a little bit tired, a little bit less anxious, [and] more relaxed.'' *Id.* Dr. Lynch testified that Xanax,[32] a benzodiazepine, is ''one of the most addictive drugs in the U.S. today.'' *Id.* at 304. Dr. Lynch concluded that Xanax is ''highly sought after,'' ''has a very high street value,'' and ''generally shouldn't be used very much.'' *Id.*

Dr. Lynch testified that ''for at least four years now, the State of Arizona has been urging physicians . . . not to have

[28] The Arizona Medical Board also provides guidance on the frequency of drug screening. The Board advises that ''clinical judgment trumps recommendations for frequency of testing'' for patients being treated for pain, but for patients being treated for addiction, testing should occur ''as frequently as necessary to ensure therapeutic adherence.'' GX 14, at 10.

[29] I also decline to discredit Dr. Lynch's testimony about the standard of care for treating individuals with substance abuse problems simply because he relied on Arizona prescribing guidelines to formulate his opinions. *See* RD, at 86–87.

[30] ''When an administrative tribunal elects to disregard the uncontradicted opinion of an expert, it runs the risk of improperly declaring itself as an interpreter of medical knowledge.'' *Zvi H. Perper, M.D.,* 77 FR 64,131, 64,140 (2012) (citing *Ross* v. *Gardner,* 365 F.2d 554 (6th Cir. 1966)).

[31] Dr. Lynch testified that the biggest factor for predicting overdose and death is dose. Tr. 244.

[32] The parties stipulated that ''Xanax is a brand name for alprazolam, a Schedule IV controlled substance.'' RD, at 27 (Stipulation No. 6).

patients on both [opioids and benzodiazepines].'' *Id.* at 180. He further stated that if a physician is going to prescribe both, he should ''go to great lengths to document the reasons'' and to document the discussions with the patient about the risks and benefits. *Id.* Dr. Lynch discussed the Arizona DHS's and the CDC's recommendations on co-prescribing. *Id.* at 179. The Arizona DHS recommends that ''[c]ombined use of opioids and benzodiazepines should be avoided if possible. If this combination is used, it should be with great caution and informed consent should be obtained.'' GX 16, at 8. The CDC likewise cautions that ''[c]linicians should avoid prescribing opioid pain medication and benzodiazepines concurrently wherever possible.'' GX 15, at 18. Dr. Lynch testified that the Arizona DHS and the CDC also advise physicians not to prescribe opioids along with carisoprodol,[33] which he described as ''a highly diverted and addictive muscle relaxant.'' Tr. 200; *see also* GX 16, at 8, 19 (stating that carisoprodol ''should be avoided'' and ''[p]articular caution should [ ] be exercised when opioids are used with other sedatives/hypnotics''). Dr. Lynch declared that carisoprodol is ''one of the top 10 most diverted drugs in the United States, and it's only FDA approved for two or three weeks of use . . . because patients tend to get addicted to it.'' *Id.* Therefore, I conclude that Dr. Lynch credibly testified that the standard of care in Arizona requires physicians to document their justification for prescribing an opioid and a benzodiazepine (or carisoprodol) concurrently, and to avoid prescribing this combination if possible.

5. The Record Evidence Supports a Finding That the Applicable Standard of Care in Arizona Requires Physicians to Take Extra Precautions When Prescribing to Individuals With Active Substance Use Disorders or a History of Substance Abuse

Dr. Lynch further testified about the applicable standard of care in Arizona for prescribing controlled substances to patients with active substance abuse disorders or a history of substance abuse. Prescribing an opioid or a benzodiazepine to a patient with a substance abuse disorder increases the patient's risk of ''abuse, misuse, overdose, and death.'' Tr. 198. Dr. Lynch testified that the Arizona Medical Board and the Arizona DHS advise that physicians should ''tread very, very lightly if someone is an alcoholic.'' *Id.* at 259. He stated that a physician ''should always get an assessment first by an addiction specialist to . . . set the baseline'' and figure out ''[w]hat exactly is going on? How bad was this? Is it alcohol? Is it poly-substance abuse?'' *Id.* at 259; *see also id.* at 261 (testifying that physicians should ''document the baseline from an addiction specialist'' before prescribing to an alcoholic), 357. Dr. Lynch testified that then, the physician should ''balance[e] the risk[s] and benefits of [the] treatment'' with the patient. *Id.* at 259. He concluded that in general, it is very difficult to ''[b]alanc[e] the risk of opioids . . . because there's a lot of downside to it,'' but if the patient has a ''history of alcoholism, it's going to be almost impossible . . . to balance those scales.'' *Id.* at 259–60. Dr. Lynch stated that if a patient is abusing a drug, but does not have a ''full-on addiction,'' ''there should still be extra caution when prescribing opioids or benzos for that person.'' *Id.* at 329–30. Dr. Lynch also testified that under the ''local standard of care,'' ''someone who is abusing any medication or alcohol should not be getting benzos and opioids at the same time.'' *Id.* at 330–31.

Dr. Lynch's testimony is supported by guidance from the Arizona DHS and the Arizona Medical Board. The Arizona DHS provides that it is an ''absolute contraindication[ ]'' to use chronic opioid therapy on a patient with a ''[d]iagnosed substance use disorder (SUD)[34] not in remission and/or active treatment.'' GX 16, at 12. Dr. Lynch testified that in the context of the Arizona DHS Guidelines, an ''absolute contraindication'' means ''don't do it for any reason at all.'' Tr. 261. The guidelines state that ''[c]linicians should consider consultation, when available, for patients with . . . a history or evidence of current drug addiction or abuse.'' GX 16, at 8.

The Arizona Medical Board also distinguishes between patients with an active substance abuse disorder and a history of substance abuse. The Board advises that ''[p]atients who have an active substance use disorder should not receive opioid therapy until they are established in a treatment/recovery program or alternatives are established such as co-management with an addiction professional.'' GX 14, at 7. The Board advises that a physician treating a patient with a history of substance abuse ''should, if possible, [ ] consult[ ] with an addiction specialist before opioid therapy is initiated (and follow-up as needed).'' *Id.; see also* Tr. 181 (''The Arizona Medical Board . . . mandate[s] that you should have a referral to addiction specialist.''). The Board emphasizes that ''[p]atients who have a history of substance use disorder (including alcohol) are at elevated risk for failure of opioid analgesic therapy to achieve the goals of improved comfort and function, and also are at high risk for experiencing harm from this therapy, since exposure to addictive substances often is a powerful trigger of relapse.'' GX 14, at 7.

Therefore, I conclude that based on the uncontroverted and credible testimony of Dr. Lynch, as supported by Arizona guidance, the applicable standard of care in Arizona requires that: Physicians must get an assessment by an addiction specialist before prescribing opioids to a patient with a history of substance abuse, and they must document the patient's baseline; physicians should not prescribe opioids to individuals who have active substance abuse disorders unless those patients are in active treatment; and, physicians should not prescribe opioids and benzodiazepines concurrently to anyone who is abusing any medication or alcohol.

6. The Record Evidence Supports a Finding That the Applicable Standard of Care in Arizona Requires Physicians To Maintain Contemporaneous Medical Records Documenting the Patient's Treatment

Finally, Dr. Lynch testified that the standard of care in Arizona requires that physicians maintain medical records documenting a patient's treatment. Tr. 233, 247–48, 301, 354. He further testified that the documentation must be contemporaneous with the treatment, and that it is not consistent with the standard of care for a physician to create medical records years after treatment was provided based on memory. *Id.* at 190–91, 346. Dr. Lynch's opinion is supported by Arizona statute, which states that it is ''unprofessional conduct'' to ''fail[ ] or refus[e] to maintain adequate records on a patient.'' Ariz. Rev. Stat. Ann. § 32–1401(27)(e). Under Arizona law, ''adequate records'' must contain, at a minimum, ''sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the

[33] The parties stipulated that ''Soma is a brand name for carisoprodol, a Schedule IV controlled substance.'' RD, at 27 (Stipulation No. 12).

[34] The Arizona DHS defines substance use disorder as ''cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems.'' GX 16, at 5; *see also* Tr. 305–06, 328.

patient's care at any point in the course of treatment.'' Ariz. Rev. Stat. Ann. § 32–1401(2).

The Arizona DHS and the Arizona Medical Board provide additional guidance about what information should be contained in a physician's medical records. The Arizona DHS Guidelines state that ''[o]ngoing medical records should document the patient evaluation, a treatment plan with clearly defined goals, discussion of risks and benefits, informed consent, treatments prescribed, results of treatment, and any aberrant drug-related behavior observed.'' GX 16, at 8, 16. The Arizona Medical Board Guidelines provide that ''[t]he medical record should document the presence of one or more recognized medical indications for prescribing an opioid analgesic and reflect an appropriately detailed patient evaluation.'' GX 14, at 6. They further state that:

Every physician who treats patients for chronic pain must maintain accurate and complete medical records'' that include the following information:

- Copies of the signed informed consent and treatment agreement.
- The patient's medical history.
- Results of the physical examination and all laboratory tests.
- Results of the risk assessment, including results of any screening instruments used.
- A description of the treatments provided, including all medications prescribed or administered (including the date, type, dose and quantity).
- Instructions to the patient, including discussions of risks and benefits with the patient and any significant others.
- Results of ongoing monitoring of patient progress (or lack of progress) in terms of pain management and functional improvement.
- Notes on evaluations by and consultations with specialists.
- Any other information used to support the initiation, continuation, revision, or termination of treatment and the steps taken in response to any aberrant medication use behaviors. These may include actual copies of, or references to, medical records of past hospitalizations or treatments by other providers.
- Authorization for release of information to other treatment providers.

*Id.* (internal citations removed). Further, the Arizona Medical Board's ''10 essential steps of universal precautions'' in assessing and reducing risk include maintaining ''careful and complete records of the initial evaluation and each follow-up visit.'' *Id.* at 16. Based on the uncontroverted and credible testimony of Dr. Lynch, as supported by Arizona guidance, I find that the applicable standard of care in Arizona requires that physicians maintain contemporaneous medical records documenting the patient's treatment.

Having read and analyzed all of the record evidence, I find that Dr. Lynch's credible and uncontroverted testimony is accurately supported by the Arizona guidelines and Arizona law. As such, I afford Dr. Lynch's standard of care testimony controlling weight in this proceeding.

*F. Allegation That Respondent Issued Prescriptions for Controlled Substances Outside the Usual Course of Professional Practice*

I find that Respondent issued two hundred and nine prescriptions to three patients without complying with the minimum requirements of the applicable standard of care in Arizona. Respondent's treatment of each patient was below the applicable standard of care and outside the usual course of the professional practice for numerous reasons outlined below, including that she failed to (1) maintain adequate medical records, (2) perform a physical examination or otherwise establish a valid doctor-patient relationship prior to prescribing, (3) conduct an adequate review of past medical records prior to initiating opioid therapy, (4) query the Arizona PMP and document the results, (5) conduct urine drug screens and document the results, and (6) document a medical justification for co-prescribing opioids and benzodiazepines. Ultimately, I find that there is substantial evidence that Respondent issued two hundred and nine prescriptions outside the usual course of professional practice, and beneath the applicable standard of care in Arizona.

1. Patient M.D.

Respondent issued one hundred and seventeen [35] prescriptions to M.D. from November 23, 2012, to November 19, 2017, for hydrocodone, oxycodone, alprazolam, triazolam, diazepam, acetaminophen with codeine, and chlordiazepoxide.[36] Dr. Lynch testified that the controlled substances prescriptions that Respondent issued to M.D. were not issued in the usual course of professional practice. Tr. 199.

Dr. Lynch testified that ''there were multiple indications that [M.D.] had a possible substance use disorder.'' *Id.* at 191–92; *see also id.* at 198, 293, 306–07, 327–32, 357. He stated that these indications included Respondent's statements to Investigators about M.D.'s alcohol problems and Arizona PMP data showing that Respondent received controlled substances from other providers on at least eighteen different occasions while under Respondent's care, from 2012 to 2017.[37] *Id.* at 191–93

[35] The OSC alleged that Respondent issued twenty-eight prescriptions to M.D. in violation of federal and state law, but the Government admitted evidence at the hearing that Respondent issued one hundred and seventeen prescriptions to M.D. *Compare* OSC, at 3–4 *with* GX 5; GX 18, at 2–7; *see also* RD, at 85, 110. I find that the Government provided Respondent with adequate notice of these additional prescriptions. The Government included photocopies of some of these prescriptions in Government Exhibit 5, and the remaining prescriptions were listed in Government Exhibit 18 (Arizona PMP report). The Prehearing Statement notified Respondent that Dr. Lynch was expected to testify about all of these prescriptions. *See* Govt Prehearing, at 7–10, 13. Respondent did not argue that the Government failed to provide adequate notice of these additional prescriptions, nor did she dispute that she had issued them. *See* RD, at 110. Previous Agency Decisions have stated that ''[t]he primary function of notice is to afford [a] respondent an opportunity to prepare a defense by investigating the basis of the complaint and fashioning an explanation that refutes the charge of unlawful behavior.'' *Wesley Pope, M.D.,* 82 FR 14,944, 14,947 (2017) (internal citation omitted). ''The parameters of the hearing are determined by the prehearing statements,'' and even when an issue is not raised in the OSC or the prehearing statement, ''an issue can be litigated if the Government otherwise timely notifies a [r]espondent of its intent to litigate the issue.'' *Id.* (internal quotations and citations omitted). Although I am including all of the prescriptions alleged, the difference in the number of violations alleged in the OSC and that I have found proven at the hearing does not ultimately affect the sanction I have ordered in this case. *See, e.g., Kaniz Khan-Jaffery M.D.,* 85 FR 45,667, 45,685 (2020) (finding that ''it is truly not the mere number of violations that tip the public interest against Respondent.'').

[36] *See* GX 5, at 1–2, 16–21, 24–25, 32–36, 43–48, 51–56, 65–67, 76–78, 81–82, 88–99, 104–116, 119–20, 123–25, 130–36, 139–44; GX 18, at 2–7; *see also* RD, at 55–57, 85. The parties stipulated that all of these drugs are controlled substances. *See* RD, at 26–27 (Stipulation Nos. 4–6, 8–11). The parties also stipulated that ''Norco is a brand name for hydrocodone'' (Stipulation No. 5), ''Librium is a brand name for chlordiazepoxide'' (Stipulation No. 9), ''Tylenol # 4 is a brand name for acetaminophen with codeine'' (Stipulation No. 10, Tr. 199), and ''Percocet is a brand name for oxycodone'' (Stipulation No. 4). RD, at 26–27.

[37] The RD notes that Dr. Lynch ''failed to mention that during the almost seven years covered by M.D.'s PMP there was only one time where the prescriptions of [Respondent] overlapped the prescriptions of another doctor.'' RD, at 39–40, n.19. Contrary to the RD's assertion, I find that Dr. Lynch directly addressed this issue. The ALJ told Dr. Lynch that he had observed that Respondent's prescriptions typically did not overlap with the other providers' prescriptions, meaning that the patients had already completed the course of medication from the other providers when Respondent prescribed to them. Tr. 363. Dr. Lynch testified that it does not matter whether the patient has run out of medication from the other provider. *Id.* at 364. He testified that it is a violation of the standard of care if a patient is receiving the same drug from multiple providers during the year. *Id.* Dr. Lynch testified that it is a very high-risk behavior to ''jump[ ] around from doc to doc.'' *Id.*

(referencing GX 18). Dr. Lynch testified that Respondent violated the standard of care by prescribing controlled substances to M.D. without ''get[ting] a referral first and document[ing] the baseline from an addiction specialist.'' Tr. 261; *see also id.* at 307 (''[Y]ou should . . . send them to an addiction specialist to figure out how to treat their alcoholism.''); *id.* at 357. Dr. Lynch also testified that Respondent prescribed opioids and benzodiazepines to M.D. at the same time on a number of occasions. *Id.* at 177–78; *see also* GX 18, at 2–7; RX 3, at 2–7. Dr. Lynch testified that under the Arizona standard of care, a physician should not prescribe opioids and benzodiazepines to ''someone who is abusing any medication or alcohol,'' including someone who is a binge drinker. Tr. 331.[38] Dr. Lynch testified that it is an egregious violation of the standard of care to co-prescribe opioids and benzodiazepines without documentation. *Id.* at 275.

Respondent and M.D. confirmed at the hearing that M.D. had a substance abuse disorder, but they characterized it as ''mild.'' Tr. 471, 729. M.D. testified that she told Respondent ''during [their] initial exams and conversations'' that she ''had issues with alcohol in the past.'' *Id.* at 471. M.D. testified that she was ''managing her alcohol problems very well'' when ''Respondent first started caring for her,'' and she did not have ''a binge drinking episode until 2014.'' *Id.* at 474–75. M.D. testified that she discussed the episode with Respondent and Respondent ''referred [her] to a treatment facility in Florida.'' Tr. 471–73. M.D. estimated that she got treatment in April 2015. *Id.* at 474. Respondent testified that she recognized that prescribing opioids and benzodiazepines to M.D. was ''not ideal,'' but she ''sp[oke] to [M.D.] about not using these agents together in any capacity'' and she ''[did not] feel that [M.D.] suffered any negative consequences from it.''[39] *Id.* at 729.

Despite Respondent's and M.D.'s efforts to minimize M.D.'s alcohol problems, it was evident from Respondent's previous statements to Investigators that M.D.'s alcohol problems were significant and active during the timeframe alleged in the OSC, and they were known to Respondent. Respondent told investigators in December 2017 that M.D. ''was removed from [Respondent's] property one time . . . because she was drunk.'' GX 4, at 3. She also told Investigators, ''I can't tell you what this couple years has been like with this addiction, this alcohol issue.'' *Id.* at 7. Thus, I credit Dr. Lynch's expert testimony that Respondent violated the standard of care by prescribing controlled substances to M.D. without getting a referral first and documenting the baseline from an addiction specialist, and I also credit Dr. Lynch's testimony that Respondent violated the standard of care by prescribing opioids and benzodiazepines to an individual with substance abuse problems.[40]

Dr. Lynch also testified that Respondent failed to establish a valid doctor-patient relationship with M.D. *Id.* at 199. Respondent disagreed. Although Respondent initially told Investigators that the individuals that she treated at home were ''more friends'' than patients, and that M.D. was ''more on the side'' than a patient of her practice, GX 4, at 5, 1, Respondent testified at the hearing that she believes that she established a valid doctor-patient relationship with M.D. Tr. 639. I found above based on the credible testimony of Dr. Lynch, as supported by Arizona law, that a physician must document a patient's treatment in order to establish a valid doctor-patient relationship in Arizona. *See supra* II.E.1. Therefore, I credit Dr. Lynch's credible expert testimony that Respondent failed to establish a valid doctor-patient relationship with M.D.

Dr. Lynch testified that Respondent's treatment of M.D. fell beneath the standard of care because her medical records do not contain any of the following: (1) Documentation of a sufficient medical history, Tr. 189–90; (2) documentation of a sufficient physical examination, *Id.* at 191; (3) documentation of informed consent, *id.* at 196; (4) documentation justifying the co-prescribing of opioids and benzodiazepines, *id.* at 180; (5) evidence that Respondent properly addressed the co-prescribing of opioids and benzodiazepines, *id.* at 191; (6) documentation justifying the long-term prescribing of alprazolam, *id.* at 196; (7) evidence that Respondent identified and addressed the controlled substances that M.D. received from other providers, *id.* at 194; (8) evidence that Respondent addressed M.D.'s substance abuse problems, *id.* at 192; (9) evidence that Respondent conducted urine drug screens, *id.* at 194; (10) evidence that Respondent checked the Arizona PMP,[41] *id.* at 279, 358; and (11) evidence that Respondent obtained M.D.'s past medical records and put those records in the context of the patient's treatment plan,[42] *id.* at 194–95.

Despite her failure to document her treatment of M.D., Respondent testified that she conducted a physical examination and took a medical history during her first encounter with M.D. *Id.* at 653–60. Respondent and M.D. testified in detail about the examinations that Respondent performed and the conversations they had about M.D.'s treatment. *See, e.g., id.* at 447–526 (M.D.'s testimony); 653–92 (Respondent's testimony). However, none of those examinations or discussions was documented. Dr. Lynch testified ''it's possible'' to conduct adequate physical examinations and medical histories without documenting them, but the fact that Respondent is not documenting them ''makes it not appropriate, not an adequate doctor/patient relationship.'' *Id.* at 379.

Dr. Lynch testified that Respondent's medical records for M.D. do not comply

at 363. He testified that if a doctor learns that a patient is receiving controlled substances from other providers, the doctor must discuss it with the patient to understand why the patient is receiving controlled substances from other providers and make sure that the doctor is ''okay with it.'' *Id.* at 281, 323. The doctor must document those discussions in the record, as well as the patient's reason for receiving controlled substances from multiple providers. *Id.*

[38] *See also id.* at 307 (''[T]he standard of care on how to treat an alcoholic or someone who has substance use disorder to alcohol is not to put them on opioids and benzos.''), 329–30 (explaining that even if M.D. did not qualify as an alcoholic, she was abusing alcohol, ''and there should still be extra caution when prescribing opioids or benzos'').

[39] Dr. Lynch testified that it is ''not a very good justification'' to say that you told the patient not to take opioids and benzodiazepines together because ''these drugs build up in your system and will stay around for days.'' *Id.* at 245.

[40] Dr. Lynch also testified that Respondent violated the standard of care by prescribing controlled substances to an active substance abuser. Tr. 198, 357. I found above based on Dr. Lynch's uncontroverted expert testimony that it is an ''absolute contraindication[ ]'' in Arizona to use chronic opioid therapy on a patient with a ''[d]iagnosed substance use disorder (SUD) not in remission and/or active treatment.'' *See* II.C. n. 9, II.E.5. (citing GX 16, at 12). I find that the record establishes that M.D. had a ''diagnosed substance use disorder'' at some point during the time period alleged in the OSC, *see, e.g.,* Tr. 471, 729, but the record is less clear on whether M.D. was receiving active treatment. Dr. Lynch's explanation for why he believed that M.D. had an active substance use disorder appears to contemplate that M.D. may have been in treatment: ''I would see someone that's going to treatment rehab is having active substance abuse.'' *Id.* at 357. Although I am unable to conclude that it was an ''absolute contraindication'' for Respondent to prescribe controlled substances to M.D., I find that the record contains substantial evidence that Respondent violated the standard of care by (1) failing to document a baseline from an addiction specialist before prescribing to M.D., and (2) prescribing opioids and benzodiazepines to M.D.

[41] Respondent testified that she thinks she checked the PMP for M.D. once in approximately 2014. *Id.* at 722. However, she did not document the results in M.D.'s medical record, as Dr. Lynch testified was required by the standard of care. *Id.* at 181–82.

[42] M.D. testified that she did not provide past medical records to Respondent. *See id.* at 450, 452–53, 487–88, 491.

with the minimum requirements of the Arizona standard of care. *Id.* at 196–97. Dr. Lynch testified that the Arizona Medical Board has a ''very good document on giving physicians guidance on how to prescribe opioids, and they go into great detail of what must be documented, including informed consent, . . . a sign[ed] [ ] contract understanding the risks and benefits of the opioids, . . . a thorough review of systems, a thorough physical exam[,] . . . periodic urine drug testing, . . . [and a] review [of] prior records.'' *Id.* at 196–97. Dr. Lynch testified that he ''[did not] see any of that provided here.'' *Id.* at 197. Additionally, Dr. Lynch was asked whether Respondent's medical records for M.D. ''sufficiently identify the patient, support the diagnosis, justify the prescribing of controlled substances, accurately document the results, indicate advice and cautionary warnings provided to the patient, and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment,'' and he confirmed that they do not. *Id.* These elements that Dr. Lynch testified are missing from M.D.'s medical records mirror Arizona law's requirements for ''adequate'' medical records. *See* Ariz. Rev. Stat. Ann. § 32–1401(2).

Dr. Lynch testified that Respondent's efforts after the December 2017 Interview to memorialize past treatment of M.D. were not sufficient to show that a medical history or physical examination were performed, because ''memories change over time, and a medical history should be done contemporaneous to doing the medical exam.'' *Id.* at 190–91, 195–96. Dr. Lynch testified that ''creat[ing] a document to show retrospectively what happened during the year'' is ''definitely outside the standard of care, not the intent of the Arizona Medical Board, the Arizona Department of Health, or even the Arizona legislature in their direction on how to deal with medical records.'' *Id.* at 190.

Dr. Lynch testified that Respondent may have ''put [M.D.'s] life at risk'' by failing to comply with the standard of care because of M.D.'s ''clear history of alcoholism, [and] potentially other substance abuse disorders as well,'' which ''puts [her] at risk of abuse, misuse, overdose, and death.'' *Id.* at 197–98. Dr. Lynch acknowledged that Respondent prescribed low doses of controlled substances to M.D., which is ''a mitigating factor,'' but he stated that he believed that Respondent ''put [M.D.] at undue risk by the way she managed [M.D.]'' because of ''the history of alcoholism, plus opioids, plus benzos, plus multiple providers.'' *Id.* at 294.

Based on the credible, uncontroverted testimony of Dr. Lynch and the substantial evidence on the record that M.D. had a history of substance abuse with alcohol, I find that Respondent issued one hundred and seventeen prescriptions to M.D. outside the usual course of professional practice, and beneath the applicable standard of care in Arizona.

2. Patient H.D.

Respondent issued sixty-eight [43] prescriptions to H.D. from February 8, 2013, to December 6, 2017, for hydrocodone, oxycodone, carisoprodol, triazolam, and acetaminophen with codeine.[44] Dr. Lynch testified that the controlled substances prescriptions that Respondent issued to H.D. were not issued in the usual course of professional practice. Tr. 209–10.

Dr. Lynch testified that Respondent's medical record for H.D. does not contain sufficient evidence that Respondent took an adequate medical history or performed an adequate physical examination prior to prescribing controlled substances. *Id.* at 204–05. Dr. Lynch also testified that there is no evidence in Respondent's medical record that Respondent conducted urine drug screens or obtained prior medical records, as required by the standard of care. *Id.* at 205–06. Respondent admitted that she did not check the PMP for H.D. while she was prescribing to H.D. *Id.* at 722.

H.D. testified that Respondent prescribed him opioids for neck and back pain and triazolam for sleep problems related to shift work. *Id.* at 398, 433–34. Respondent also testified that she prescribed triazolam to H.D. for shift work disorder, although there is no mention of shift work disorder in H.D.'s medical file or in the letter that H.D. prepared discussing Respondent's treatment of him. *Compare id.* at 646–47 *with* GX 7. H.D. testified that Respondent conducted a physical examination, took a medical history, and reviewed past medical records on his computer prior to prescribing controlled substances.[45] *See, e.g., id.* at 389–98. H.D. testified that the physical examination of his back and neck occurred ''probably [ ] sometime in 2012,'' and Respondent did not examine his back and neck again because ''it was the same continuing problem.'' *Id.* at 443. I found above based on Dr. Lynch's credible expert testimony that the Arizona standard of care requires physicians to document the physical examination and medical history. *See supra* II.E.1, 2. Therefore, I find that Respondent violated the standard of care by failing to document a medical history and physical examination, even if she performed them.

Dr. Lynch testified that Respondent failed to establish a valid doctor-patient relationship with H.D. Tr. 209–10. Respondent testified that she believes that she established a valid doctor-patient relationship with H.D., *id.* at 639, and H.D. testified that he felt that he had a valid doctor-patient relationship with Respondent. *Id.* at 419. However, I found above that a physician must document a patient's treatment in order to establish a valid doctor-patient relationship in Arizona. *See supra* II.E.1. Therefore, I credit Dr. Lynch's credible expert testimony that Respondent failed to establish a valid doctor-patient relationship with H.D.

Dr. Lynch further identified several instances where Respondent prescribed H.D. an opioid concurrently with carisoprodol or a benzodiazepine, and he testified that this prescribing pattern occurs throughout the entire file. *Id.* at 199–203. Dr. Lynch testified that there is no documentation in H.D.'s medical record explaining why these two substances were prescribed together. *Id.* at 205. Dr. Lynch testified that with ''72,000 deaths per year in the United States due to overdoses, with 1 in 500 patients overdosing and dying[,] [t]here should be great vigilance when a [sic] opioid or benzodiazepines or [carisoprodol] is given to a patient.'' *Id.* at 209. Dr. Lynch testified that Respondent could have done harm to H.D. by prescribing this drug combination. *Id.*

[43] The OSC alleged that Respondent issued seventeen prescriptions to H.D. in violation of federal and state law, but the Government admitted evidence at the hearing that Respondent issued sixty-eight prescriptions to H.D. *Compare* OSC, at 3 *with* GX 5 (prescriptions), GX 18, at 10–15 (PMP data); RD, at 91. I find that the Government provided Respondent with adequate notice of these additional prescriptions in its prehearing statement. *See* Govt Prehearing, at 12–13. Respondent did not argue that the Government failed to provide adequate notice of these additional prescriptions, nor did she dispute that she had issued them. *See* RD, at 110. Ultimately, the difference in the number of the violations alleged in the OSC and those demonstrated at hearing does not affect my findings on the public interest in this case. *See supra* n.35.

[44] *See* GX 5, at 3–6, 10–15, 22–23, 28–31, 37–42, 49–50, 57–64, 72–75, 79–80, 83–84, 87, 100–03, 117–18, 126–29, 137–38, 145–46; GX 18, at 10–15; *see also* RD, at 47–49, 91.

[45] H.D. testified that he showed Respondent blood pressure readings, results of an A1C test, and an MRI report, but none of those records were produced at the hearing. *Id.* at 392. Dr. Lynch testified that a full review of medical records is required by the standard of care, and it is not sufficient for the physician to simply review an MRI or laboratory results. *Id.* at 183–84.

Dr. Lynch also testified that the Arizona PMP shows that H.D. received controlled substances from providers other than Respondent while he was under Respondent's care. *Id.* at 206–07; GX 18, at 10–15. Dr. Lynch identified four instances where H.D. obtained prescriptions from other providers for hydrocodone, acetaminophen with codeine, or carisoprodol—the same controlled substances that Respondent was prescribing. Tr. 206–07; GX 18, at 12–13. Dr. Lynch stated that H.D.'s medical record does not address these prescriptions, as required by the standard of care.[46] *Id.* at 207.

Finally, Dr. Lynch testified that Respondent's medical records for H.D. do not comply with the minimum standard of care because ''there's no contemporaneous documentation of any of the scripts.'' *Id.* at 208. Additionally, Dr. Lynch was asked whether Respondent's medical records for H.D. ''sufficiently identify the patient, support the diagnosis, justify the prescribing of controlled substances, accurately document the results, indicate advice and cautionary warnings provided to the patient, and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment,'' and he confirmed that they do not. *Id.* at 209. These elements that Dr. Lynch testified are missing from H.D.'s medical records mirror Arizona law's requirements for ''adequate'' medical records. *See* Ariz. Rev. Stat. Ann. § 32–1401(2).

Based on the credible, uncontroverted testimony of Dr. Lynch and the substantial evidence on the record, I find that Respondent issued sixty-eight prescriptions to H.D. outside the usual course of professional practice and beneath the applicable standard of care in Arizona.

3. Patient S.P.

Respondent issued twenty-four[47] prescriptions to S.P. from January 3, 2013, to July 16, 2017, for hydrocodone, triazolam, diazepam, tramadol, and clonazepam.[48] During that same timeframe, S.P. was also prescribing controlled substances to Respondent.[49] GX 19, at 1–3. Dr. Lynch testified that the controlled substances prescriptions that Respondent issued to S.P. were not issued in the usual course of professional practice. Tr. 216.

Dr. Lynch testified that Respondent failed to establish a valid doctor-patient relationship with S.P. *Id.* Respondent disagreed. Respondent testified that she believes that she established a valid doctor-patient relationship with S.P. *Id.* at 639. Respondent testified that she treated S.P. from the early 2000s to the end of 2017 ''for a myriad primary care issues.'' *Id.* at 636, 691. S.P. and Respondent testified that Respondent performed physical examinations on S.P. before prescribing controlled substances. *Id.* at 540, 598, 608, 692. S.P. testified that the examinations usually took place in her home. *Id.* at 598. S.P. testified that Respondent examined her on more than ten occasions but she could not recall precisely how many times. *Id.* at 598–99. S.P. testified that Respondent prescribed Xanax and triazolam for shift work sleep disorder. *Id.* at 546, 646. S.P. also testified that Respondent prescribed controlled substances to her for a shoulder and knee injury. *Id.* at 537–38, 541, 592–93. In her lay opinion, S.P. believed that Respondent prescribed controlled substances to her for a legitimate medical purpose. *Id.* at 549–50.

Despite S.P.'s and Respondent's efforts to describe the treatment that Respondent provided to S.P. over a number of years, I found above based on Dr. Lynch's credible expert testimony that the Arizona standard of care requires physicians to document the physical examination and medical history. *See supra* II.E.1.2. I also found above that a physician must document a patient's treatment in order to establish a valid doctor-patient relationship in Arizona. *See supra* II.E.1. Therefore, I credit Dr. Lynch's credible expert testimony that Respondent failed to establish a valid doctor-patient relationship with S.P.

Dr. Lynch testified that Respondent's medical records for S.P. do not comply with the minimum standard of care. *Id.* at 214. He reasoned that there is no documentation of a sufficient medical history or a proper physical examination and there is no explanation of why triazolam and hydrocodone were prescribed. *Id.* at 213. Dr. Lynch testified that Respondent obtained some ''other records'' for S.P. from other physicians, but these records were insufficient to meet the minimal Arizona standard of care because Respondent failed to document ''when they were received, what they mean, [and] any kind of follow-up on it.'' *Id.* at 214–15. ''[T]here's nothing here that anyone could use to treat [S.P.] going forward.'' *Id.* Additionally, Dr. Lynch was asked whether Respondent's medical records for S.P. ''sufficiently identify the patient, support the diagnosis, justify the prescribing of controlled substances, accurately document the results, indicate advice and cautionary warnings provided to the patient, and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment,'' and he confirmed that they do not. *Id.* at 215. These elements that Dr. Lynch testified are missing from S.P.'s medical records mirror Arizona law's requirements for ''adequate'' medical records. *See* Ariz. Rev. Stat. Ann. § 32–1401(2).

Dr. Lynch testified that S.P.'s PMP shows that she received nine different controlled substances from nine different providers from January 1, 2013, to September 4, 2018. *Id.* at 211–12, 343–44; GX 18, at 16–20. Dr. Lynch testified that getting controlled substances from nine different providers is ''a big red flag'' and ''a high-risk behavior,'' even if the patient has an excuse.[50] Tr. 272–73. Dr. Lynch testified

[46] The RD notes that ''Dr. Lynch failed to mention that during the almost seven years covered by H.D.'s PMP none of these four instances of obtaining a controlled substance from a provider other than [Respondent] resulted in a situation where the prescriptions of [Respondent] overlapped the prescriptions of another doctor.'' RD, at 39 n.18 (citing GX 18, at 10–14). As noted above, *see supra* n.37, I find that Dr. Lynch addressed the fact that the prescriptions did not overlap. Generally, I find that the question of whether or not Respondent's prescriptions overlapped with the other providers' prescriptions was not relevant to Dr. Lynch's opinion. The violation of the standard of care, according to Dr. Lynch, is that Respondent failed to document that H.D. was receiving controlled substances from other providers while she was prescribing to him. *See* Tr. 206–07, 281, 323.

[47] The OSC alleged that Respondent issued seven prescriptions to S.P. in violation of federal and state law, but the Government admitted evidence at the hearing that Respondent issued twenty-four prescriptions. *Compare* OSC, at 3 *with* GX 5 (prescriptions), GX 18, at 16–20 (PMP data); *see also* RD, at 95. I find that the Government provided Respondent with adequate notice of these additional prescriptions in its prehearing statement. *See* Govt Prehearing, at 11–13. Respondent did not argue that the Government failed to provide adequate notice of these additional prescriptions, nor did she dispute that she had issued them. *See* RD, at 110.

[48] *See* RX 5, at 4; GX 5, at 7, 9, 26–27, 68–69, 70–71, 85–86, 121–122; GX 18, at 16–20; *see also* RD, at 61–62, 95. The parties stipulated that ''Klonopin is a brand name for clonazepam, a Schedule IV controlled substance.'' RD, at 27 (Stipulation No. 14).

[49] According to the Arizona PMP, S.P. issued thirty prescriptions to Respondent for at least four different controlled substances: Alprazolam, hydrocodone/acetaminophen, triazolam, and testosterone. GX 18, at 1–3.

[50] S.P. testified that three providers on the PMP—Dr. Mortazavi, Dr. Nicoletti, and Dr. Wristen—were colleagues of her primary care provider, Dr. Bessette. Tr. 568–70. These three providers wrote prescriptions for S.P. on Dr. Bessette's behalf, but S.P. testified that she never saw these providers. *Id.* Dr. Lynch acknowledged that four of the providers on S.P.'s PMP shared the same address. *Id.* at 349. Dr. Lynch testified that his concerns would be ''slightly mitigated'' if those doctors worked for the same practice, but he testified that there were still

Continued

that there is no documentation in S.P.'s medical file addressing this behavior, as required by the Arizona standard of care. *Id.* at 213–14, 323. Dr. Lynch also testified that it was outside the standard of care for Respondent to prescribe opioids and benzodiazepines to a patient who was getting these drugs from other doctors, even if Respondent's prescriptions did not overlap with the other doctors' prescriptions.[51] *Id.* at 274, 323, 364–65. He testified that this is especially true because there was no documentation. *Id.* at 274–75; 323.

Dr. Lynch testified that there were red flags that S.P. may have been struggling with ''opioid use disorder'' or ''benzo use disorder,'' including that S.P. received multiple controlled substances from multiple doctors, and that S.P. was prescribing controlled substances to Respondent at the same time that Respondent was prescribing to her. *Id.* at 213–15, 294–95, 297, 307. Dr. Lynch testified that by failing to address these red flags, Respondent ''could have done harm to [S.P.] by her treatment.'' *Id.* at 215, 294–95. Dr. Lynch testified that he would have ''do[ne] a urine drug test,'' ''sen[t] for an assessment,'' and ''ha[d] a conversation about what's going on.'' *Id.* at 295. There is no evidence that Respondent conducted urine drug screens, *id.* at 213, and Respondent admitted that she did not check the PMP for S.P. while she was prescribing to S.P., *id.* at 722.

Based on the credible, uncontroverted testimony of Dr. Lynch and the substantial evidence on the record, I find that Respondent issued twenty-four prescriptions to S.P. outside the usual course of professional practice, and beneath the applicable standard of care in Arizona.

a lot of red flags in the chart. *Id.* at 297. Dr. Lynch also acknowledged that one of the nine providers did not prescribe to S.P. until 2018, and Respondent stopped prescribing to S.P. in 2017. *Id.* at 360–61. Dr. Lynch testified that this fact did not change his opinion. *Id.* at 361.

[51] The RD notes that ''Dr. Lynch failed to mention that during the almost six years covered by S.P.'s PMP none of these instances of obtaining a controlled substance from a provider other than [Respondent] resulted in a situation where prescriptions of [Respondent] overlapped the prescriptions of another doctor.'' RD, at 41 n.20. As noted above, *see supra* n.37, I find that Dr. Lynch addressed the fact that the prescriptions did not overlap. Generally, I find that the question of whether or not Respondent's prescriptions overlapped with the other providers' prescriptions was not relevant to Dr. Lynch's opinion. The violation of the standard of care, according to Dr. Lynch, is that Respondent failed to document that S.P. was receiving controlled substances from other physicians while she was prescribing to him. *See* Tr. 213–14, 323.

## III. Discussion

### *A. Allegation That Respondent's Registration Is Inconsistent With the Public Interest*

Under Section 304 of the CSA, ''[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' 21 U.S.C. 824(a)(4). In the case of a ''practitioner,'' which is defined in 21 U.S.C. 802(21) to include a ''physician,'' Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the . . . distribution[ ] or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). These factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003).

According to Agency Decisions, I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

DEA regulations state, ''[a]t any hearing for the revocation . . . of a registration, the . . . [Government] shall have the burden of proving that the requirements for such revocation . . . pursuant to . . . 21 U.S.C. [§ ] 824(a) . . . are satisfied.'' 21 CFR 1301.44(e). In this matter, while I have considered all of the factors,[52] the relevant evidence is confined to Factors Two and Four. I find that the evidence satisfies the Government's *prima facie* burden of showing that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). I further find that Respondent failed to produce sufficient evidence to rebut the Government's *prima facie* case.

#### 1. Factors Two and Four—the Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

##### (a) Allegation That Respondent Issued Prescriptions for Controlled Substances Outside the Usual Course of the Professional Practice

According to the CSA's implementing regulations, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner

[52] As to Factor One, the evidence in the record is that Respondent has an Arizona medical license, Tr. 624, and there is no evidence in the record of any recommendation from Respondent's state licensing board or professional disciplinary authority. 21 U.S.C. 823(f)(1). State authority to practice medicine is ''a necessary, but not a sufficient condition for registration . . . .'' *Robert A. Leslie, M.D.,* 68 FR at 15230. Therefore, ''[t]he fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of Respondent's DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011).

As to Factor Three, there is no evidence in the record that Respondent has a ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010). Agency cases have therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

As to Factor Five, the Government alleged that Respondent made several false statements to Investigators that should be considered under Factor Five. *See* Govt Prehearing, at 6; Govt Posthearing, at 5–13, 45–48. In this case, I found it more appropriate to address these statements in my assessment of Respondent's credibility as a witness, rather than under Factor Five. *See supra* II.D.

acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). The Supreme Court has stated, in the context of the CSA's requirement that schedule II controlled substances may be dispensed only by written prescription, that ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse . . . [and] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006).

Based on Dr. Lynch's credible and unrebutted expert testimony and the substantial evidence on the record, I found above that Respondent issued two hundred and nine prescriptions for controlled substances beneath the applicable standard of care in Arizona and outside of the usual course of professional practice. *See supra* II.F. Therefore, I find that Respondent violated 21 CFR 1306.04(a).

Respondent admits that she committed unprofessional conduct by failing to maintain adequate medical records. Resp Posthearing, at 8, 12; Tr. 719. However, aside from that failure, Respondent maintains that her treatment of H.D., M.D., and S.P. was appropriate. *See* Resp Posthearing, at 15 (stating that ''[t]he only acknowledged and established deficiency was the maintenance of medical records'').[53] Respondent argues that the Government's ''assumption that the absence of a written record implies the absence of a sufficient medical history or medical examination of each patient'' was ''rebutted by the credible, sworn testimony of M.D., H.D., S.P., and [ ] the Respondent.'' *Id.* at 10. Respondent argues that she conducted ''[t]horough medical histories'' and ''thorough focused physical exams,'' she reviewed relevant diagnostic tests, she devised a treatment plan, she ''periodically assessed'' ''the effectiveness of controlled substance treatment,'' and she made ''referrals . . . to appropriate specialists.'' *Id.* at 15. Respondent emphasizes that H.D., M.D., and S.P. were ''experienced health care professionals'' who ''had a comprehensive grasp of their medical treatment.'' *Id.* at 9.[54] Finally, Respondent argues that the Government failed to prove that she committed additional violations of the standard of care beyond her failure to maintain adequate medical records. *See* Resp Posthearing, at 7–10, 15.

I am not persuaded by Respondent's arguments. First, I cannot agree with Respondent that she performed adequate physical examinations, conducted adequate medical histories, and otherwise appropriately treated her patients when there is no documentation of that treatment. The Agency has repeatedly emphasized that ''[c]onscientious documentation is . . . not just a ministerial act, but a key treatment tool and vital indicator to evaluate whether the physician's prescribing practices are within the usual course of professional practice.'' *Cynthia M. Cadet, M.D.,* 76 FR 19,450, 19,464 (2011) (internal citation and quotation omitted); *see also Kaniz F. Khan-Jaffery, M.D.,* 85 FR 45667, 45686 (2020) (''DEA's ability to assess whether controlled substances registrations are consistent with the public interest is predicated upon the ability to consider the evidence and rationale of the practitioner at the time that she prescribed a controlled substance—adequate documentation is critical to that assessment.'').

The Arizona Medical Board echoes this sentiment, emphasizing that adequate documentation is critical in assessing a physician's compliance with the standard of care. The Guidelines state: ''The Board will consider the use of opioids for pain management to be for a legitimate medical purpose if it is based on sound clinical judgment and current best clinical practices, *is appropriately documented,* and is of demonstrable benefit to the patient.'' GX 14, at 5 (emphasis added). The Guidelines further state that ''[t]he Board will judge the validity of the physician's treatment of a patient on the basis of *available documentation,* rather than solely on the quantity and duration of medication administered.'' *Id.* at 6 (emphasis added). Finally, the Guidelines state that ''[t]he Board will not take disciplinary action against a physician for deviating from this Reference when *contemporaneous medical records* show reasonable cause for such deviation.'' GX 14, at 6 (emphasis added). The Arizona legislature, the Arizona Medical Board, and the Arizona DHS provide detailed guidance on what must be documented, including a medical history, a physical examination, and sufficient information to support the diagnosis and justify the treatment. *See supra* II.E.6 (citing GX 14, GX 16, and Ariz. Rev. Stat. Ann. § 32–1401(2)). Dr. Lynch testified that the medical record is also known as the ''medical/legal record,'' because ''it's accepted that when we go through [the] process'' of ''document[ing] exactly what we talked about, what we did, . . . then it actually happened, and we did it.'' Tr. 301; *see also id.* at 354. He has ''always been taught if you didn't document it, you didn't do it.'' *Id.* at 301.

Without documentation, there is no way to adequately assess Respondent's treatment of her patients. Witness accounts of treatment that happened years before are not reliable.[55] Respondent's witnesses occasionally acknowledged that their recollection was limited. For example, M.D. and S.P. could not reliably estimate how many times Respondent had physically examined them. M.D. testified, ''that's a lot of years. I don't recall.'' *Id.* at 502. S.P. testified that she ''[did not] recall that number'' and she could not ''give [ ] an estimate.'' *Id.* at 598. When pressed, S.P. testified that she was examined ''several times'' and agreed that it was more than ten. *Id.* at 599. S.P. also could not recall what condition Respondent first treated her for, or when Respondent first prescribed her controlled substances. *Id.* at 536–37. This lack of precision is insufficient to assess Respondent's compliance with the standard of care.

I am also not persuaded by Respondent's argument that her only violation of the standard of care was her failure to maintain adequate medical records. I found above that the Government's expert credibly testified that Respondent committed numerous violations of the Arizona standard of care in her treatment of H.D., M.D., and S.P. *See supra* II.F. For example, I found that Respondent failed to document adequate medical histories and physical examinations, failed to conduct urine drug screens, failed to check the Arizona PMP, failed to document a justification for co-prescribing opioids and benzodiazepines, and failed to adequately review past medical records—all required by the Arizona standard of care. I also found that Respondent violated the standard of care by prescribing opioids and benzodiazepines to an individual with known substance abuse problems.

[53] *See also* GX 13 (Respondent's August 22, 2018 letter to Investigators stating that Respondent's ''standard practice has always been to prioritize patient care and safety,'' and emphasizing that Respondent established valid doctor-patient relationships with H.D., M.D., and S.P. and treated them for legitimate medical conditions).

[54] *See also* Tr. 730 (testifying that ''[o]ne of the benefits of having medical providers as patients is they are very cognitively aware of the situation they're entering into,'' but noting that it ''doesn't negate [her] responsibility'' to them).

[55] I also noted above that the witness accounts have limited probative value because the witnesses have a strong incentive to provide testimony that supports that Respondent's prescribing to them was lawful and legitimate. *See supra* II.D.

Respondent argues that she did not violate the standard of care by failing to conduct periodic urine drug screens and regular PMP checks, because neither tool was required by state law. Resp Posthearing, at 9. Respondent also argues that the patients informed her about all of the controlled substances that they received from other physicians, so she ''had sufficient knowledge of all the medical treatment and prescriptions'' to enable her to ''exercise properly her clinical judgment as to each patient.'' *Id.; see also* Tr. 733 (testifying that she had no ''significant reason to utilize those [tools] because [she] knew each time they were receiving something from somebody else'' and she ''believed what [they] were telling [her]'').

I disagree with Respondent that PMP checks and urine drug screens were not required by the standard of care. *See supra* II.E.3. Although Dr. Lynch acknowledged that neither tool was mandated by the Arizona legislature,[56] I found above that Dr. Lynch credibly testified that both are part of the minimum standard of care in Arizona. *Id.* This expert testimony was unrebutted and it was supported by the Arizona DHS Guidelines and the Arizona Medical Board Guidelines. *Id.* I also disagree with Respondent that it was appropriate for her to rely on her patients' accounts of the prescriptions that they received from other physicians. Dr. Lynch testified that it is important to use objective tools, such as urine drug screens and the PMP, to monitor patient compliance because ''1 in 500 patients [is] dying from opioids and 33 percent . . . [are] abusing or misusing'' opioids. Tr. 198.[57] Additionally, I found based on Dr. Lynch's unrebutted expert testimony that if Respondent knew that her patients were receiving controlled substances prescriptions from other physicians, the standard of care required her to at the very least, document that fact in the patient records, as well as her discussions with the patients resolving the red flag. *See id.* at 281, 293, 323.

Respondent implies that her patients required less monitoring because they are experienced health care professionals who ''had a comprehensive grasp of their medical treatment including their controlled substance prescriptions from other medical providers.'' Resp Posthearing, at 9. However, Respondent did not offer any evidence that medical providers are less susceptible to drug abuse and diversion than other patients. And in fact, the evidence showed that H.D., M.D., and S.P. were all receiving controlled substances from other providers, while under Respondent's care, which is considered an ''[a]berrant drug-related behavior[ ]'' that requires more frequent monitoring, according to the Arizona DHS. *See supra* II.E.3 (citing GX 16, at 13).

Respondent's failure to utilize objective monitoring tools was particularly egregious with M.D., due to her known substance abuse problems. Dr. Lynch testified that M.D. is a high-risk patient because she is an alcoholic. Tr. 272. According to the Arizona DHS, high-risk patients should be screened every three months or more often, as indicated. *Id.* at 277–80; GX 16, at 13–14. Objective testing was also important with M.D. because the evidence suggests that Respondent lacked objectivity with M.D. because of their close personal relationship. Respondent told Investigators in 2017 that she had been ''duped'' by M.D. before and that she can ''be a little too trusting sometimes, especially if it's someone . . . [she] care[s] about.'' GX 4, at 7.

Respondent also argues that she did not violate the Arizona standard of care by prescribing opioids and benzodiazepines concurrently because ''the use of [these drugs] is allowable and is a matter of medical judgment.'' Resp Posthearing, at 7 (citing GX 16; Tr. 262, 299). Respondent references Dr. Lynch's testimony that co-prescribing is not a violation of the standard of care and his testimony that a physician's clinical judgment trumps the guidelines. Tr. 280. I find that Respondent's reliance on Dr. Lynch's testimony about clinical judgment is misplaced,[58] but I agree with Respondent that Arizona does not ban co-prescribing in individuals who do not have substance abuse problems.[59] *See supra* II.E.4. However, I found above that the Arizona standard of care requires physicians to document their justification for co-prescribing and their discussions with the patient about the risks and benefits of co-prescribing. *Id.* Because Respondent did not document either, I have found that she violated the standard of care. *See supra* II.F.

In addressing her failure to obtain past medical records, Respondent argues that she was ''well acquainted'' with each patient and ''openly discussed all past medical care'' before initiating treatment. Resp Posthearing, at 9. Respondent references M.D.'s testimony that they discussed all of M.D.'s past experiences, medications, and providers before Respondent prescribed any medication. *Id.* (citing Tr. 450). Respondent also cites H.D.'s testimony that Respondent took a complete medical history and reviewed his laboratory and MRI results on his computer before prescribing. *Id.* (citing 391–92, 394, 396).

I disagree with Respondent that these efforts excused her from complying with the requirement of obtaining past medical records. Dr. Lynch testified that physicians should conduct a full review of relevant prior records in order to ''understand the condition'' and evaluate the effectiveness of past treatments. *See supra* II.E.2. The Arizona Medical Board emphasizes that it is important to verify patients' reports of past treatment by obtaining past medical records: ''Information provided

[56] Respondent's counsel asked Dr. Lynch whether PMP checks and urine drug screens were ''required'' in Arizona, and Dr. Lynch testified that they were not. *Id.* at 270–71, 280. Dr. Lynch clarified that urine drug screens are part of the minimum standard of care in Arizona, even though they are not required by state law: ''[Y]ou keep using words like requirements or standard of care or law. There are a lot of bodies that spend a lot of time trying to influence the standard of care, and they'll come out in the form of requirements—or not requirements but recommendations. And then the doctors typically will get in line, but they don't always adopt all of it. But it certainly has been the standard of care to urine drug test in the State of Arizona for the last seven or eight years.'' *Id.* at 271.

[57] *See also* Tr. 183 (''between 19 and 40 percent of patients will be abusing or misusing the opioid that you're writing . . . so urine drug screening is one objective way that we know that they're taking the medication''), *id.* at 237–38 (physicians should ''trust'' what their patients are telling them, ''but verify'' their reports using tools such as urine drug screens and PMP reports); GX 14, at 10 (''Drug testing is an important monitoring tool because self-reports of medication use are not always reliable and behavioral observations may detect some problems but not others.'').

[58] Dr. Lynch agreed with Respondent's counsel that a physician is ''always supposed to use clinical judgment'' and that ''clinical judgment trumps the recommendations.'' Tr. 262. Dr. Lynch also agreed that a ''doctor's clinical judgment could cause her to prescribe treatment for somebody or not use drug testing, even though the guidelines recommend it, if, in her clinical judgment, it wasn't necessary.'' *Id.* at 262–63. However, Dr. Lynch also testified that the Arizona DHS and the Arizona Medical Board ''each give eight to 10 things that you should do,'' and while physicians may ''have a right to kind of say, well, I'm not going to do that or I'm not going to do this,'' they should generally follow the guidance. *Id.* at 263. Dr. Lynch continued, ''[I]t doesn't seem like any of the recommendations are followed, and that's my concern.'' *Id.* Thus, it may have been permissible for Respondent to exercise her clinical judgment not to follow a specific recommendation, but Dr. Lynch testified that she violated the standard of care by ignoring the ''totality of'' the Arizona DHS's and the Arizona Medical Board's recommendations. *Id.* Respondent also violated the standard of care by failing to document why her ''clinical judgment'' caused her to disregard recommendations of the Arizona DHS and the Arizona Medical Board.

[59] I found above that Respondent violated the standard of care by co-prescribing to M.D based on Dr. Lynch's expert testimony that it is a violation of the standard of care to co-prescribe to individuals with substance abuse problems. *See supra* II.F. (citing Tr. 331).

by the patient is a necessary but insufficient part of the evaluation process. Reports of previous evaluations and treatments should be confirmed by obtaining records from other providers, if possible.'' GX 14, at 7. It is critical that physicians take steps to prevent the abuse and diversion of controlled substances by using objective tools to verify the veracity of patients' statements and their compliance with their treatment plan. *See Roy S. Schwartz,* 79 FR 34,360, 34,363 (2014) (''[D]iversion occurs whenever controlled substances leave 'the closed system of distribution established by the CSA . . . .' '').

Respondent also defends her decision to prescribe controlled substances to M.D. despite M.D.'s substance abuse problems. Respondent states that she had ''first-hand knowledge'' of M.D.'s alcohol problems because she discussed them with M.D. ''during [their] initial conversations and medical examinations.'' Resp Posthearing, at 8 (citing 471, 479, 655). Respondent argues that M.D. was ''managing her alcohol problems very well'' when ''Respondent first started caring for her,'' and that M.D. did not have ''a binge drinking episode until 2014.'' *Id.* (citing Tr. 474–75). Respondent discussed the episode with M.D. and ''referred [her] to a treatment facility in Florida.'' *Id.* (citing Tr. 471–73). Thus, Respondent argues that the Government's ''claim that [her] treatment of M.D. fell below the standard of care because she allegedly [ ] failed to refer M.D. to an Addiction Specialist . . . is simply not true.'' *Id.*

I appreciate that Respondent discussed M.D.'s substance abuse problems with her and referred her to a treatment facility. However, Respondent did not document any of those efforts. Dr. Lynch testified that physicians should ''define'' and ''document the baseline from an addiction specialist'' before prescribing to an alcoholic because ''addiction docs do a really good job of doing a history.'' *See supra* II.E.5, II.F.1 (citing Tr. 261, 357). Dr. Lynch also testified that prescribing opioids and benzodiazepines to anyone who is abusing alcohol is a violation of the standard of care, and that prescribing these drugs with no documentation is an ''egregious'' violation. *See supra* II.E.5, II.F.1 (citing Tr. 275, 331). There is no evidence that Respondent ever performed a urine drug screen on M.D., despite M.D.'s alcoholism and her high risk behavior of receiving controlled substances from different providers on eighteen occasions. *Id.* (citing Tr. 191–93). And Respondent only checked the PMP once in at least five years of prescribing controlled substances to M.D. Tr. 722. Thus, Respondent's standard of care violations with M.D. go beyond her alleged failure to refer M.D. to a treatment facility.

Respondent also argues that Dr. Lynch is not an expert in treating substance abuse disorders [60] and that he ''admitted he did not even have enough medical records to render an expert opinion on M.D.'s alcohol consumption.'' Resp Posthearing, at 8. Although Dr. Lynch testified that he did not have enough documentation to definitively diagnose M.D. with a substance abuse disorder, he testified that it is ''more than likely'' that she had a substance abuse disorder. Tr. 338–39; *see also* II.F.1. (citing Tr. 191–92, 198, 293, 306–07, 327–32, 357). There is substantial evidence on the record to support Dr. Lynch's testimony that M.D. had substance abuse problems, including Respondent's statements to Investigators in 2017 that M.D. was an alcoholic and M.D.'s testimony that she was diagnosed with a ''mild'' substance abuse disorder. *See supra* II.F.1. Moreover, it is not necessary to definitively diagnose M.D. with a substance abuse disorder because Dr. Lynch testified that even if M.D. did not have a ''full-on addiction,'' she was ''still [] abusing [alcohol],'' and it is a violation of the standard of care to prescribe opioids and benzodiazepines to ''someone who is abusing any medication or alcohol.'' Tr. 329–31. Dr. Lynch testified that prescribing opioids or benzodiazepines to an individual with a substance abuse disorder ''puts the person at risk of abuse, misuse, overdose, and death,'' and Respondent may have put M.D.'s life at risk because of her clear history of alcoholism. *Id.* at 197–98.

Finally, Respondent asserts that ''[t]he government did not produce any evidence of diversion in three days of testimony,'' nor did the government ''produce any evidence of harm to the public health of a patient of the Respondent.'' Resp Posthearing, at 11. However, Respondent does not cite legal authority for the proposition that I must find evidence of diversion or harm before I may suspend or revoke a registration. Agency Decisions have found that DEA has the authority to revoke a DEA registration in the absence of evidence of diversion if the registrant's ''prescribing practices . . . create a substantial risk of diversion'' or even the ''opportunity for diversion.'' *See, e.g., Garrett Howard Smith, M.D.,* 83 FR 18882, 18905 n.32 (2018) (citing *Dewey C. Mackay, M.D.,* 75 FR 49,956, 49,974 n.35 (2010) (''Accordingly, under the public interest standard, DEA has authority to consider those prescribing practices of a physician, which, while not rising to the level of intentional or knowing misconduct, nonetheless create a substantial risk of diversion.''); *Paul J. Caragine, Jr.,* 63 FR 51592, 51601 (''Careless or negligent handling of controlled substances creates the opportunity for diversion and could justify revocation or denial.'')). I found that Respondent issued numerous prescriptions beneath the applicable standard of care and outside of the usual course of professional practice in Arizona. I also found that Respondent failed to adequately respond to red flags that her patients may have been abusing or diverting the controlled substances that she prescribed, which constitutes ''acts inconsistent with the public interest.'' *See supra* II.F; *Wesley Pope, M.D.,* 82 FR 14944, 14966 (2017) (internal quotations and citations omitted).

(b) Violation of State Law

In addition to alleging that Respondent violated 21 CFR 1306.04(a), the OSC alleged that Respondent violated Arizona law by prescribing controlled substances (1) without maintaining adequate patient records, (2) without conducting a physical examination or previously establishing a valid doctor-patient relationship, and (3) while engaging in conduct that was or might have been harmful or dangerous to the health of the patient. *See* OSC, at 3 (citing Ariz. Rev. Stat. Ann. §§ 32–1401(27)(e), (ss), (q)).[61] I find that the Government has proven these allegations by substantial

[60] As discussed above, I find that Dr. Lynch was sufficiently qualified to opine on M.D.'s substance abuse problems. *See supra* II.C.

[61] This statute has been updated approximately yearly over the last decade. Throughout my Decision, I will refer to the version of the statute that became effective on August 9, 2017, consistent with how to statute is referenced in the OSC. *See* OSC, at 2. Although there have been substantive changes to the statute during the time period at issue, none of them impact my Decision. In September 2013, the statute was modified to clarify that a ''mental health status examination'' may be performed in lieu of a physical examination. Additionally, various revisions clarified that examinations may be performed virtually through telemedicine encounters. Because there is no evidence that Respondent performed a mental status examination in lieu of a physical examination, or performed examinations virtually, I find that these changes do not impact my Decision.

The lettering of the statute's various provisions has also changed. On April 26, 2018, subsection (q) was changed to subsection (r) and subsection (ss) was changed to subsection (tt). Throughout my Decision, I will refer to these provisions by their original lettering, consistent with how they were cited in the OSC. *See* OSC, at 2.

evidence, at least with respect to certain prescriptions.

i. Respondent Violated Ariz. Rev. Stat. Ann. § 32–1401(27)(e) by Failing To Maintain Adequate Medical Records

I find that the substantial evidence on the record supports a finding that Respondent violated Arizona law by issuing two hundred and nine prescriptions without ''maintain[ing] adequate records.'' Ariz. Rev. Stat. Ann. § 32–1401(27)(e). Arizona law provides that ''adequate records'' must contain, at a minimum, ''sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.'' Ariz. Rev. Stat. Ann. § 32–1401(2). Respondent did not maintain contemporaneous medical records for any patient that satisfied the requirements of the statute. *See supra* II.F; *see also* Tr. 197, 209, 215 (Dr. Lynch's testimony confirming that Respondent's medical records failed to meet the above criteria); *id.* at 719 (Respondent's testimony acknowledging that she committed unprofessional conduct by failing to maintain adequate medical records).

ii. Respondent Violated Ariz. Rev. Stat. Ann. § 32–1401(27)(ss) by Failing to Physically Examine or Otherwise Establish a Doctor-Patient Relationship Prior To Prescribing Controlled Substances

Additionally, I find that the substantial evidence on the record supports a finding that Respondent violated Ariz. Rev. Stat. Ann. § 32–1401(27)(ss) in issuing some, or all, of the prescriptions at issue by failing to physically examine or otherwise establish a doctor-patient relationship prior to prescribing controlled substances. Arizona law states that it is ''unprofessional conduct'' to ''[p]rescrib[e], dispens[e] or furnish[] a prescription medication . . . to a person unless the [doctor] first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship.'' Ariz. Rev. Stat. Ann. § 32–1401(27)(ss) (2017). I found above that in order to establish a valid doctor-patient relationship in Arizona, a physician must maintain medical records documenting the patient's treatment, *see supra* II.E.1, and I concluded that Respondent failed to establish valid doctor-patient relationships with H.D., M.D., and S.P.[62] *See supra* II.F. I also found above that Respondent failed to document sufficient physical examinations for each patient.[63] *Id.*

Respondent argues that she conducted thorough, focused physical examinations, despite her failure to document them. *See* Resp Posthearing, at 10, 15. However, I found above based on Dr. Lynch's credible and uncontroverted testimony that the Arizona standard of care requires physicians to document physical examinations. *See* supra II.E.1. (citing Tr. 196–97; GX 12, at 28). Consistent with Dr. Lynch's testimony, the Arizona Medical Board has deemed physicians' records to be inadequate under Ariz. Rev. Stat. Ann. § 32–1401(27)(e) based on a failure to document physical examinations. For example, the Board found that a physician violated section (e) when he issued eleven controlled substances prescriptions to a friend without maintaining medical records. *In the Matter of Steven M. Rayle, M.D.,* 2017 WL 3461215, at *1–2 (Aug. 3, 2017). In support of its conclusion that the physician's records were inadequate, the Board stated that a physical examination must be documented:

> The standard of care requires a physician to document a patient evaluation, including history and physical examination adequate to establish a diagnosis, identify underlying conditions, and monitor for effectiveness, side effects, and adverse effects of the medication. Respondent deviated from the standard of care by repeatedly prescribing medications to Patient 1 without documenting a history and/or physical exam, and without monitoring for efficacy, side effects or adverse outcomes.

*Id.* at *1.[64]

Even if I were to conclude that Respondent had performed adequate physical examinations, despite her failure to document them, the substantial record evidence would still support a finding that Respondent violated section Ariz. Rev. Stat. Ann. § 32–1401(27)(ss), at least with respect to certain prescriptions. The record evidence demonstrates that Respondent did not perform a physical examination every time she prescribed a controlled substance,[65] which the statute requires in the absence of a previously-established doctor-patient relationship.[66] Thus, any time

[62] Although Respondent testified at the hearing that she believes that she established valid doctor-patient relationships with H.D., M.D. and S.P., *see* Tr. 639, I find that my conclusion that Respondent failed to establish valid doctor-patient relationships is consistent with Respondent's initial statements to Investigators that the individuals that she treated at home were ''more friends'' than patients, and that M.D. was ''more on the side'' than a patient of her practice. GX 4, at 5, 11. The Arizona Medical Board has initiated disciplinary actions alleging violations of Ariz. Rev. Stat. Ann. § 32–1401(27)(ss) based on similar facts. *See, e.g. In the Matter of Warren Moody, M.D.,* No. MD–07–0874A, 2007 WL 3375035 (Oct. 16, 2007) (summarily suspending physician's license for various forms of misconduct, including prescribing controlled substances to friends without maintaining medical records); *In the Matter of Brian R. Briggs, M.D.,* No. MD–15–0164A, 2017 WL 554258 (Feb. 2, 2017) (issuing a Letter of Reprimand and placing respondent on probation for prescribing controlled substances to a live-in girlfriend—who was also receiving opioids from other providers—without maintaining medical records and without ''perform[ing] and document[ing] an appropriate physical and mental examination''); *In the Matter of David Landau, M.D.,* No. MD–17–0777A, 2018 WL 2192279 (Apr. 16, 2018) (issuing a Letter of Reprimand against a physician for various forms of misconduct, including prescribing controlled substances to a friend without maintaining adequate medical records); *see also In the Matter of Joshua D. Holland, M.D.,* No. MD–08–1020A, 2009 WL 2461330 (Aug. 6, 2009) (entering a Consent Agreement with the respondent for various forms of misconduct, including failing to maintain adequate medical records required by Ariz. Rev. Stat. Ann. § 32–1401(27)(e), because the respondent prescribed controlled substances to two close personal friends without a ''documented physician-patient relationship'' and without documenting a rationale for the prescriptions). Although I do not rely on these Board decisions as espousing any particular interpretation of Arizona's laws, I find that they provide support for Dr. Lynch's testimony and for my ultimate conclusions about Arizona law.

[63] There is no evidence that Respondent performed a mental status examination in lieu of a physical examination prior to prescribing.

[64] *See also In the Matter of Thomas J. Petrone, M.D.,* No. MD–08–0059A, 2009 WL 349716 (Ariz. Med. Bd. Feb. 5, 2009) (finding that respondent's records were inadequate because ''he did not document a physical examination or include past medical records in the patient's charts and he prescribed medications and escalated doses of opioids without therapeutic indications''); *In the Matter of Mark D. Goldberg, M.D.,* No. MD–07–0128A, 2009 WL 981092 (Ariz. Med. Bd. Apr. 2, 2009) (finding that respondent's medical records were inadequate because there was no documentation of a history, a physical examination, or the medication administered).

[65] *See, e.g.,* Tr. 441–44 (H.D.'s testimony that not all of the prescriptions that Respondent issued were based on in-person encounters and Respondent only performed a targeted examination of his back once), Tr. 502 (M.D.'s testimony that Respondent performed focused physical examinations ''when things changed or [she] had different symptoms''); GX 13, at 2 (Respondent's letter dated August 22, 2018, stating that ''[p]hysical exams and in person discussions are not utilized each and every time a prescription is called in to a pharmacy.'')

[66] A plain language reading of the statute supports this interpretation. The statute prohibits ''prescribing, dispensing, or furnishing a prescription medication . . . unless the licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship.'' There is no language limiting the application of the statute to initial prescriptions. The phrase ''initial prescription'' is used elsewhere in the Arizona code. *See* Ariz. Rev. Stat. Ann. § 32–3248 (2018) (placing restrictions on ''initial prescriptions'' for Schedule II controlled substances). Additionally, the fact that the statute excuses a physician from performing a physical examination if there is a ''previously established a doctor-patient relationship'' implies that that statute will be

Respondent prescribed a controlled substance without performing a physical examination, Respondent violated section (ss). I cannot conclude with certainty how many times Respondent violated this statute because Respondent did not maintain any documentation, or offer sufficient evidence of when she performed physical examinations.

Overall, I find that there is substantial evidence that Respondent violated Ariz. Rev. Stat. Ann. § 32–1401(27)(ss), based on Dr. Lynch's credible expert testimony that Respondent failed to establish valid doctor-patient relationships and document adequate physical examinations. Any such violation weighs against Respondent's continued registration under Factors Two and Four.

iii. Respondent Violated Ariz. Rev. Stat. Ann. § 32–1401(27)(q) By Committing Conduct That Might Have Been Harmful or Dangerous to the Health of Her Patients

I also find that the substantial evidence on the record supports a finding that Respondent violated Arizona law by issuing two hundred and nine prescriptions while ''[c]ommitting any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.'' Ariz. Rev. Stat. Ann. § 32–1401(27)(q). The Arizona Court of Appeals has acknowledged that this statute is ''potentially overly inclusive,'' because it is broad enough to encompass ''many appropriate forms of medical treatment [that] entail potential harm,'' such as radiation, chemotherapy, and most prescription drugs. *Webb* v. *Ariz. Bd. of Med. Exam'rs,* 48 P.3d 505, 511 (Ariz. Ct. App. 2002) (rejecting appellant's argument that Ariz. Rev. Stat. Ann. § 32–1401(27)(r) was unconstitutionally vague). The court concluded that the Arizona legislature could not have intended to proscribe ''any form of treatment that entails potential danger or harm,'' but rather must have intended to ''proscribe only those forms of treatment whose potential or actual harm is *unreasonable* under the circumstances, given the applicable standard of care.'' *Id.* There is no requirement that the state board ''make an express finding that potential or actual harm is 'unreasonable under the circumstances.''' *Osborne* v. *Arizona Medical Board,* No. 1 CA–CV 16–0250, 2017 WL 2544508, at *4 (Ariz. Ct. App. June 13, 2017) (internal citation omitted).

I find that the substantial evidence on the record supports a finding that Respondent's prescribing to H.D., M.D., and S.P. might have been harmful or dangerous to their health. Dr. Lynch testified that patients who are taking pain pills have a one in five hundred chance of overdosing and dying, ''which is a very high death rate.'' Tr. 182–83. He stated that when opioids and benzodiazepines are combined, the death rate increases by nine times. *Id.* at 302. Respondent could have caused harm by prescribing this dangerous combination of controlled substances without maintaining medical records; without documenting any justification for the prescriptions; without obtaining past medical records to confirm the patients' past treatment; without utilizing monitoring tools, such as the PMP and urine drug screens; without adequately addressing red flags of abuse and diversion, such as doctor shopping; and without adequately addressing M.D.'s substance abuse problems. *See supra* II.F; *see also* Tr. 197–98 (Dr. Lynch's testimony that Respondent's prescribing may have ''put [M.D.'s] life at risk'' because of M.D.'s clear history of alcoholism); *id.* at 205, 209 (Dr. Lynch's testimony that Respondent could have harmed H.D. by prescribing opioids and benzodiazepines without any documented justification); *id.* at 213–15, 294–95, 297, 307 (Dr. Lynch's testimony that Respondent could have harmed S.P. by failing to address red flags of opiate use disorder or benzodiazepine use disorder). Further, the Arizona Medical Board has initiated disciplinary actions alleging violations of Ariz. Rev. Stat. Ann. § 32–1401(27)(q) based on similar articulations of potential harm.[67]

For all these reasons, I find that the Government has proven by substantial evidence that Respondent violated Ariz. Rev. Stat. Ann. § 32–1401(27)(q).

In conclusion, I find that the Government has proven by substantial evidence that Respondent issued two hundred and nine controlled substance prescriptions outside of the usual course of professional practice and beneath the applicable standard of care in the State of Arizona in violation of 21 CFR 1306.04(a) and Ariz. Rev. Stat. Ann. § 32–1401(27)(e), (q), and (ss).[68] As Respondent issued these prescriptions without complying with her obligations under the CSA and Arizona law, I find that Factors Two and Four weigh in favor of revocation. *See George Mathew, M.D.,* 75 FR 66138, 66148 (2010)). Overall, I find that the Government has established a *prima facie* case that Respondent's continued registration is inconsistent with the public interest.

## IV. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration is inconsistent with the public interest, the burden shifts to the Respondent to show why she can be entrusted with a registration. *Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases). Respondent has not ensured me that she can be trusted with a registration.

The CSA authorizes the Attorney General to ''promulgate and enforce any

applied to every prescription that a physician issues, because it suggests that a physician who has established a doctor-patient relationship has discretion over when to perform a physical examination.

[67] *See, e.g., In the Matter of Thomas J. Petrone, M.D.,* No. MD–08–0059A, 2009 WL 349716, at *3 (Ariz. Med. Bd. Feb. 5, 2009) (finding that there was ''potential harm of misuse, addiction, overdose, and death'' when ''[r]espondent dispensed opioids to [three individuals] in the absence of any documented therapeutic indications''); *In the Matter of Leonard A. Jasinski, M.D.,* MD–09–0625A, 2009 WL 6038216, at *1 (Ariz. Med. Bd. Feb. 11, 2009) (finding that there was potential for harm from respondent's prescribing to his stepson, who had a prior history of opiate dependence, because the prescribing ''may have exacerbated [his stepson's dependence] and may have prevented him from obtaining appropriate medical treatment and intervention''); *In the Matter of Mark R. Austein, M.D.,* Nos. MD–14–0230A, MD–14–1060A, MD–15–1027B, 2017 WL 554260, at *3 (Ariz. Med. Bd. Feb. 2, 2017) (finding that ''abuse, addiction, and/or diversion'' could have resulted from respondent's failure to monitor his buprenorphine patients for treatment compliance); *Osborne* v. *Arizona Medical Board,* No. 1 CA–CV 16–0250, 2017 WL 2544508, at *3–5 (Ariz. Ct. App. June 13, 2017) (affirming the superior court's order upholding the Arizona Medical Board's conclusion that respondent caused the ''potential for overdose and death'' by prescribing excessive dosages of opioids, failing to document a clear rationale for dosage escalations, failing to account for co-morbid conditions, and failing to recognize clear signs of opioid misuse and diversion).

[68] The RD found that Respondent issued two hundred and nine prescriptions to H.D., M.D., and S.P. outside the usual course of professional practice and not for a legitimate medical purpose, in violation of federal law. *See, e.g.,* RD, at 90, 94, 99. Although the RD implied that the Government had failed to meet its burden of proving certain state law violations, the RD ultimately sustained all of the Government's state law allegations. *Compare Id.* (stating that ''the Government's allegation that [Respondent] issued prescriptions outside the usual course of professional practice and without a legitimate medical purpose, in violation of 21 U.S.C. 841(a)(1), 21 CFR 1306.04(a) and Ariz. Rev. Stat. Ann. § 32–1401(27)(e), (q), and (ss), is SUSTAINED'') *with* RD, at 88–90, 92–93, 97, 118–21 (disagreeing with the Government's conclusion that a physician must maintain medical records in order to establish a valid doctor-patient relationship, and concluding that Respondent physically examined and formed valid doctor-patient relationships with H.D., M.D., and S.P.), *id.* at 83 (stating that the ''Arizona Revised Statute, which the Government cited to in the OSC, does not share 'a substantial relationship to the CSA's purpose of preventing substance abuse and diversion' ''), *id.* at 84 (noting that section (q) is ''undeniably broad''); *see also* Govt Posthearing, at 15 (taking exception to the RD's ''fail[ure] to evaluate any of the testimony and exhibits against the backdrop of Ariz. Rev. Stat. Ann. § 32–1401(27)(q)'').

rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.'' 21 U.S.C. 871(b). This authority specifically relates ''to 'registration' and 'control,' and 'for the efficient execution of his functions' under the statute.'' *Gonzales* v. *Oregon, supra,* 546 U.S. at 259. A clear purpose of this authority is to ''bar[ ] doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking.'' *Id.* at 270.

In efficiently executing the revocation and suspension authority delegated to me under the CSA for the aforementioned purposes, I review the evidence and arguments Respondent submitted to determine whether or not she has presented ''sufficient mitigating evidence to assure the Administrator that [s]he can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21931, 21932 (1988)). '''Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.' '' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR at 23853; *John H. Kennnedy, M.D.,* 71 FR 35705, 35709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62884, 62887 (1995).

The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

Here, Respondent has presented no evidence on the record that I could consider as accepting responsibility. Respondent maintained throughout these proceedings that she believes that her prescribing to the three individuals in question was proper and she made statements throughout the proceeding that minimized her misconduct. *See* Resp Posthearing, at 15; *supra* III.A.1.a. For example, Respondent testified that she was ''not the least bit concerned that any of [the prescriptions that she issued] were given away, diverted, or used inappropriately.'' Tr. 729. Respondent also minimized the potential dangers of prescribing controlled substances to M.D., despite M.D.'s substance abuse problems. Respondent testified that she ''hope[d] . . . [M.D.] was able to clarify that she has a *mild* alcohol use disorder,'' and while she recognized that prescribing opioids and benzodiazepines to M.D. was ''not ideal,'' she testified that she ''sp[oke] to [M.D.] about not using these agents together in any capacity'' and ''[did not] feel that [M.D] suffered any negative consequences from it.'' *Id.* (emphasis added). Although Respondent and M.D. downplayed M.D.'s struggles with alcohol at the hearing, it was evident from Respondent's previous statements to Investigators that M.D.'s alcohol problems were significant and disruptive. Respondent told investigators in December 2017 that M.D. ''was removed from [Respondent's] property one time . . . because she was drunk.'' GX 4, at 3. She also told Investigators, ''I can't tell you what this couple years has been like with this addiction, this alcohol issue.'' *Id.* at 7. Dr. Lynch testified that Respondent put M.D.'s life at risk with her prescribing because of M.D.'s history of alcoholism and her history of receiving controlled substances from multiple providers. Tr. 197–98, 294. I am concerned by Respondent's unwillingness to acknowledge the dangers of prescribing dangerous combinations of controlled substances to an intimate partner who has substance abuse problems, without utilizing any monitoring tools or maintaining medical records.

Respondent did admit that she failed to maintain adequate medical records. *See, e.g., id.* at 719; Resp Posthearing, at 8, 12. However, Respondent occasionally minimized the importance of diligent recordkeeping in her testimony. She testified that she ''probably took some notes'' when she was providing treatment to H.D., but she ''probably threw them away.'' Tr. 694–95, 717–18. When asked why she would throw away records pertaining to a patient, Respondent said it was ''[b]ecause [she] felt like [she] had the information [she] needed to treat him.'' *Id.* at 718. When asked again why she destroyed the records, she replied: ''Because I knew what it was. For example, if a patient is being managed for hypertension, it's a trend phenomenon. If you're managing two patients for hypertension, it's usually fairly easy to remember the trends for two people.'' *Id.* Respondent's implication that she could have safely treated H.D. without maintaining medical records is contrary to Arizona's emphasis on the importance of maintaining contemporaneous medical records. *See supra* II.E., III.A.1.a.

Regardless, Respondent's admission that she failed to maintain adequate medical records was not a sufficient acceptance of responsibility, because I found above that Respondent's standard of care violations went beyond her failure to maintain adequate medical records. *See supra* II.F, III.A.1. Respondent did not accept responsibility for any of those additional violations. In all, Respondent failed to explain why, in spite of her misconduct, she can be entrusted with a registration. ''The degree of acceptance of responsibility that is required does not hinge on the respondent uttering 'magic words' of repentance, but rather on whether the respondent has credibly and candidly demonstrated that [s]he will not repeat the same behavior and endanger the public in a manner that instills confidence in the Administrator.'' *Jeffrey Stein, M.D.,* 84 FR 46968, 49973 (2019); *see also Singh, M.D.,* 81 FR at 8248 (''until . . . [a] Respondent can convincingly show he [or she] accepts the authority of the law and those bodies charged with enforcing it and regulating his [or her] activities, granting [ ] a DEA registration will gravely endanger the public.'').

Even if Respondent's acceptance of responsibility for her wrongdoing had been sufficient such that I would reach the matter of remedial measures, Respondent has not offered adequate remedial measures to assure me that I can entrust her with a registration. Respondent testified that she has closed her private practice and indicated that she does not intend to resume it in the future. Tr. 637, 731–33; Resp Posthearing, at 8, 12–13. Respondent also testified that her documentation will be better in the future because she will only use her registration in the emergency room ''where there are electronic medical records that [she] fill[s] out on every single patient.'' Tr. 732. Respondent testified that she thinks she is a better documenter in the emergency room than in her private practice because the company that she works for has told her that her documentation is adequate enough for billing. *Id.* at 691.

These remedial measures primarily address Respondent's documentation failures. They do not address my additional concerns about Respondent's prescribing, such as prescribing

potentially dangerous combinations of controlled substances, failing to utilize monitoring tools, and prescribing controlled substances to an individual with a substance abuse disorder.[69] The fact that Respondent has closed her private practice is not a sufficient remedial measure. If Respondent retains her registrations, she will continue to prescribe controlled substances in the emergency room. Respondent has not taken any steps to assure me that she will prescribe controlled substances in a lawful manner in any setting, including the emergency room.[70]

The Agency also looks to the egregiousness and extent of the misconduct, which are significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases). Respondent argues that her misconduct was not egregious enough to warrant revocation because it involved the treatment of ''three fellow health care professionals in a small private practice,'' ''[i]t was not a fee-generating business,'' ''none of [the individuals] suffered any adverse effects from the care[,] and there was no harm to the public health.'' Resp Posthearing, at 12. Respondent characterizes this case as a recordkeeping case involving three recordkeeping failures, and she references an Agency Decision in which the Agency declined to revoke a pharmacy's registration after the pharmacy accepted responsibility for three recordkeeping violations. *Id.* (citing *Terese Inc.,* 76 FR 46843 (2011)).[71]

The ALJ agreed with Respondent that revocation was not warranted. Although he acknowledged that Respondent had not fully accepted responsibility as previous Agency Decisions have required, he found that Respondent ''candidly acknowledged'' that she failed to maintain adequate medical records, which was the ''main reason her prescriptions violated DEA regulations.'' RD, at 114. The ALJ found that the Government had not proven that Respondent's violations were ''egregious enough or severe enough to warrant outright revocation,'' because all three patients were healthcare professionals who testified at the hearing, Respondent established a doctor-patient relationship with each individual and demonstrated a commanding grasp of their medical issues, and Respondent closed her private practice. *Id.* at 115–23. Additionally, the ALJ found that Dr. Lynch's opinions were primarily based on Respondent's failure to maintain adequate medical records. Thus, the ALJ concluded that ''this is a factually unique case'' that warrants a ''unique sanction,'' and recommended a three-month suspension of one of Respondent's six DEA registrations,[72] followed by various restrictions on Respondent's registrations.[73] *Id.* at 123, 127 (internal quotations and citations omitted).

I appreciate the ALJ's careful analysis and hard work on this case. I also appreciate the hard work and dedication of Respondent's attorney. However, I cannot agree with Respondent that this is a recordkeeping case that deserves a remedy short of revocation, nor can I agree with the ALJ's conclusion that this is a ''unique case'' that warrants a

[69] Respondent states in her posthearing brief that she completed courses in ''Safe and Effective Opioid Prescribing While Managing Acute and Chronic Pain'' and ''Introduction to Prescribing Opioids for Pain Management.'' Resp Posthearing, at 13. I agree with the RD that these courses should not be considered as remedial evidence because no testimony was offered about them and they are not mentioned in Respondent's curriculum vitae. *See* RD, at 80 n.45 (referencing RX 1).

[70] Respondent admitted into evidence an affidavit from the Emergency Department Medical Director at the hospital where she has been working since 2014. RX 11. The affidavit states that ''[Respondent] is an outstanding Emergency Room physician, is dedicated to delivering high quality, compassionate patient care and she succeeds at same.'' *Id.* at 1. The affidavit also states that ''[Respondent] is an exceptional asset to Holy Cross and the vastly underserved population that is treated there,'' and ''if [Respondent] were to lose her DEA registration she would be unable to work at Holy Cross Hospital, which would be devastating to the community.'' *Id.* While I appreciate that Respondent is a highly-qualified and hardworking physician, and that she has made substantial contributions to her community, community impact evidence is considered to be irrelevant to DEA revocation proceedings. *See, e.g., Frank Joseph Stirlacci, M.D.,* 85 FR 45229, 45239 (2020) (declining to consider Respondent's argument that his revocation ''would deprive the low-income and homeless patients . . . of his medical services''); *Mark De La Lama, P.A.,* 76 FR 20011, 20020 n.20 (2011) (declining to consider a registrant's service to underserved and underinsured persons). Although this affidavit could be relevant to my determination of whether I can entrust Respondent with a DEA registration, I find that this affidavit has little weight because the affiant was not subject to cross examination at the hearing.

[71] I agree with the RD that *Terese* is not relevant to my sanction determination because it is a pharmacy case that involves three recordkeeping violations of a different nature than those involved in this case. RD, at 126–27.

[72] The RD proposes that registration number BH3877733—which Respondent testified that she uses to prescribe controlled substances in her private clinical practice and in the emergency room, Tr. 631—be suspended for three months. RD, at 127. Following the suspension period, the RD proposes that Respondent may resume using that registration in the emergency room, but she must provide DEA with a signed writing that she will cease private practice. *Id.* It further proposes that Respondent may seek permission from DEA to resume private practice two years after the Agency's final order, but she must provide evidence that she has attended trainings on medical recordkeeping and prescribing controlled substances. *Id.*

Respondent has five additional DEA registrations that are connected with five air medical bases in Southern Arizona that she supervises: FH2922169, FH2922157, FH2922133, FH2922121, and FH2922119. *Id.* at 630–31. Respondent testified that these registrations are ''used exclusively to obtain medications for flight crews'' and she does not use them to prescribe controlled substances to patients. *Id.* at 630–31633. The RD recommends that these five registrations remain active during the suspension period, but only ''to order, purchase, or obtain controlled substances for the air bases that [Respondent] supervises for Air Methods.'' RD, at 128. I reject the RD's (and Respondent's) contention that Respondent's various DEA registrations should be subjected to different sanctions based on the manner in which Respondent uses them. *See* RD, at 122 (stating that the Government ''ha[d] advanced no evidence whatsoever concerning [Respondent's] prescribing of controlled substances in the emergency room or how she has handled controlled substances as director of Air Methods''); Resp Posthearing, at 2, 10 (arguing that ''the evidence presented by Government [sic] at the Order to Show Cause hearing related solely to conduct that involved Respondent's DEA Registration BH 3877733'' and there is ''no evidence justifying any adverse action against Respondent's FH DEA Registrations''). My finding that Respondent's continued registration is inconsistent with the public interest applies equally to all of Respondent's DEA registrations, regardless of how she uses those registrations. In cases involving pharmacies with multiple DEA registrations, DEA has held that it may revoke the pharmacy's second registration where misconduct has been proven with respect to ''owners, officers, or key employees'' of the first pharmacy who ''have influence over the management or control of the second pharmacy.'' *See Superior Pharmacy I and Superior Pharmacy II,* 81 FR 31310, 31341 n.71 (2016) (*citing Lawsons & Sons Pharmacy and Fenwick Pharmacy,* 48 FR 16140, 16141 (1983); *Orlando Wholesale, L.LC.,* 71 FR 71,555, 71,557 (2006)). This rule has also been applied to practitioners who hold multiple registrations. *See Roberto Zayas, MD,* 82 FR 21410, 21430 (revoking physician's Florida registration based on allegations concerning his Texas registration and where there was no evidence that the Florida registration was being used). In fact, when the Agency orders revocation, as a matter of course it orders revocation of pending applications in the same jurisdiction. *See e.g., Leslie Pompy, M.D.,* 84 FR 57749, 57762 (2019); *Kaniz F. Khan-Jaffery, M.D.,* 85 FR at 45686. In this case, all of the registrations at issue are based in Arizona and I have found that Respondent violated the applicable standard of care in Arizona and state law; therefore, I find that her registrations in Arizona are inconsistent with the public interest and I apply my sanction to all of her Arizona registrations.

[73] The ALJ found that the Agency's Decision in *Joseph Gaudio, M.D.,* 74 FR 10083 (2009) was instructive in crafting a remedy. RD, at 124–26. However, Dr. Gaudio's violations were of a different nature than Respondent's. While *Gaudio* involved a physician who prescribed controlled substances for a short period of time to individuals over the internet, the case before me involves a physician who prescribed controlled substances to close friends over a long period of time without maintaining any medical records. *See* Tr. 636. Moreover, the sanction imposed in *Gaudio* was more substantial than the remedy proposed by the ALJ in this case. In *Gaudio,* the Agency suspended the respondent's registration for one year and ordered that the registrant provide a sworn statement accepting responsibility for his violations of the CSA in order to get his registration back. *Id.* at 10,095. By contrast, in this case, the ALJ proposes that only one of Respondent's registrations be suspended for three months, while her other registrations remain active for certain purposes. RD, at 127–28.

''unique remedy.'' Rather, I find that revocation is the appropriate remedy based on the egregiousness of Respondent's conduct, her failure to accept responsibility, and her failure to ensure that I can entrust her with a registration in the future.

I do not find that Respondent's misconduct was mitigated by the fact that she prescribed to health care professionals. There was no testimony or evidence at the hearing that the standard of care for treating healthcare professionals is different from the standard of care for treating individuals who are not healthcare professionals. Nor was there any evidence that healthcare professionals are any less susceptible to drug abuse or diversion. In fact, there were red flags that indicated that these individuals may have been abusing or diverting controlled substances. *See supra* II.F, III.A.1.a. And while I appreciate that H.D., M.D., and S.P. all presented as credible witnesses with impressive credentials who believed that Respondent treated them for legitimate medical conditions, and that Respondent was knowledgeable about their medical conditions, there is not sufficient documentary proof to assure me that Respondent was not merely handing out controlled substances to her friends. I found above that a physician must maintain medical records in order to establish a valid doctor-patient relationship in Arizona, and I also found that documentation is critical to effective enforcement of the CSA. *See supra* II.E., III.A.1.a. With a regulated community of nearly two million registrants,[74] DEA must be able to rely on physicians to maintain complete and accurate medical records justifying their prescribing decisions.

In finding that revocation was not warranted, the ALJ concluded that recordkeeping was Respondent's ''primary fault.'' RD, at 116. He found that Dr. Lynch's opinions in the case were primarily based on Respondent's failure to maintain adequate medical records. *Id.* at 115–16 (citing Tr. 354, 379, 381, 741–42). The ALJ placed much emphasis on Dr. Lynch's testimony that ''we wouldn't be here today if it was [sic] for the lack of documentation.'' *Id.* (citing Tr. 741). He also referenced Dr. Lynch's testimony that ''it's possible'' to conduct adequate physical examinations and medical histories without documenting them, but ''the fact [Respondent is] not documenting it makes it not appropriate, not an adequate doctor/patient relationship.'' *Id.* at 115 (citing Tr. 378–79). The ALJ interpreted Dr. Lynch's testimony as meaning that ''Respondent's DEA registrations would not be subject to revocation had she only documented what she had done.'' *Id.* at 116. However, given the extensive testimony of Dr. Lynch regarding Respondent's multiple violations of the standard of care, I interpret Dr. Lynch's statement to refer to the fact that without documentation, it is not possible to adequately assess the appropriateness of Respondent's actions.

Additionally, Dr. Lynch testified that Respondent's standard of care violations went beyond her failure to document. Specifically, Dr. Lynch testified that Respondent committed ''eight standard of care violations'' that ''add up to pretty substandard care.'' [75] Tr. 355; *see also id.* at 742 (testifying that ''most of it is the medical record,'' but ''there are a lot of deficiencies, eight that I pointed out in my report''). Dr. Lynch testified that some of these violations were ''egregious'' and dangerous and Respondent could have done harm with her prescribing. *See* II.F. Overall, I do not minimize Dr. Lynch's testimony about Respondent's many standard of care violations simply because he testified that his decision was primarily based on Respondent's failure to document.

I decline to adopt the ALJ's proposed remedy because it imposes administrative burdens on DEA to monitor Respondent's registrations and it does not adequately protect the public. Respondent has not given me any assurances that she will prescribe controlled substances appropriately in the future nor has she accepted responsibility for any of her violations of the CSA. In the midst of an opioid epidemic where Arizona ranked sixth highest in the nation for drug overdose deaths in 2010, *see* GX 16, at 4, I find that revocation is the appropriate remedy given the egregiousness of Respondent's conduct and her failure to accept responsibility. I found above that Respondent could have done harm to her patients by prescribing dangerous combinations of controlled substances without maintaining medical records; without documenting any justification for the prescriptions; without obtaining past medical records to confirm the patients' past treatment; without utilizing monitoring tools, such as the PMP and urine drug screens; without adequately addressing red flags of abuse and diversion, such as doctor shopping; and without adequately addressing M.D.'s substance abuse problems. *See* III.A.1.b.iii. For those same reasons, I find that Respondent's conduct was egregious. Respondent acknowledged at the hearing that combining opioids and benzodiazepines might increase the risk of respiratory depression or sedation, Tr. 665–66, yet she prescribed this combination to M.D., even though M.D. had known substance abuse problems. *See supra* II.F.1. Dr. Lynch testified that opioids have a ''very high death rate,'' and the death rate increases by nine times when opioids are combined with benzodiazepines. Tr. 180, 182, 302. It was dangerous for Respondent to prescribe these controlled substances to M.D., especially without utilizing any monitoring tools to ensure that M.D. was not abusing or diverting the drugs. These tools would have provided the objectivity that Respondent was lacking with regard to M.D., as Respondent stated in the Interview that she had been ''duped'' by M.D. before and that she can ''be a little too trusting sometimes, especially if it's someone . . . [she] care[s] about.'' GX 4, at 7. It was also egregious for Respondent to prescribe controlled substances to S.P.—a former intimate partner who was also prescribing controlled substances to Respondent—without maintaining any medical records documenting that treatment. Dr. Lynch testified that such an arrangement is ''way outside the standard of care'' and he would ''have a real concern'' with it because ''it's akin to treating yourself.'' Tr. 187.

In sanction determinations, the Agency has historically considered its interest in deterring similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Joseph Gaudio, M.D.,* 74 FR 10083, 10095 (2009); *Singh,* 81 FR at 8248. I find that considerations of both specific and general deterrence weigh in favor of revocation in this case. A sanction short of revocation would send a message to the regulated community that a practitioner can prescribe controlled substances to individuals over long periods of time without maintaining even basic medical records, without performing or documenting objective assessments of whether they were abusing or diverting controlled substances in violation of state and federal law, even in the face of red flags

[74] *See* DEA FY 2020 Budget Request *available at https://www.justice.gov/jmd/page/file/1142431/download.*

[75] One of the eight violations that Dr. Lynch summarized was prescribing controlled substances to close personal friends. Tr. 355. As discussed above, *see* II.C., I found that Dr. Lynch's testimony on prescribing to close friends was primarily framed as an ethical violation, not a standard of care violation. Therefore, I do not give any weight in my Decision to Dr. Lynch's testimony that long-term prescribing to someone with whom you are in a close personal relationship is a violation of the standard of care.

indicating such abuse and diversion, and continue to maintain a controlled substances registration in spite of the violations and without accepting responsibility. Further, there is simply no evidence that Respondent's egregious behavior is not likely to recur in the future such that I can entrust her with a DEA registration; In other words, the factors weigh in favor of revocation as a sanction.

I will therefore order that Respondent's registrations be revoked as contained in the Order below.

**Order**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration Nos. BH3877733, FH2922119, FH2922121, FH2922133, FH2922157, and FH2922169 issued to Carol Hippenmeyer, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Carol Hippenmeyer, M.D. to renew or modify these registrations, as well as any other application of Carol Hippenmeyer, M.D., for additional registrations in Arizona. This Order is effective July 26, 2021.

**D. Christopher Evans,**

*Acting Administrator.*

[FR Doc. 2021–13526 Filed 6–24–21; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice includes the summaries of three petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before July 26, 2021.

**ADDRESSES:** You may submit your comments including the docket number of the petition by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Jessica Senk, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Jessica D. Senk, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Senk.Jessica@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

**I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

**II. Petitions for Modification**

*Docket Number:* M–2021–016–C.

*Petitioner:* Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

*Mine:* Itmann No. 5 Mine, MSHA ID No. 46–09569, located in Wyoming County, West Virginia.

*Regulation Affected:* 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

*Modification Request:* The petitioner requests a modification of the existing standard, 30 CFR 75.507–1(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Itmann No. 5 Mine in West Virginia. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace EX in return air outby the last open crosscut.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR–800 which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream™ product line that created issues with providing acceptable supply service levels. Because of those issues, 3M discontinued the Airstream™ in June 2020, and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR–800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. The 3M™ Versaflo™ TR–800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of ''ia''. (ATEX refers to European directives for controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135°C Da, $-20$ °C ≤ Ta ≤ +55 °C, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR–800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR–800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR–800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs that shall be kept with the equipment or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M™ Versaflo™ TR–800 and the ''blocked filter'' alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs to be used in the return air outby the last open crosscut shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR–800 shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs that will be used in the return air outby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR–800 or the CleanSpace EX in the return air outby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX in the return air outby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR–800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133 in the 3M™ Versaflo™ TR–800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be ''changed out'' in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR–800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR–830 Battery Pack nor the CleanSpace EX Power Unit may be

disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR–830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR–830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR–641N, which includes one 3M™ Charger Cradle TR–640 and one 3M™ Power Supply TR–941N, or

b. 3M™ 4-Station Battery Charger Kit TR–644N, which includes four 3M™ Charger Cradles TR–640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR–944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF–0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR- 800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR–800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR–800 or CleanSpace EX can be used in return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

*Docket Number:* M–2021–017–C.

*Petitioner:* Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

*Mine:* Itmann No. 5 Mine, MSHA ID No. 46–09569, located in Wyoming County, West Virginia.

*Regulation Affected:* 30 CFR 75.500(d) (Permissible electric equipment).

*Modification Request:* The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection for miners at the Itmann No. 5 Mine in West Virginia. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR), and the CleanSpace EX in or inby the last crosscut.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M ™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR–800 unit which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream™ product line that created issues with providing acceptable supply service levels. Because of those issues, 3M discontinued the Airstream™ in June 2020 and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR–800 motor/blower and battery qualify as intrinsically safe in the US, Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. The 3M™ Versaflo™ TR–800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of ''ia''. (ATEX refers to European directives for controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135°C Da, −20°C

≤ Ta ≤ +55 °C, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR–800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR–800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR–800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR–800 and

CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M™ Versaflo™ TR–800 and the ''blocked filter'' alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M ™Versaflo™ TR–800I shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs that will be used inby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR–800 or the CleanSpace EX inby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX in the return air inby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR–800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M™ Versaflo™ TR–800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be ''changed out'' in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR–800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR–830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR–830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR–830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR–641N, which includes one 3M™ Charger Cradle TR–640 and one 3M™ Power Supply TR–941N, or

b. 3M™ 4-Station Battery Charger Kit TR–644N, which includes four 3M™ Charger Cradles TR–640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR–944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace

Battery Charger EX, Product Code PAF–0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR- 800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR–800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR–800 or CleanSpace EX can be used inby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

*Docket Number:* M–2021–018–C.

*Petitioner:* Consol Pennsylvania Coal Company LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania (ZIP 15317).

*Mine:* Itmann No. 5 Mine, MSHA ID No. 46–09569, located in Wyoming County, West Virginia.

*Regulation Affected:* 30 CFR 75.1002(a) (Installation of electric equipment and conductors: permissibility).

*Modification Request:* The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Itmann No. 5 Mine in West Virginia. Specifically, the petitioner is applying to use the 3M™ Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace EX within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) Currently the petitioner uses the 3M™ Airstream™ helmet to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology.

(b) 3M elected to discontinue the 3M™ Airstream™ helmet, replacing it with a 3M™ Versaflo™ TR–800 which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M™ Airstream™ Headgear-Mounted PAPR System has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they had faced multiple key component supply disruptions for the Airstream product line that have created issues with providing acceptable supply service levels. Because of those issues, 3M discontinued the Airstream™ in June 2020 and this discontinuation is global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream™ components.

(e) Currently there are no replacement 3M PAPRs that meet MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA in accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream™ do not have an MSHA-approved alternative PAPR to provide to miners. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M™ Versaflo™ TR–800 motor/blower and battery qualify as intrinsically safe in the US, Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres). The 3M™ Versaflo™ TR–800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). ATEX-certified with an IS rating of ''ia''. (ATEX refers to European directives for controlling explosive atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135 °C Da, $-20$ °C $\leq$ Ta $\leq$ +55 °C, under the current standard (IEC 60079).

(i) The petitioner requests a modification to also permit the use of CleanSpace EX powered respirator under the same conditions as it proposed with respect to the 3M™ Versaflo™ TR–800. It too has been determined to be intrinsically safe.

(j) The 3M™ Versaflo™ TR–800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

The petitioner proposes the following alternative method:

(a) Affected mine employees must be trained in the proper use and maintenance of the 3M™ Versaflo™ TR–800 and the CleanSpace EX PAPRs in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX is approved under 30 CFR part 18 and must be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, the petitioner will require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPRs, battery packs, and all associated wiring and connections must be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR must be removed from service.

(c) The operator will maintain a separate logbook for the 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M™ Versaflo™ TR–800 F and the ''blocked filter'' alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs to be used on the longwall face or within 150 feet of pillar workings shall be physically examined prior to initial use, and each unit will be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M™ Versaflo™ TR–800I shall include:

i. Check the equipment for any physical damage and the integrity of the case;

ii. Remove the battery and inspect for corrosion;

iii. Inspect the contact points to ensure a secure connection to the battery;

iv. Reinsert the battery and power up and shut down to ensure proper connections;

v. Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

vi. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) The operator is to ensure that all 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's log book and shall include a description of the work performed.

(h) The 3M Versaflo™ TR–800 and CleanSpace EX PAPRs that will be used on the longwall face or within 150 feet of pillar workings, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(i) Prior to energizing the 3M™ Versaflo™ TR–800 or the CleanSpace EX inby the last open crosscut, methane tests must be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX on the longwall face or within 150 feet of pillar workings or in areas where methane may enter the air current.

(l) Neither the 3M™ Versaflo™ TR–800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M™ Versaflo™ TR–800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(m) The petitioner will use only the 3M™ TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M™ Versaflo™ TR–800. The petitioner will use only the CleanSpace EX Power Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs must be ''changed out'' in intake air outby the last open crosscut. Before each shift when the 3M™ Versaflo™ TR–800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

i. Always correctly use and maintain the lithium-ion battery packs. Neither the 3M™ TR–830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

ii. The 3M™ TR–830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M™ TR–830 Battery Pack is to be charged by either:

a. 3M™ Battery Charger Kit TR–641N, which includes one 3M™ Charger Cradle TR–640 and one 3M™ Power Supply TR–941N, or,

b. 3M™ 4-Station Battery Charger Kit TR–644N, which includes four 3M™ Charger Cradles TR–640 and one 3M™ 4-Station Battery Charger Base/Power Supply TR–944N.

iii. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF–0066.

iv. The batteries must not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

v. The batteries shall not be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries must not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M™ Versaflo™ TR–800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and

limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M™ Versaflo™ TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the Decision and Order. When training is conducted on the terms and conditions in the Decision and Order, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M™ Versaflo™ TR–800 or CleanSpace EX PAPR.

(r) All personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training must be completed before any 3M™ Versaflo™ TR–800 or CleanSpace EX can be used on the longwall face or within 150 feet of pillar workings. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M™ Versaflo™ TR–800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the Decision and Order in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Jessica Senk,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2021–13544 Filed 6–24–21; 8:45 am]

**BILLING CODE 4520–43–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0042]**

### TUV Rheinland of North America, Inc.: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of TUV Rheinland of North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before July 12, 2021.

**ADDRESSES:** Comments may be submitted as follows:

*Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

*Instructions:* All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2007–0042). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Extension of comment period:* Submit requests for an extension of the comment period on or before July 12, 2021 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Notice of the Application for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for an expansion of current recognition as a NRTL. TUVRNA requests the addition of four test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an

expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA currently has eight facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470. A complete list of TUVRNA sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/tuv.html.*

## II. General Background on the Application

TUVRNA submitted an application, dated January 30, 2019 (OSHA–2007–0042–0052), to expand recognition to include four additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 lists the appropriate test standards found in TUVRNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 399 | Standard for Drinking-Water Coolers. |
| UL 1973 | Standard for Batteries for Use in Stationary, Vehicle Auxillary Power and Light Electric Rail (LER) Applications. |
| UL 2054 | Standard for Household and Commercial Batteries. |
| UL 2271 | Standard for Batteries for Use in Light Electric Vehicle (LEV) Applications. |

## III. Preliminary Finding on the Application

TUVRNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation indicates that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of these four test standards for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's application.

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0042.

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

## Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on June 21, 2021.

**James S. Frederick,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–13545 Filed 6–24–21; 8:45 am]

BILLING CODE 4510–26–P

# NATIONAL CREDIT UNION ADMINISTRATION

## Privacy Act of 1974: Systems of Records

**AGENCY:** National Credit Union Administration (NCUA)

**ACTION:** Notice of a new system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974, the National Credit Union Administration (NCUA) gives notice of a new proposed Privacy Act system of records. The new proposed system is the Mailing, Contact and Other Lists System, NCUA–23. This system will support the NCUA's communications and outreach efforts to members of the public, and the NCUA's statutorily mandated examination and supervision activities of credit unions. This system will store information pertaining to individuals in the performance of the NCUA's statutory duties.

**DATES:** Submit comments on or before July 26, 2021. This action will take effect without further notice on July 26, 2021 unless comments are received that would result in a contrary determination.

**ADDRESSES:** You may submit comments by any of the following methods, but please send comments by one method only:

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

- *NCUA website: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Ben Hardaway, Director, Division of Communications, Office of External Affairs and Communications; Susan Brown, Systems Officer, Office of Examination and Insurance; or Rena Kim, Privacy Attorney, Office of General Counsel, the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314.

**SUPPLEMENTARY INFORMATION:** This notice informs the public of the NCUA's proposal to establish and maintain a new system of records. The proposed new system is being established under the NCUA's authority under the Federal Credit Union Act, 12 U.S.C. 1751, et. seq. The information collected in the NCUA–23 system of records will facilitate communication with the NCUA's stakeholders, including members of the public, providing interested parties with information on the agency's initiatives, required reports including the 5300 Call Report, and credit union examination and supervision policies and practices. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's systems of records.

The format of NCUA–23 aligns with the guidance set forth in OMB Circular A–108. NCUA–23 and all of the NCUA's Standard Routine Uses are published in full below. All of the NCUA's SORNs are available at *www.ncua.gov.*

By the National Credit Union Administration Board.

**Melane Conyers-Ausbrooks,**

*Secretary of the Board.*

**SYSTEM NAME AND NUMBER:**

Mailing, Contact and Other Lists—NCUA–23.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

The system is operated and maintained in part by the NCUA staff, and in part by third-party vendors. Please contact the system managers (below) for more information.

**SYSTEM MANAGER(S):**

Director of the Office of External Affairs and Communications, and the Director of the Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

12 U.S.C. 1751, et. seq.

**PURPOSE(S) OF THE SYSTEM:**

This system of records is maintained for the purposes of supporting the National Credit Union Administration's (NCUA's) communications and outreach efforts to members of the public and to facilitate the NCUA's statutorily mandated examination and supervision activities, including:

1. Handling requests for informational literature, newsletters, and other NCUA materials;
2. Processing event registrations, conducting surveys, and providing information about NCUA-related activities and events and;
3. Notifying credit unions of mandatory actions and updates that they must complete and are related to the NCUA's mission of providing a safe and sound credit union system.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by this system are (1) Current and former directors, officers, employees, and volunteers of credit unions; (2) Members of the public; and (3) NCUA employees and contractors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the system may contain contact information including name, title, address, phone number, and email address.

**RECORD SOURCE CATEGORIES:**

The information in the system about credit union officials is generally provided by credit unions for supervision and examination activities. Other information may be from members of the public who submit requests for information, subscriptions, inquiries, guidance, and other assistance to the NCUA, and those who have registered for NCUA events and responded to questionnaires, request forms, feedback forms or surveys. NCUA employees and contractors may add or update information to the system as part of their assigned duties to handle such correspondence, or for credit union supervision and examination activities. Whenever practicable, the NCUA collects information about an individual directly from that individual.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NCUA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. NCUA's Standard Routine Uses apply to this system of records.
2. To appropriate agencies, entities, and persons for the purpose of supervision, enforcement, training, or other outreach activities.
3. To an entity or person that is the subject of supervision or enforcement activities including examinations, investigations, administrative proceedings, and litigation, and the attorney or non-attorney representative for that entity or person.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Electronic records and backups are stored on secure servers, approved by NCUA's Office of the Chief Information Officer (OCIO), within a FedRAMP-authorized commercial Cloud Service Provider's (CSP) Software-as-a-Service solution hosting environment and accessed only by authorized personnel. No paper files are maintained.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records may be retrieved by any of the following: Name, address, phone number, or email address.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records are maintained until they become inactive and, in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a NCUA records disposition schedule approved by NARA.

**ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:**

NCUA and the Cloud Service Provider have implemented the appropriate administrative, technical, and physical controls in accordance with the Federal Information Security Modernization Act of 2014, Public Law 113–283, S. 2521, and NCUA's information security policies to protect the confidentiality, integrity, and availability of the information system and the information contained therein. Access is limited only to individuals authorized through NIST-compliant Identity, Credential,

and Access Management policies and procedures. The records are maintained behind a layered defensive posture consistent with all applicable federal laws and regulations, including OMB Circular A–130 and NIST Special Publications 800–37.

**RECORD ACCESS PROCEDURES:**

Individuals wishing access to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. The address to which the record information should be sent.
4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to request an amendment to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. A statement specifying the changes to be made in the records and the justification therefore.
4. The address to which the response should be sent.
5. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

**NOTIFICATION PROCEDURES:**

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. The address to which the record information should be sent.
4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

This is a new system.

[FR Doc. 2021–13599 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

### Notice of Proposed Information Collection Request: Public Libraries Survey FY 2021–FY 2023

**AGENCY:** Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

**ACTION:** Notice, request for comments on this collection of information.

**SUMMARY:** The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. This pre-clearance consultation 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 can be properly assessed. The purpose of this Notice is to solicit comments concerning the modifications to and continuance of the Public Libraries Survey for Fiscal Years 2021–2023. The Agency is particularly interested in public comments addressing the following issues: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 21, 2021.

**ADDRESSES:** Send comments to: Connie Bodner, Ph.D., Director of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the documents contact: Matthew Birnbaum, Ph.D., Senior Evaluation Officer, Office of Digital and Information Strategy, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Birnbaum can be reached by telephone: 202–653–4760, or by email at *mbirnbaum@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

### II. Current Actions

Pursuant to Public Law 107–279, this Public Libraries Survey collects annual descriptive data on the universe of public libraries in the United States and the Outlying Areas. Information such as public service hours per year, circulation of library books, number of librarians, population of legal service

area, expenditures for library collection, programs for children and young adults, staff salary data, and access to technology, etc., would be collected. The request includes new public library data regarding programs and other physical collections. The Public Libraries Survey has been conducted by the Institute of Museum and Library Services under the clearance number 3137–0074, which expires September 30, 2023. This action is to request a new three-year approval.

*Agency:* Institute of Museum and Library Services.

*Title:* Public Libraries Survey, FY 2021–FY 2023.

*OMB Number:* 3137–0074.

*Agency Number:* 3137.

*Affected Public:* State and local governments, State library administrative agencies, and public libraries.

*Number of Respondents:* 56.

*Frequency:* Annually.

*Burden Hours per Respondent:* 94.1.

*Total Burden Hours:* 5,270.2.

*Total Annual Costs:* $154,104.73.

*Total Annual Federal Costs:* $726,187.85.

*Public Comments Invited:* Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: June 22, 2021.

**Kim Miller,**

*Senior Grants Management Specialist, Institute of Museum and Library Services.*

[FR Doc. 2021–13616 Filed 6–24–21; 8:45 am]

**BILLING CODE 7036–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0155]**

## Revisions to Uniform Low-Level Radioactive Waste Manifest Forms

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Availability of forms; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) announces the availability of revisions to the NRC Form 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)), NRC Form 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)), and NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)). The forms are available for implementation, consistent with the forms included in NUREG/BR–0204, Revision 3, ''Instructions for Completing NRC's Uniform Low-Level Radioactive Waste Manifest.''

**DATES:** Revised NRC Forms 540, 541, and 542 became effective on June 25, 2021. Users of the NRC Forms 540, 541, 542 should transition to the revised forms on or before September 23, 2021.

**ADDRESSES:** Please refer to Docket ID NRC–2018–0155 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–2018–0155. 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, 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 Form Library:* NRC Forms 540, 541, and 542 can be accessed on the NRC Form Library at *https://www.nrc.gov/reading-rm/doc-collections/forms/.*
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Priya Yadav, telephone: 301–415–6667, email: *Priya.Yadav@nrc.gov* and Karen Pinkston, telephone: 301–415–3650, email: *Karen.Pinkston@nrc.gov.* Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The NRC published NUREG/BR–0204, Revision 3, ''Instructions for Completing the NRC's Uniform Low-Level Radioactive Waste Manifest,'' on July 2, 2020 (85 FR 39936), including revisions to NRC Forms 540, 541, and 542. However, following several requests to delay implementation, the NRC announced on September 30, 2020 (85 FR 61576) that it was postponing implementation of NUREG/BR–0204, Revision 3 and the revised NRC forms until further notice. The NRC indicated that licensees should continue to use NUREG/BR–0204, Revision 2 and the versions of NRC Forms 540, 541, and 542 that were renewed in January 2020, or equivalent, as defined in NRC's regulations.

### II. Discussion

NUREG/BR–0204, Revision 3, provides guidance on completing NRC Forms 540, 541, and 542 (*i.e.,* the NRC's Uniform Low-Level Waste Manifest) as required by part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix G. The NRC revised NUREG/BR–0204 and NRC Forms 540, 541, and 542 to address stakeholder feedback since the publication of Revision 2 of NUREG/BR–0204 (ADAMS Accession No. ML071870172). The final NUREG/BR–0204, Revision 3 and the NRC's comment resolutions are available in ADAMS under Accession Nos. ML20178A433 and ML19214A186, respectively.

This notice herein announces the revisions to the NRC Form 540, 541, and 542 are available for implementation. Note, the definitions section 10 CFR part 20, appendix G, states that ''Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information.'' Licensees should contact the receiving facility for waste shipments to Agreement States to determine if Agreement State regulators require the use of an equivalent form consistent with their State regulatory program.

Dated: June 22, 2021.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2021–13543 Filed 6–24–21; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–269, 50–270, and 50–287; NRC–2021–0127]**

### Duke Energy Carolinas, LLC; Duke Energy; Oconee Nuclear Station, Units 1, 2, and 3

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Subsequent license renewal application; receipt.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received an application for the subsequent renewal of Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, which authorize Duke Energy Carolinas, LLC (Duke Energy or the applicant) to operate Oconee Nuclear Station (ONS), Units 1, 2, and 3. The subsequent renewed licenses would authorize the applicant to operate ONS for an additional 20 years beyond the period specified in each of the current renewed licenses. The current renewed operating licenses for ONS expire as follows: Unit 1 on February 6, 2033, Unit 2 on October 6, 2033, and Unit 3 on July 19, 2034.

**DATES:** The subsequent license renewal application referenced in this document is available on June 22, 2021.

**ADDRESSES:** Please refer to Docket ID NRC–2021–0127 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0127. Address questions about *Regulations.gov* Docket IDs to Stacy Schumann; telephone: 301–287–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* 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.
- *Public Library:* A copy of the subsequent license renewal application for ONS can be accessed at the following public library: Seneca Library, 300 E South 2nd St., Seneca, SC 29678.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Angela Wu, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2995; email: *Angela.Wu@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The NRC has received an application (ADAMS Package Accession No. ML21158A193) from Duke Energy, dated June 7, 2021, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and part 54 of title 10 of the *Code of Federal Regulations,* to renew the operating licenses for ONS. Subsequent renewal of the licenses would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the respective current renewed operating licenses. The current renewed operating licenses for ONS expire as follows: Unit 1 on February 6, 2033, Unit 2 on October 6, 2033, and Unit 3 on July 19, 2034. The ONS units are Pressurized Water Reactors located in Seneca, South Carolina. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Dated: June 22, 2021.

For the Nuclear Regulatory Commission.

**Lauren K. Gibson,**

*Chief, License Renewal Project Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.*

[FR Doc. 2021–13560 Filed 6–24–21; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Renewal of a Previously Approved Information Collection 3206–0261: Questionnaire for Non-Sensitive Positions (SF 85)

**AGENCY:** Office of Personnel Management.

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to request the Office of Management and Budget (OMB) renew a previously-approved information collection, Questionnaire for Non-Sensitive Positions (SF 85).

**DATES:** Comments are encouraged and will be accepted until August 24, 2021. This process is conducted in accordance with 5 CFR 1320.8(d)(1).

**ADDRESSES:** You may submit comments, identified by docket number and title, by the following method:

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

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

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Lisa Loss, 202–606–1800, or U.S. Office of Personnel Management, Suitability Executive Agent Programs, P.O. Box 699, Slippery Rock, PA 16057, or sent by email to *SuitEA@opm.gov.*

**SUPPLEMENTARY INFORMATION:** OPM is soliciting comments for this collection as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The Questionnaire for Non-Sensitive Positions, SF 85 is an information

collection completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract. The collection is used as the basis of information for background investigations to establish that such persons are:

- Suitable for employment or retention in Federal employment in a low risk, non-sensitive position, or fit for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent to a low risk, non-sensitive position;
- Fit to perform work on behalf of the Federal Government pursuant to the Government contract, when the duties to be performed are equivalent to a low risk, non-sensitive position;
- Eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed by the individual are equivalent to the duties performed by an employee in a low risk, non-sensitive position.

For applicants, the SF 85 is to be used only after a conditional offer of employment has been made. e-QIP (Electronic Questionnaires for Investigations Processing) is a web-based system application that houses the SF 85. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to particular question, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history.

OPM recommends renewal of the form without any proposed changes, except to underlying authorities, which have been revised in the period since the last renewal; the Privacy Act Information Statement, to acknowledge the transfer of background investigations files from OPM to the Defense Counterintelligence and Security Agency; and the Purpose Statement, to make more clear that the form may be used for investigations for fitness for appointment to a position in the excepted service. No other changes are recommended at this time. Ongoing assessments will occur to ensure the SF 85 reflects and collects pertinent information for the investigative process and aligns with governing policies, rules, and regulations requiring use of this form.

### Analysis

*Agency:* Office of Personnel Management.

*Title:* Questionnaire for Non-Sensitive Positions (SF 85).

*OMB Number:* 3206–0261.

*Affected Public:* Individuals.

*Number of Respondents:* 55,040.

*Estimated Time per Respondent:* 120 minutes.

*Total Burden Hours:* 110,080.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2021–13524 Filed 6–24–21; 8:45 am]

**BILLING CODE 6325–53–P**

---

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Alternative Annuity Election, RI 20–80

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an expiring information collection request (ICR) with minor edits, Alternative Annuity Election, RI 20–80.

**DATES:** Comments are encouraged and will be accepted until July 26, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0168) was previously published in the **Federal Register** on April 2, 2021, at 86 FR 17419, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 20–80 is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Alternative Annuity Election.

*OMB Number:* 3206–0168.

*Frequency:* On occasion.

*Affected Public:* Individual or Households.

*Number of Respondents:* 200.

*Estimated Time per Respondent:* 20 minutes.

*Total Burden Hours:* 67 hours.

Office of Personnel Management.

**Alexys Stanley,**

*Director, Office of Privacy and Information Management.*

[FR Doc. 2021–13531 Filed 6–24–21; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: RI 38–115, Representative Payee Survey

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an expiring information collection request (ICR) with minor edits, Representative Payee Survey, RI 38–115.

**DATES:** Comments are encouraged and will be accepted until July 26, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995, OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0208) was previously published in the **Federal Register** on April 2, 2021, at 86 FR 17420, allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 38–115 is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Representative Payee Survey.

*OMB Number:* 3206–0208.

*Frequency:* Annually.

*Affected Public:* Individual or Households.

*Number of Respondents:* 11,000.

*Estimated Time per Respondent:* 20 minutes.

*Total Burden Hours:* 3,667.

Office of Personnel Management.

**Alexys Stanley,**

*Director, Office of Privacy and Information Management.*

[FR Doc. 2021–13532 Filed 6–24–21; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Disabled Dependent Questionnaire, RI 30–10

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an expiring information collection request (ICR) with minor edits, Disabled Dependent Questionnaire, RI 30–10.

**DATES:** Comments are encouraged and will be accepted until July 26, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0179) was previously published in the **Federal Register** on April 2, 2021, at 86 FR 17418, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 30–10 is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Disabled Dependent Questionnaire.
*OMB Number:* 3206–0179.
*Frequency:* On occasion.
*Affected Public:* Individual or Households.
*Number of Respondents:* 2,500.
*Estimated Time per Respondent:* 1 hour.
*Total Burden Hours:* 2,500 hours.

Office of Personnel Management.

**Alexys Stanley,**

*Director, Office of Privacy and Information Management.*

[FR Doc. 2021–13529 Filed 6–24–21; 8:45 am]

**BILLING CODE 6325–38–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. N2021–2; Order No. 5920]**

## Service Standard Changes

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is acknowledging a recently-filed Postal Service request for an advisory opinion on the service standards for First-Class Mail Package Service (FCPS). This document invites public comments on the request and addresses several related procedural steps.

**DATES:** *Notices of intervention are due:* July 1, 2021; *Live WebEx Technical Conference:* June 28, 2021, at 11:00 a.m., Eastern Daylight Time, Virtual.

**ADDRESSES:** Submit notices of intervention electronically via the Commission's Filing Online system at *http://www.prc.gov.* Persons interested in intervening who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Pre-Filing Issues
III. The Request
IV. Initial Administrative Actions
V. Ordering Paragraphs

### I. Introduction

On June 17, 2021, the Postal Service filed a request for an advisory opinion from the Commission regarding planned changes to the service standards for First-Class Package Service (FCPS).[1] The intended effective date of the Postal Service's planned changes is no earlier than October 1, 2021. Request at 1. The Request was filed pursuant to 39 U.S.C. 3661 and 39 CFR part 3020. Before issuing its advisory opinion, the Commission shall accord an opportunity for a formal, on-the-record hearing pursuant to 5 U.S.C. 556 and 557. 39 U.S.C. 3661(c). This Order provides information on the Postal Service's planned changes, explains and establishes the process for the on-the-record hearing, and lays out the procedural schedule to be followed in this case.

### II. Pre-Filing Issues

On March 23, 2021, the Postal Service published a 10-year strategic plan announcing potential changes intended to achieve financial stability and service excellence.[2] In connection with this publication, on May 25, 2021, the Postal Service also filed a notice of its intent to conduct a pre-filing conference regarding its proposed changes to the service standards for FCPS, which would ''generally affect service on a nationwide or substantially nationwide basis.'' Notice at 1 (quoting 39 U.S.C. 3661(b)).

On May 26, 2021, the Commission issued Order No. 5900, which established Docket No. N2021–2 to consider the Postal Service's proposed changes, notified the public concerning the Postal Service's pre-filing conference, and appointed a Public Representative.[3] Due to the COVID–19 pandemic, the Postal Service held its pre-filing conference virtually on June 8, 2021, from 1:00 p.m. to 2:00 p.m. Eastern Daylight Time (EDT). *See* Request at 2. The Postal Service asserts that it completed the pre-filing requirements appearing in 39 CFR 3020.111 and certifies that it has made a good faith effort to address concerns of interested persons about the Postal Service's proposal raised at the pre-filing conference. *See id.*

### III. The Request

#### *A. The Postal Service's Planned Changes*

The Postal Service states that the existing service standards for FCPS mirror the existing service standards applied to Market Dominant Single-Piece First-Class Mail (letter- and flat-shaped mailpieces). *See* Request at 3. The Postal Service's proposed changes for FCPS are similar to the changes proposed for Market Dominant First-Class Mail in Docket N2021–1, because the FCPS service standards would also be adjusted to account for additional drive time between origin and destination processing facilities. *See* Notice at 2; *see also* Request at 3. However, the actual service standards that the Postal Service proposes to apply to FCPS would differ from those proposed for First-Class Mail. *See id.* The Postal Service plans for its proposed changes for FCPS to become effective no earlier than October 1, 2021. *See* Request at 1.

The Postal Service proposes to expand the scope of the existing 2-Day service standard applied to FCPS. *See* Request at 3. For FCPS within the contiguous United States, the Postal Service proposes to narrow the scope of the existing 3-Day service standard; instead 4-Day and 5-Day service standards would apply to certain FCPS traveling longer distances between origin and destination. *See id.* Overall for FCPS volume within the contiguous United States, the Postal Service projects that approximately 23.6 percent would be subject to the proposed 2-Day service standard; 44.5 percent would be subject to the proposed 3-Day service standard; approximately 17.3 percent would be subject to the proposed 4-Day service standard; and approximately 14.6 percent would be subject to the proposed 5-Day service standard. *See id.* at 4, Figure 1. The Postal Service projects that pharmaceutical volume would experience less impact from the proposed changes than other FCPS volume, estimating that almost all pharmaceutical volume currently subject to the 2-Day service standard and the majority of pharmaceutical volume currently subject to the 3-Day service standard would remain subject to those respective service standards. *See id.* at 5.

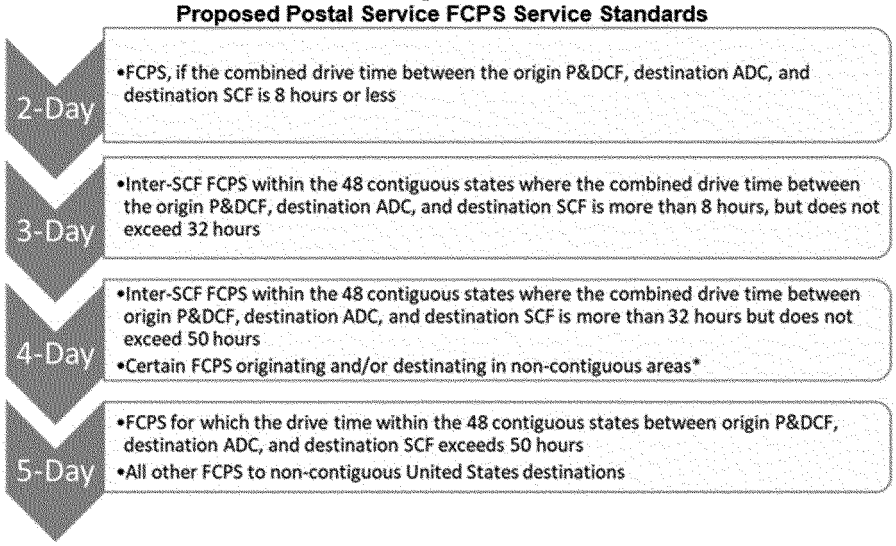
Specifically, the Postal Service proposes to apply the following service standards to FCPS.

[1] United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 17, 2021 (Request). FCPS ''is a mailing service available for lightweight packages—for retail mailers, the weight of the package cannot exceed 13 ounces; for commercial mailers, the weight of the package cannot exceed 15.999 ounces.'' Notice of Pre-Filing Conference, May 25, 2021, at 1, n.1 (Notice).

[2] *See* United States Postal Service, Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence, March 23, 2021, at 3, available at *https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf* (Postal Service's Strategic Plan). Further information related to the Postal Service's Strategic Plan is available at *https://about.usps.com/what/strategic-plans/delivering-for-america/.*

[3] Notice and Order Concerning the Postal Service's Pre-Filing Conference, May 26, 2021, at 1–4 (Order No. 5900).

**Figure 1**
**Proposed Postal Service FCPS Service Standards**




Notes:

* Specifically, this refers to the following:
- FCPS originating in the contiguous 48 states destined to the city of Anchorage, Alaska, the 968 3-Digit ZIP Code area in Hawaii, or the 006, 007, or 009 3-Digit ZIP Code areas in Puerto Rico.
- FCPS originating in the 006, 007, or 009 3-Digit ZIP Code areas in Puerto Rico and the destination is in the contiguous 48 states.
- FCPS originating in Hawaii and the destination is in Guam, or vice versa.
- FCPS originating in Hawaii and the destination is in American Samoa, or vice versa.
- FCPS for which both the origin and destination are within Alaska.

Request at 5.

"SCF" refers to "Sectional Center Facility." *Id.* at 3. With respect to a particular SCF, "Intra-SCF" refers to volumes that originate and destinate within the 3-Digit ZIP Code areas assigned to that SCF in the Domestic Mail Manual and "Inter-SCF" refers to volumes that originate outside those 3-Digit ZIP Code areas. Revised Service Standards for Market-Dominant Mail Products, 77 Fed. Reg. 31,190, 31,194, n.12 (May 25, 2012) (codified at 39 CFR pt. 121). "P&DCF" refers to Processing & Distribution Center or Facility. Request at 3. "ADC" refers to Area Distribution Center. 77 Fed. Reg. 31,192.

Source: Request at 3, 5.

*B. The Postal Service's Position*

The Postal Service states that attempting to meet the existing service standards has led to high costs, transportation inefficiencies, and difficulties in providing reliable and consistent service performance. *See* Request at 6. The Postal Service explains that transporting FCPS by surface (trucks) is more reliable and cost-effective than air transportation. *See id.* The Postal Service asserts that the proposed changes would allow the Postal Service to use surface rather than air transportation for more FCPS between additional Postal Service origin and destination processing facilities (OD Pairs). *See id.* The Postal Service states that the proposed changes could generate a net improvement to the Postal Service's finances of approximately $55 million annually, when considering transportation cost savings and the Postal Service's estimate that the proposal would not materially impact FCPS volumes. *See id.* at 8.

The Postal Service asserts that implementing the proposed changes would enable it to: Provide more reliable and consistent service performance, improve its ability to run according to its operating plans and optimize its surface transportation network, increase its use of more cost-effective air carriers for volume that will continue to be transported by air (such as volume destined for non-contiguous areas), achieve significant cost savings due to the creation of a more efficient transportation network, and implement future operational benefits. *See id.* at 6–9. It adds that the proposed changes are a key component of the Postal Service's Strategic Plan, intended to achieve financial stability and service excellence. *See id.* at 9.

Further, the Postal Service asserts that the proposed changes would conform to the policies of title 39, United States Code. *See id.* at 9–12. The Postal Service discusses how the proposed changes would continue to satisfy the universal service provisions appearing in 39 U.S.C. 101, 403, and 3661(a) under the proposed service standards.[4] The Postal Service also asserts that the proposed changes would not impair compliance with the policies of 39 U.S.C. 3633, which govern the financial performance of competitive products. *See* Request at 11–12.

[4] *See id.* at 9–11. The Postal Service observes that the Commission has concluded that the universal service obligation extends to competitive products. *See id.* at 9, n.1 (citing Postal Regulatory Commission, *Report on Universal Postal Service and the Postal Monopoly,* 25, December 19, 2008, available at *https://www.prc.gov/docs/61/61628/USO%20Report.pdf*).

*C. The Postal Service's Direct Case*

The Postal Service is required to file its direct case along with the Request. *See* 39 CFR 3020.114. The Postal Service's direct case includes all of the prepared evidence and testimony upon which the Postal Service proposes to rely on in order to establish that its proposal accords with and conforms to the policies of title 39, United States Code. *See id.* The Postal Service provides the direct testimony of three witnesses and identifies a fourth individual to serve as its institutional witness and provide information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses.

**Table 1**
**Postal Service Witnesses**

| Witness | Topic(s) | Designation |
|---|---|---|
| 1. **Stephen B. Hagenstein** | • The proposed service standard changes and their benefits<br>• How the proposed service standard changes would affect current mail volume in the contiguous United States (including the actual impact of the proposed changes, in terms of changes to the OD Pairs, as well as current FCPS volume) | USPS-T-1 |
| 2. **Michelle Kim** | • The overall impact of the proposed service standard changes on the Postal Service's financial situation<br>• The projected transportation cost savings related to the proposal | USPS-T-2 |
| 3. **Thomas J. Foti** | • Trends in the lightweight package market<br>• How the proposed service standard changes may impact customer satisfaction<br>• The market research conducted to estimate the potential volume and contribution impact of the proposed service standard changes | USPS-T-3 |
| 4. **Sharon Owens** | • Institutional witness capable of providing information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses | None filed |

Source: Request at 2, 4, 6-8.

Additionally, the Postal Service filed seven library references, four of which are available to the public and three of which are designated as non-public material.

**Table 2**
**Postal Service Library References**

| Designation | Title | Sponsoring Witness |
|---|---|---|
| • **LR-N2021-2-1** | Calculating Transportation Cost Changes | Michelle Kim |
| • **LR-N2021-2-2** | Model Input Data | Stephen B. Hagenstein |
| • **LR-N2021-2-3** | Model Defining Tools | Stephen B. Hagenstein |
| • **LR-N2021-2-4** | Model Results | Stephen B. Hagenstein |
| • **LR-N2021-2-NP1** | Calculating Transportation Cost Changes | Michelle Kim |
| • **LR-N2021-2-NP2** | Model Input Data and Results | Stephen B. Hagenstein |
| • **LR-N2021-2-NP3** | First-Class Package Service Transit Commitment Survey | Thomas J. Foti |

Note: The Postal Service filed the three non-public library references under seal (shaded in the above table), asserting that they consist of detailed volume and cost information regarding purchased transportation; data that reveal cost, volume, weight, modes of transportation, transportation windows, service performance information for competitive products; and market research on FCPS developed by an external firm on behalf of the Postal Service. *See* Notice of United States Postal Service of Filing of Library References and Application for Non-Public Treatment, June 17, 2021, Application of the Postal Service for Non-Public Treatment, at 1, 3-6.

Source: Notice of United States Postal Service of Filing of Library References and Application for Non-Public Treatment, June 17, 2021.

## IV. Initial Administrative Actions

### *A. General Procedures*

The procedural rules in 39 CFR part 3020 apply to Docket No. N2021–2. Before issuing its advisory opinion, the Commission shall accord an opportunity for a formal, on-the-record hearing pursuant to 5 U.S.C. 556 and 557. 39 U.S.C. 3661(c). The Commission will sit *en banc* for Docket No. N2021–2. *See* 39 CFR 3020.122(b). Due to the COVID–19 pandemic, the Commission is conducting all business, including any hearing or public meeting for Docket No. N2021–2 virtually and not in person.

### *B. Scope*

Docket No. N2021–2 is limited in scope to the specific changes proposed by the Postal Service in its Request. *See* 39 CFR 3020.102(b). To the extent that participants raise alternative proposals and present reasons why those alternatives may be superior to the Postal Service's proposal, the Commission would interpret such discussion as critiquing the specific changes proposed by the Postal Service in its Request.[5] However, the Commission would not evaluate or opine on the merits of such alternative proposals in its advisory opinion. *See* Order No. 2080 at 18. Pursuant to its discretion, the Commission may undertake evaluation of alternatives or other issues raised by participants in separate proceedings (such as special studies or public inquires). *See* 39 CFR 3020.102(b). Moreover, any interested person may petition the Commission to initiate a separate proceeding (such as a rulemaking or public inquiry) at any time. *See* 39 CFR 3010.201(b) (initiation of notice and comment proceedings).

### *C. Designation of Presiding Officer*

Pursuant to 39 CFR 3010.106 and 3020.122(b), the Commission appoints Commissioner Ann C. Fisher to serve as presiding officer in Docket No. N2021–2, effective immediately. In addition to the authority delegated to the presiding officer under 39 CFR 3010.106(c), the Commission expands the presiding officer's authority to allow her to propound formal discovery requests upon any party, at her discretion. The numerical limitation on interrogatories appearing in 39 CFR 3020.117(a) shall not apply to the presiding officer. The Commission also authorizes Commissioner Fisher to rule on procedural issues such as motions for late acceptance and discovery-related matters such as motions to be excused from answering discovery requests. Commissioner Fisher shall have authority to issue any ruling in this docket not otherwise specifically reserved to the Commission by 39 CFR 3020 and 3010.106.

### *D. Procedural Schedule*

The Commission establishes a procedural schedule, which appears below the signature of this Order as Attachment 1. *See* 39 CFR 3010.151, 3020.110; *see also* 39 CFR part 3020 Appendix A. These dates may be changed only if good cause is shown, if the Commission later determines that the Request is incomplete, if the Commission determines that the Postal Service has significantly modified the Request, or for other reasons as determined by the Commission. *See* 39 CFR 3020.110(b) and (c).

[5] *See* Docket No. RM2012–4, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. 3661, May 20, 2014, at 18 (Order No. 2080).

*E. How To Access Material Filed in This Proceeding*

1. Using the Commission's Website

The public portions of the Postal Service's filing are available for review on the Commission's website (*http://www.prc.gov*). The Postal Service's electronic filing of the Request and prepared direct evidence effectively serves the persons who participated in the pre-filing conference. *See* 39 CFR 3020.104. Other material filed in this proceeding will be available for review on the Commission's website, unless the information contained therein is subject to an application for non-public treatment.

2. Using Methods Other Than the Commission's Website

The Postal Service must serve hard copies of its Request and prepared direct evidence ''only upon those persons who have notified the Postal Service, in writing, during the pre-filing conference(s), that they do not have access to the Commission's website.'' 39 CFR 3020.104. If you demonstrate that you are unable to effectively use the Commission's Filing Online system or are unable to access the internet, then the Secretary of the Commission will serve material filed in Docket No. N2021–2 upon you via First-Class Mail. *See* 39 CFR 3010.127(b) and (c). You may request physical service by mailing a document demonstrating your need to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. Service may be delayed due to the impact of the COVID–19 pandemic. Pursuant to 39 CFR 3010.127(c), the Secretary shall maintain a service list identifying no more than two individuals designated for physical service of documents for each party intervening in this proceeding. Accordingly, each party must ensure that its listing is accurate and should promptly notify the Secretary of any errors or changes. *See* 39 CFR 3010.127(c).

3. Non-Public Material

The Commission's rules on how to file and access non-public material appear in 39 CFR part 3011. Each individual seeking non-public access must familiarize themselves with these provisions, including the rules governing eligibility for access; non-dissemination, use, and care of the non-public material; sanctions for violations of protective conditions; and how to terminate or amend access.[6] Any person seeking access to non-public material must file a motion with the Commission containing the information required by 39 CFR 3011.301(b)(1)–(4). Each motion must attach a description of the protective conditions and a certification to comply with protective conditions executed by each person or entity (and each individual working on behalf of the person or entity) seeking access. 39 CFR 3011.301(b)(5)–(6). To facilitate compliance with 39 CFR 3011.301(b)(5)–(6), a template Protective Conditions Statement and Certification to Comply with Protective Conditions appears below the signature of this Order as Attachment 2, for completion and attachment to a motion for access. *See* 39 CFR part 3011 subpart C, appendix A. Persons seeking access to non-public material are advised that actual notice provided to the Postal Service pursuant to 39 CFR 3011.301(b)(4) will expedite resolution of the motion, particularly if the motion for access is uncontested by the Postal Service.

Non-public information must be redacted from filings submitted through the Commission's website; instead, non-public information must be filed under seal as required by 39 CFR part 3011 subpart B.

*F. How To File Material in This Proceeding*

1. Using the Commission's Filing Online System

Except as provided in 39 CFR 3010.120(a), all material filed with the Commission shall be submitted in electronic format using the Filing Online system, which is available over the internet through the Commission's website. The Commission's website accepts filings during the Commission's regular business hours, which are from 8:00 a.m. through 4:30 p.m. EDT, except for Saturdays, Sundays, and Federal holidays. A guide to using the Filing Online system, including how to create an account, is available at *https://www.prc.gov/how-to-participate.* If you have questions about how to use the Filing Online system, please contact the dockets clerk by email at *dockets@prc.gov* or telephone at (202) 789–6847. Please be advised that the dockets clerk can only answer procedural questions but may not provide legal advice or recommendations.

[6] *See* 39 CFR 3011.300, 3011.302–304.

2. Using Methods Other Than the Commission's Filing Online System

Material may be filed using a method other than the Commission's website only if at least one of the following exceptions applies:

- The material cannot reasonably be converted to electronic format,
- The material contains non-public information (*see* 39 CFR part 3011),
- The filer is unable to effectively use the Commission's Filing Online system and the document is 10 pages or fewer, or
- The Secretary has approved an exception to the requirements to use the Commission's Filing Online system based on a showing of good cause. 39 CFR 3010.120(a).

Material subject to these exceptions may be filed by mail to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. Due to the agency's virtual status, posting mailed materials to the Commission's website may be delayed. Accordingly, before mailing materials, it is strongly recommended that individuals contact the dockets clerk by email at *dockets@prc.gov* or telephone at (202) 789–6847.

*G. Technical Conference*

1. Date and Purpose

A technical conference will be held live via WebEx on June 28, 2021, at 11:00 a.m. EDT.[7] The technical conference is an informal, off-the-record opportunity to clarify technical issues as well as to identify and request information relevant to evaluating the Postal Service's proposed changes. *See* 39 CFR 3020.115(c). The technical conference will be limited to information publicly available in the Request. Any non-public information, including information in non-public Library References attached to the Request, should not be raised at the technical conference. At the technical conference, the Postal Service will make available for questioning its three witnesses whose direct testimony was filed along with the Request and a fourth individual to serve as its institutional witness, who will provide information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses. *See* Request at 2; *see also* 39 CFR 3020.113(b)(6)–(7), 3020.115(b). The

[7] Based upon the pro forma schedule set forth in appendix A of 39 CFR part 3020, this technical conference would be set for day 10, which would be Sunday June 27, 2021; however, this date is adjusted to Monday June 28, 2021, in accordance with 39 CFR 3020.103.

names and topics to which these four individuals are prepared to address are summarized above in Section III.C., Table 1, *infra.*

2. How To Livestream the Technical Conference

The technical conference will be broadcast to the public via livestream, which will allow the public to view and listen to the technical conference, as it is occurring and after. To view and listen to the livestream, on or after 11:00 a.m. EDT on June 28, 2021, an individual must click on the internet link that will be identified on the Commission's YouTube Channel, which is available at *https://www.youtube.com/channel/UCbHvK-S8CJFT5yNQe4MkTiQ.* Individuals do not have to register in advance to access the livestream. Please note that the livestream is a broadcast; therefore, there is a brief delay (several seconds) between the technical conference being captured on camera and being displayed to viewers of the livestream. Additionally, please note that clicking on the livestream link will not allow an individual the opportunity to question the Postal Service's four witnesses. Details on how to participate in the live WebEx (and have the opportunity to question the Postal Service's four witnesses) follow.

3. How To Participate in the Technical Conference

To participate in this live technical conference and have the opportunity to ask questions of the Postal Service's four witnesses, an individual need not formally intervene in this docket, but must register in advance as follows. Each individual seeking to participate in the live WebEx using an individual device (*e.g.,* a desktop computer, laptop, tablet, or smart phone) must register by sending an email to *N2021-2registration@prc.gov,* with the subject line ''Registration'' by June 23, 2021. In order to facilitate orderly public participation, this email shall provide the following information:

- Your first and last name;
- your email address (to receive the WebEx link);
- the name(s) of the Postal Service witness(es) you would like to question and/or the topic(s) of your question(s); and
- your affiliation (if you are participating in your capacity as an employee, officer, or member of an entity such as a corporation, association, or government agency).

The *N2021-2registration@prc.gov* email address is established solely for the exchange of information relating to the logistics of registering for and participating in the technical conference.[8] No information related to the substance of the Postal Service's Request shall be communicated, nor shall any information provided by participants apart from the list identified above be reviewed or considered. Only documents filed with the Commission's docket system will be considered by the Commission. Before the technical conference, the Commission will email each identified individual a WebEx link, an explanation of how to connect to the technical conference, and information regarding the schedule and procedures to be followed.

4. Availability of Materials and Recording

To facilitate discussion of the matters to be explored at the technical conference, the Postal Service shall, if necessary, file with the Commission any materials not already filed in Docket No. N2021–2 (such as PowerPoint presentations or Excel spreadsheets) that the Postal Service expects to present at the technical conference by June 25, 2021. Doing so will foster an orderly discussion of the matters under consideration and facilitate the ability of individuals to access these materials should technical issues arise for any participants during the live WebEx. If feasible, the recording will be available on the Commission's YouTube Channel at *https://www.youtube.com/channel/UCbHvK-S8CJFT5yNQe4MkTiQ.*

Participants in the WebEx, by participating, consent to such recording and posting. Information obtained during the technical conference or as a result of the technical conference is not part of the decisional record, unless admitted under the standards of 39 CFR 3010.322. *See* 39 CFR 3020.115(e).

*H. How To Intervene (Become a Party to This Proceeding)*

To become a party to this proceeding, a person or entity must file a notice of intervention by July 1, 2021.[9] This filing must clearly and concisely state: The nature and extent of the intervenor's interest in the issues (including the postal services used), the intervenor's position on the proposed changes in services (to the extent known), whether or not the intervenor requests a hearing, and whether or not the intervenor intends to actively participate in the hearing. *See* 39 CFR 3010.142(b). Page one of this filing shall contain the name and full mailing address of no more than two persons who are to receive service, when necessary, of any documents relating to this proceeding. *See id.* A party may participate in discovery; file testimony and evidence; conduct written examination of witnesses; conduct limited oral cross-examination; file briefs, motions, and objections; and present argument before the Commission or the presiding officer. *See id.* sections 3010.142(a); 3020.122(e). An opposition to a notice of intervention is due within 3 days after the notice of intervention is filed. *See id.* section 3010.142(d)(2).

*I. Discovery*

1. Generally Applicable Discovery Procedures

Discovery requests may be propounded upon filing a notice of intervention. Discovery that is reasonably calculated to lead to the admissible evidence is allowed. *See* 39 CFR 3020.116(a). Each party must familiarize themselves with the Commission's rules appearing in 39 CFR part 3020, including the rules for discovery in N-dockets generally and specific to interrogatories, requests for the production of documents, and requests for admissions.[10] No party may propound more than a total of 25 interrogatories (including both initial and follow-up interrogatories) without prior approval by the Commission or presiding officer.[11]

Each answer to a discovery request is due within 7 days after the discovery request is filed.[12] Any motion seeking to be excused from answering any discovery request is due within 3 days after the discovery request is filed. *See* 39 CFR 3020.105(b)(1). Any response to such motion is due within 2 days after the motion is filed. *See id.* section 3020.105(b)(2). The Commission expects parties to make judicious use of discovery, objections, and motions practice, and encourages parties to make every effort to confer to resolve disputes informally before bringing disputes to the Commission to resolve.

[8] Please refer to the Commission's privacy policy which is available at *https://www.prc.gov/privacy.*

[9] Neither the Public Representative nor the Postal Service must file a notice of intervention; both are automatically deemed parties to this proceeding. *See* 39 CFR 3010.142(a).

[10] *See* 39 CFR 3020.116–3020.119.

[11] *See* 39 CFR 3020.117(a); Order No. 2080 at 42; *see also* Docket No. N2021–2, Order Affirming Presiding Officer's Ruling No. N2021–1/9, May 26, 2021, at 9 (Order No. 5901).

[12] *See* 39 CFR 3020.117(b)(4), 3020.118(b)(1), 3020.119(b)(1). Filing an opposition to a notice of intervention shall not delay this deadline. *See* 39 CFR 3010.142(d)(3).

2. Discovery Deadlines for the Postal Service's Direct Case

All discovery requests regarding the Postal Service's direct case must be filed by July 15, 2021. All discovery answers by the Postal Service must be filed by July 22, 2021. The parties are urged to initiate discovery promptly, rather than to defer filing requests and answers to the end of the period established by the Commission.

*J. Rebuttal Case Deadlines*

A rebuttal case is any evidence and testimony offered to disprove or contradict the evidence and testimony submitted by the Postal Service. A rebuttal case does not include cross-examination of the Postal Service's witnesses or argument submitted via a brief or statement of position. Any party that intends to file a rebuttal case must file a notice confirming its intent to do so by July 20, 2021.[13] Any rebuttal case, consisting of any testimony and all materials in support of the case, must be filed by July 29, 2021.

*K. Surrebuttal Case Deadlines*

A surrebuttal case is any evidence and testimony offered to disprove or contradict the evidence and testimony submitted by the rebutting party. A surrebuttal case does not include cross-examination of the rebutting party's witnesses or argument submitted via a brief or statement of position. Any party that intends to file surrebuttal case must obtain the Commission's prior approval and must bear the burden of demonstrating exceptional circumstances that would warrant granting the motion. *See* 39 CFR 3020.121(b). Any motion for leave to file a surrebuttal case is due July 30, 2021.[14] Any response to such motion is due August 3, 2021.[15] Any surrebuttal case, consisting of any testimony and all materials in support of the case, must be filed by August 5, 2021.

*L. Hearing Dates*

The Commission expects that this case will require no more than one or two business days for hearing, but reserves three business days out of an abundance of caution and consistent with the pro forma schedule set forth in appendix A of 39 CFR part 3020. If no party files a notice of intent to file a rebuttal case by July 20, 2021, then the hearing of the Postal Service's direct case shall begin July 29, 2021, with additional days reserved on July 30, 2021 and August 2, 2021. If any party files a notice of intent to file a rebuttal case by July 20, 2021 but no surrebuttal testimony will be presented, then the hearing of the Postal Service's direct case shall begin August 5, 2021, with additional days reserved on August 6, 2021, and August 9, 2021. If any party files a notice of intent to file a rebuttal case by July 20, 2021, and the Commission approves the presentation of surrebuttal testimony, then the hearing of the Postal Service's direct case shall begin August 10, 2021, and the hearing of the surrebuttal case shall end August 12, 2021.

*M. Presentation of Evidence and Testimony*

Evidence and testimony shall be in writing and may be accompanied by a trial brief or legal memoranda. *Id.* section 3020.122(e)(1). Whenever possible and particularly for factual or statistical evidence, written cross-examination will be used in lieu of oral cross-examination. *Id.* section 3020.122(e)(2).

Oral cross-examination will be allowed to clarify written cross-examination and/or to test assumptions, conclusions, or other opinion evidence. *Id.* section 3020.122(e)(3). Assuming that no rebuttal case is filed, any party that intends to conduct oral cross-examination shall file a notice of intent to do so by July 22, 2021.[16] The notice must include an estimate of the amount of time requested for each witness.

In lieu of submitting hard copy documents to the Commission as contemplated by 39 CFR 3020.122(e)(2), each party shall file a single document titled ''Notice of Designations'' containing a list for each witness that identifies the materials to be designated (without the responses). The filing party shall arrange its list for each witness in alphabetical order by the name of the party propounding the interrogatory followed by numerical order of the interrogatory. For example:

*Designations for Witness One*

ABC/USPS–T1–1
ABC/USPS–T1–3
DEF/USPS–T1–1
GHI/USPS–T1–3
JKL/USPS–T1–2

*Designations for Witness Two*

DEF/USPS–T2–4
GHI/USPS–T2–2

Assuming that no rebuttal case is filed, each party shall file its Notice of Designations by July 23, 2021.

Assuming that no rebuttal case is filed, on July 27, 2021, the Postal Service shall file a ''Notice of Designated Materials'' identifying any corrections to the testimony or designated materials for each witness sponsored by the Postal Service. Attached to that notice shall be a single Adobe PDF file that contains, in order: The witness's testimony (with any corrections highlighted); identification of any library references sponsored by the witness; and the witness's designated written responses in alphabetical order by the name of the party propounding the interrogatory followed by numerical order of the interrogatory (with any corrections to the responses highlighted).

*N. Presentation of Argument*

1. General Procedures

Any person that has intervened in Docket No. N2021–2 (and thereby formally became a party to this proceeding) may submit written argument by filing a brief or a statement of position; they also may request to present oral argument at the hearing. *See* 39 CFR 3020.123, *see also* 39 CFR 3010.142(a). Any person that has not intervened in Docket No. N2021–2 may submit written argument by filing a statement of position. *See* 39 CFR 3020.123(g), *see also* 39 CFR 3010.142(a).

2. Presentation of Written Argument

A brief is a written document that addresses relevant legal and evidentiary issues for the Commission to consider and must adhere to the requirements of 39 CFR 3020.123(a)–(f). A statement of position is a less formal version of a brief that describes the filer's position on the Request and the information on the existing record in support of that position. *See* 39 CFR 3020.123(g).

[13] The pro forma schedule set forth in appendix A of 39 CFR part 3020 lists this deadline as day 37, which would be Saturday July 24, 2021. Consistent with Docket No. N2021–1, this deadline is adjusted to day 33, Tuesday July 20, 2021, so as to provide additional time necessary for the coordination of the technical aspects of the virtual hearing. See Docket No. N2021–1, Presiding Officer's Ruling Adjusting Procedural Schedule and Modifying Pre-Hearing Filings, May 13, 2021, at 2 (Docket No. N2021–1 POR No. 7).

[14] The pro forma schedule set forth in appendix A of 39 CFR part 3020 lists this deadline as day 44, which would be Saturday July 31, 2021. However, this deadline is adjusted to Friday July 30, 2021, so as to provide additional time necessary for the coordination of the technical aspects of the virtual hearing.

[15] The pro forma schedule set forth in appendix A of 39 CFR part 3020 lists this deadline as day 46, which would be Monday August 2, 2021. However, this deadline is adjusted to Tuesday August 3, 2021, so as to allow 2 business days to respond to the filing of a motion for leave to file a surrebuttal case.

[16] Consistent with the necessary adjustments made in Docket No. N2021–1 to conduct a virtual hearing, the Commission adjusts the timeframe contemplated by 39 CFR 3020.122(e)(3) and instead sets this deadline as 7 days before the beginning of the virtual hearing (assuming that no rebuttal case is filed).

a. Briefing Deadlines

Assuming that no rebuttal case is filed, initial briefs are due August 9, 2021, and reply briefs are due August 16, 2021. If any party files a notice confirming its intent to file a rebuttal case by July 20, 2021, then the briefing schedule may be revised.

b. Deadline for Statement of Position

Any interested person, including anyone that has not filed a notice of intervention and become a party to this proceeding, may file a statement of position. *See* 39 CFR 3020.123(g), *see also* 39 CFR 3010.142(a). A statement of position is limited to the existing record and may not include any new evidentiary material. *See* 39 CFR 3020.123(g). Filings styled as a brief or comments, conforming with the content and timing requirements, shall be deemed statements of positions. Any statement of position is due August 9, 2021.

3. Request To Present Oral Argument

Oral argument has not historically been part of N-cases; the Commission would only grant a request to present oral argument upon an appropriate showing of need by the presenting party. *See* Order No. 2080 at 53. Assuming that no rebuttal case is filed, any party may file a request to present oral argument by July 22, 2021.

*O. The Commission's Advisory Opinion*

Unless there is a determination of good cause for extension, the Commission shall issue its advisory opinion within 90 days of the filing of the Request. *See* 39 CFR 3020.102(a). Therefore, absent a determination of good cause for extension, the Commission shall issue its advisory opinion in this proceeding by September 15, 2021. ''The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his [or her] judgment the opinion conforms to the policies established under [title 39, United States Code].'' 39 U.S.C. 3661(c). The advisory opinion shall address the specific changes proposed by the Postal Service in the nature of postal services. *See* 39 CFR 3020.102(b).

*P. Public Representative*

Pursuant to 39 U.S.C. 3661(c), Mallory L. Smith shall continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding. *See* Order No. 5900 at 3, 4.

## V. Ordering Paragraphs

*It is ordered:*

1. The procedural schedule for this proceeding is set forth below the signature of this Order.

2. Pursuant to 39 CFR 3010.106 and 3020.122(b), the Commission appoints Commissioner Ann C. Fisher to serve as presiding officer in Docket No. N2021–2, effective immediately.

3. Commissioner Fisher is authorized to propound formal discovery requests upon any party, at her discretion. The numerical limitation on interrogatories appearing in 39 CFR 3020.117(a) shall not apply to the Presiding Officer.

4. Commissioner Fisher is authorized to rule on procedural issues such as motions for late acceptance and discovery-related matters such as motions to be excused from answering discovery requests.

5. Commissioner Fisher is authorized to make other rulings in this Docket not otherwise specifically reserved to the Commission according to 39 CFR 3020 and 3010.106.

6. Pursuant to 39 U.S.C. 3661(c), Mallory L. Smith shall continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

7. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Mallory Smith,**

*Federal Register Liaison.*

PROCEDURAL SCHEDULE FOR DOCKET NO. N2021–2

[Established by the Commission, June 21, 2021]

| | |
|---|---|
| **Technical Conference Dates** | |
| Deadline to Email *N2021-2registration@prc.gov* to Register to Participate in the Live Technical Conference via WebEx. | June 23, 2021. |
| Filing of the Postal Service's Materials for the Technical Conference | June 25, 2021. |
| Technical Conference (live via WebEx) | June 28, 2021, at 11:00 a.m. Eastern Daylight Time. |
| **Intervention Deadline** | |
| Filing of Notice of Intervention | July 1, 2021. |
| **Discovery Deadlines for the Postal Service's Direct Case** | |
| Filing of Discovery Requests | July 15, 2021. |
| Filing of the Postal Service's Answers to Discovery | July 22, 2021. |
| **Deadlines in Preparation for Hearing (assuming no rebuttal case)** | |
| Filing of Notice Confirming Intent to Oral Conduct Cross-Examination | July 22, 2021. |
| Filing of Request to Present Oral Argument | July 22, 2021. |
| Filing of Notice of Designations | July 23, 2021. |
| Filing of Notices of Designated Materials | July 27, 2021. |
| **Rebuttal Case Deadlines (if applicable)** | |
| Filing of Notice Confirming Intent to File a Rebuttal Case | July 20, 2021. |
| Filing of Rebuttal Case | July 29, 2021. |
| **Surrebuttal Case Deadlines (if applicable)** | |
| Filing of Motion for Leave to File Surrebuttal Case | July 30, 2021. |

PROCEDURAL SCHEDULE FOR DOCKET NO. N2021–2—Continued

[Established by the Commission, June 21, 2021]

| | |
|---|---|
| Filing of Response to Motion for Leave to File Surrebuttal Case | August 3, 2021. |
| Filing of Surrebuttal Case (if authorized) | August 5, 2021. |
| **Hearing Dates** | |
| Hearings (with no Rebuttal Case) | July 29 to 30 and August 2, 2021. |
| Hearings (with Rebuttal Case, but no authorized Surrebuttal Case) | August 5, 6 and 9, 2021. |
| Hearings (with Rebuttal Case and authorized Surrebuttal Case) | August 10 to 12, 2021. |
| **Briefing Deadlines** | |
| Filing of Initial Briefs (with no Rebuttal Case) | August 9, 2021. |
| Filing of Reply Briefs (with no Rebuttal Case) | August 16, 2021. |
| **Statement of Position Deadline** | |
| Filing of Statement of Position (with no Rebuttal Case) | August 9, 2021. |
| **Advisory Opinion Deadline** | |
| Filing of Advisory Opinion (absent determination of good cause for extension) | September 15, 2021. |

BILLING CODE 7710–FW–P

**Docket N2021-2 Template to Attach to Motion for Access to Non-public Material Protective Conditions Statement**

The Postal Service requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials") in Commission Docket No. N2021-2. _____ (name of participant filing motion) (hereinafter "the movant") requests access to these materials related to Commission Docket No. N2021-2 (hereinafter "this matter").

The movant has provided to each person seeking access to these materials:

- This Protective Conditions Statement;
- The Certification to Comply with Protective Conditions;
- The Certification of Compliance with Protective Conditions and Termination of Access; and
- The Commission's rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3011.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with 39 CFR 3011.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities

in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3011.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3011.300(a) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

a. Specific Commission order,

b. Subpart B of 39 CFR 3011 (procedure for filing these materials in Commission proceedings), or

c. 39 CFR 3011.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3011.302(b) and (c), all persons granted access to these materials:

a. Must use these materials only related to this matter; and

b. Must protect these materials from any person not authorized to obtain access under 39 CFR 3011.300 or 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;

b. Excerpts from, parts of, or the entirety of these materials;

c. Written materials that quote or contain these materials; and

d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as “Confidential” and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3011.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3011.304(a)(2), the

movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

(signature of representative) /s/ _____

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(e-mail address of representative)

(choose the appropriate response) Attorney / Non-Attorney Representative for

(name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(5).

**Certification To Comply With Protective Conditions**

The Postal Service requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials") filed in Commission Docket No. N2021-2.

_____ (name of participant filing motion) requests that the Commission grant me access to these materials to use related to Docket No. N2021-2 (hereinafter "this matter").

I certify that:

- I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;
- I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and
- I will comply with all protective conditions established by the Commission.

(signature of individual receiving access) /s/

(print name of individual receiving access)

(title of individual receiving access)

(employer of individual receiving access)

(name of the participant filing the motion)

(date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(6).

[FR Doc. 2021–13515 Filed 6–24–21; 8:45 am]

BILLING CODE 7710–FW–C

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–451, OMB Control No. 3235–0509]**

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*
Rule 301 of Regulation ATS

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 301 of Regulation ATS (17 CFR 242.301) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Regulation ATS provides a regulatory structure for alternative trading systems. Rule 301 of Regulation ATS contains certain record keeping and reporting requirements, as well as additional obligations that apply only to alternative trading systems with significant volume. The Rule requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operations report on Form ATS. Alternative trading systems are also required to supply updates on Form ATS to the Commission describing material changes to the system, file quarterly transaction reports on Form ATS–R, and file cessation of operations reports on Form ATS. An alternative trading system with significant volume is required to comply with requirements for fair access and systems capacity, integrity, and security. Rule 301 also imposes certain requirements pertaining to written safeguards and procedures to protect subscribers' confidential trading information.

The Commission staff estimates that entities subject to the requirements of Rule 301 will spend a total of approximately 2,687 hours a year to comply with the Rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

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, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 21, 2021.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–13508 Filed 6–24–21; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–346, OMB Control No. 3235–0392]**

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*
Rule 15g–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15g–3—Broker or dealer disclosure of quotations and other information relating to the penny stock market (17 CFR 240.15g–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. The

purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 178 broker-dealers will each spend an average of approximately 87.0833333 hours annually to comply with this rule. Thus, the total time burden is approximately 15,501 hours per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 21, 2021.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–13507 Filed 6–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–347, OMB Control No. 3235–0393]**

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736

*Extension:*
Rule 15g–4

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15g–4—Disclosure of compensation to brokers or dealers (17 CFR 240.15g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 178 broker-dealers will each spend an average of approximately 87.0833333 hours annually to comply with this rule. Thus, the total time burden is approximately 15,501 hours per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 21, 2021.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–13505 Filed 6–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–151, OMB Control No. 3235–0291]**

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*
Rules 17Ad–6 and 17Ad–7

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–6 (17 CFR 240.17Ad–6) and Rule 17Ad–7 (17 CFR 240.17Ad–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 17Ad–6 under the Exchange Act requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) Specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquiries and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts, or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

Rule 17Ad–7 under the Exchange Act requires each registered transfer agent to retain the records specified in Rule 17Ad–6 in an easily accessible place for a period of six months to six years, depending on the type of record or document. Rule 17Ad–7 also specifies the manner in which records may be maintained using electronic, microfilm, and microfiche storage methods.

These recordkeeping requirements are designed to ensure that all registered transfer agents are maintaining the records necessary for transfer agents to monitor and keep control over their own performance and for the Commission to adequately examine registered transfer agents on an historical basis for compliance with applicable rules.

The Commission estimates that approximately 359 registered transfer

agents will spend a total of 179,500 hours per year complying with Rules 17Ad–6 and 17Ad–7 (500 hours per year per transfer agent).

The retention period under Rule 17Ad–7 for the recordkeeping requirements under Rule 17Ad–6 is six months to six years, depending on the particular record or document. The recordkeeping and retention requirements under Rules 17Ad–6 and 17Ad–7 are mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rules. These rules do not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: June 21, 2021.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–13506 Filed 6–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92219; File No. SR–NASDAQ–2021–049]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date for Changing the Primary and Secondary Source of Quotation Data of MEMX LLC

June 21, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation date for changing the primary and secondary source of quotation data of MEMX LLC (''MEMX'') in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.

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

Nasdaq is filing this proposal to extend the implementation date for changing the primary and secondary source of quotation data of MEMX in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.

Nasdaq proposed to amend Equity 4, Rule 4759 (Data Feeds Utilized) to change the primary and secondary source of quotation data of certain market centers in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.[3] These changes were filed by Nasdaq on February 3, 2021 and published in the **Federal Register** on February 22, 2021.[4]

Nasdaq initially proposed to implement the proposed rule change no later than ninety (90) days following the effective date of the proposed rule change. Due to the need for additional system configuration testing in advance of the date of launch, Nasdaq has decided to delay implementation for MEMX until the Q3 2021. The Exchange will announce the new implementation date in an Equity Trader Alert at least ten days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The purpose of this proposal is to inform the SEC and market participants of the new implementation date for changing the primary and secondary source of quotation data for MEMX. These enhancements were proposed in a rule filing that was submitted to the SEC, and this proposal does not make any substantive changes to that filing. Nasdaq is delaying the implementation date to allow for additional system configuration testing prior to implementation.

*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. As explained above, the purpose of this proposal is to inform the SEC and market participants of the new implementation date for changing the primary and secondary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed changes were to change the primary and secondary source of quotation data for MEMX and MIAX PEARL, LLC (''MIAX PEARL''). The changes for MIAX PEARL have been completed. Therefore, this proposal is only to extend the time period for implementing MEMX.

[4] *See* Securities Exchange Act Release No. 91138 (February 16, 2021), 86 FR 10608 (February 22, 2021) (NASDAQ–2021–008) (''Proposal'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

source of quotation data for MEMX, and the Exchange does not expect the date change to place any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may 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. Waiver of the operative delay would allow the Exchange to immediately extend the implementation date for changing the primary and secondary source of quotation data of MEMX to allow for additional system configuration testing prior to implementation. 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 operative delay and designates the proposed rule change operative upon filing.[11]

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–049 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–2021–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–049, and should be submitted on or before July 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–13521 Filed 6–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92220; File No. SR–Phlx–2021–35]**

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date for Changing the Primary and Secondary Source of Quotation Data of MEMX LLC

June 21, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to extend the implementation date for changing the primary and secondary source of quotation data of MEMX LLC (''MEMX'') in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.

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.

[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

Phlx is filing this proposal to extend the implementation date for changing the primary and secondary source of quotation data of MEMX in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.

Phlx proposed to amend Rule 3304 (Data Feeds Utilized) to change the primary and secondary source of quotation data of certain market centers in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.[3] These changes were filed by Phlx on February 4, 2021 and published in the **Federal Register** on February 23, 2021.[4]

Phlx initially proposed to implement the proposed rule change no later than ninety (90) days following the effective date of the proposed rule change. Due to the need for additional system configuration testing in advance of the date of launch, Phlx has decided to delay implementation for MEMX until the Q3 2021. The Exchange will announce the new implementation date in an Equity Trader Alert at least ten days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The purpose of this proposal is to inform the SEC and market participants of the new implementation date for changing the primary and secondary source of quotation data for MEMX. These enhancements were proposed in a rule filing that was submitted to the SEC, and this proposal does not make any substantive changes to that filing. Phlx is delaying the implementation date to allow for additional system configuration testing prior to implementation.

*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. As explained above, the purpose of this proposal is to inform the SEC and market participants of the new implementation date for changing the primary and secondary source of quotation data for MEMX, and the Exchange does not expect the date change to place any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may 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. Waiver of the operative delay would allow the Exchange to immediately extend the implementation date for changing the primary and secondary source of quotation data of MEMX to allow for additional system configuration testing prior to implementation. 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 operative delay and designates the proposed rule change operative upon filing.[11]

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2021–35 on the subject line.

[3] The proposed changes were to change the primary and secondary source of quotation data for MEMX and MIAX PEARL, LLC (''MIAX PEARL''). The changes for MIAX PEARL have been completed. Therefore, this proposal is only to extend the time period for implementing MEMX.

[4] *See* Securities Exchange Act Release No. 91142 (February 17, 2021), 86 FR 11031 (February 23, 2021) (PHLX–2021–08) (''Proposal'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

*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–2021–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2021–35, and should be submitted on or before July 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–13522 Filed 6–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92217; File No. SR–BX–2021–027]**

## Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date for Changing the Primary and Secondary Source of Quotation Data of MEMX LLC

June 21, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation date for changing the primary and secondary source of quotation data of MEMX LLC (''MEMX'') in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

BX is filing this proposal to extend the implementation date for changing the primary and secondary source of quotation data of MEMX in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.

BX proposed to amend Equity 4, Rule 4759 (Data Feeds Utilized) to change the primary and secondary source of quotation data of certain market centers in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.[3] These changes were filed by BX on February 3, 2021 and published in the **Federal Register** on February 22, 2021.[4]

BX initially proposed to implement the proposed rule change no later than ninety (90) days following the effective date of the proposed rule change. Due to the additional need for system configuration testing in advance of the date of launch, BX has decided to delay implementation for MEMX until the Q3 2021. The Exchange will announce the new implementation date in an Equity Trader Alert at least ten days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The purpose of this proposal is to inform the SEC and market participants of the new implementation date for changing the primary and secondary source of quotation data for MEMX. These enhancements were proposed in

[3] The proposed changes were to change the primary and secondary source of quotation data for MEMX and MIAX PEARL, LLC (''MIAX PEARL''). The changes for MIAX PEARL have been completed. Therefore, this proposal is only to extend the time period for implementing MEMX.

[4] *See* Securities Exchange Act Release No. 91139 (February 16, 2021), 86 FR 10604 (February 22, 2021) (BX–2021–002) (''Proposal'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

a rule filing that was submitted to the SEC, and this proposal does not make any substantive changes to that filing. BX is delaying the implementation date to allow for additional system configuration testing prior to implementation.

*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. As explained above, the purpose of this proposal is to inform the SEC and market participants of the new implementation date for changing the primary and secondary source of quotation data for MEMX, and the Exchange does not expect the date change to place any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may 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. Waiver of the operative delay would allow the Exchange to immediately extend the implementation date for changing the primary and secondary source of quotation data of MEMX to allow for additional system configuration testing prior to implementation. 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 operative delay and designates the proposed rule change operative upon filing.[11]

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–027 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–2021–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–027, and should be submitted on or before July 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–13520 Filed 6–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[License No. 09/09–0462]**

### Hercules Technology III, LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0462 issued to Hercules Technology III, LP, said license is hereby declared null and void.

United States Small Business Administration.

**Thomas G. Morris,**

*Acting Associate Administrator, Director, Office of SBIC Liquidation, Office of Investment and Innovation.*

[FR Doc. 2021–13496 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

**[License No. 04/04–0307]**

### CapitalSouth Partners SBIC Fund III, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 04/04–0307 issued to CapitalSouth Partners SBIC Fund III, L.P. said license is hereby declared null and void.

United States Small Business Administration.

**Thomas G. Morris,**

*Acting Associate Administrator, Director, Office of Liquidation, Office of Investment and Innovation.*

[FR Doc. 2021–13494 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16932 and #16933; Kentucky Disaster Number KY–00084]**

### Presidential Declaration Amendment of a Major Disaster for the State of Kentucky

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Kentucky (FEMA–4595–DR), dated 04/23/2021.

*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 02/27/2021 through 03/14/2021.

**DATES:** Issued on 06/15/2021.

*Physical Loan Application Deadline Date:* 07/08/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/24/2022.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Kentucky, dated 04/23/2021, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 07/08/2021.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2021–13499 Filed 6–24–21; 8:45 am]

**BILLING CODE 8026–03–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. AB 1311]**

### Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company

On June 7, 2021, Metro-North Commuter Railroad Company (Metro-North) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (the Board) authorize the third-party, or ''adverse,'' discontinuance of operating authority held by Housatonic Railroad Company (Housatonic) over a 41.1-mile rail line owned by Metro-North, extending between milepost 0.0 at Beacon, NY, and milepost 71.2 at the Connecticut/New York state line, in Dutchess and Putnam Counties, NY (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 12508, 12524, 12533, 12582, 12570, 12531, 12563, 10509, and 12564.

Metro-North explains that it acquired the Line in 1995 and that, when the Board's predecessor, the Interstate Commerce Commission, authorized the acquisition, it also exempted Metro-North from most of the provisions of Subtitle IV of Title 49 of the U.S. Code and allowed Metro-North to abandon the Line subject to the future discontinuance of trackage rights held by the Danbury Terminal Railroad Company (DTRC). *See Metro N. Commuter R.R.—Acquis. Exemption—Maybrook Line,* FD 32639 et al. (ICC served Jan. 13, 1995). DTRC and Housatonic later merged, and Housatonic assumed DTRC's operating rights. *See Housatonic R.R.—Corp. Family Transaction Exemption—Danbury Terminal R.R.,* FD 33310 (STB served Dec. 27, 1996). Metro-North now seeks adverse discontinuance of Housatonic's operating authority over the Line.

In a decision served in this proceeding on April 20, 2021, Metro-North was granted exemptions from several statutory provisions as well as waivers of certain Board regulations that the Board concluded were inapplicable and unneeded in connection with Metro-North's anticipated application.

According to Metro-North, it is not aware of any document that indicates the Line contains federally granted rights of way. Any documentation in Metro-North's possession will be made available promptly to those requesting it. Metro-North's entire case for discontinuance was filed with the application.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

Any interested person may file comments concerning the proposed adverse discontinuance or protests (including protestant's entire opposition case) by July 22, 2021. Persons who may oppose the proposed adverse discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR 1152.25. Metro-North's reply is due by August 6, 2021.

All pleadings, referring to Docket No. AB 1311, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on: (1) Metro-North's representative, Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1634 I (''Eye'') St. NW, Suite 300, Washington, DC 20006; and (2) Housatonic's representative, Edward J. Rodriguez, 4 Huntley Rd., P.O. Box 687, Old Lyme, CT 06371. Except as otherwise set forth in 49 CFR part 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding. 49 CFR 1104.12(a).

[1] Metro-North initially submitted its application on April 30, 2021. By letter filed on May 14, 2021, Metro-North stated that it had provided notice of an incorrect list of Zip Codes and requested that the proceeding be held in abeyance until June 7, 2021, to allow Metro-North to provide the required 15-day notice and permit newspaper publication of the corrected information. That request was granted, and Metro-North submitted its supplemental information on June 7, 2021, which therefore will be considered the filing date and the basis for all dates in this notice. Metro-North also filed an updated certificate of service on June 15, 2021.

A Draft Environmental Assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Office of Environmental Analysis (OEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the Draft EA (or EIS) may contact OEA by phone at the number listed below. Draft EAs normally will be made available within 33 days of the filing of the application, and the deadline for submission of comments on the Draft EA will generally be within 30 days of its service. The comments received will be addressed in a Final EA (or EIS) and the Board's decision. A Supplemental Final EA (or EIS) may be issued where appropriate.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Relay Service at 1–800–877–8339.

Board decisions and notices are available at *www.stb.gov.*

Decided: June 22, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2021–13625 Filed 6–24–21; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request for Land Use Change From Aeronautical to Non-Aeronautical for 7.6 Acres of Land at Lebanon Municipal Airport, Lebanon, NH

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

**ACTION:** Request for public comments.

**SUMMARY:** Notice is being given that the FAA is considering a request from the City of Lebanon, NH to change the land use from Aeronautical to Non-Aeronautical use for 7.6 acres of land at Lebanon Municipal Airport, Lebanon, NH. The land is not required for aeronautical use and can be developed as an extension of the existing business park. The expansion would create a new long term revenue source for the airport and the proceeds will be deposited in the airport's operations and maintenance account.

**DATES:** Comments must be received on or before July 26, 2021.

**ADDRESSES:** You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 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.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Telephone: 781–238–7618.

**Authority:** 49 United States Code 47107(h)(2).

Issued in Burlington, Massachusetts, on June 21, 2021.

**Julie Seltsam-Wilps,**

*Deputy Director.*

[FR Doc. 2021–13484 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0492]**

### Agency Information Collection Activity Under OMB Review: VA MATIC Authorization

**AGENCY:** Veterans Benefits Administration (VBA), Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0492.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0492'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* 44 U.S.C. 3501–21.

*Title:* VA MATIC Authorization, 29–0532–1.

*OMB Control Number:* 2900–0492.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Veteran policyholders complete VA Form 29–0532–1 to authorize deduction of Government Life Insurance premiums from their bank account.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 75 on April 21, 2021, pages 20796.

*Affected Public:* Individuals and Households.

*Estimated Annual Burden:* 1,500 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 3,000.

By direction of the Secretary.

**Dorothy Glasgow,**

*VA PRA Clearance Officer, (Alternate), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2021–13541 Filed 6–24–21; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA), Office of the Secretary.

**ACTION:** Rescindment of a System of Records.

**SUMMARY:** ExecVA was a repository for Veterans' calls. The details of the calls are recorded and assigned to field personnel within the system. Users throughout VA can collaborate on responses to Veterans and other stakeholders, which results in improved accuracy, consistency, and timeliness of responses through shared data and knowledge management. ExecVA was developed on the COTS product Footprints.

**DATES:** VA stopped maintaining the system of record in ExecVA the week of September 28, 2018. During this time ExecVA data was migrated to *SalesForce.com*.

Comments on this rescindment notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the rescindment will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to the Executive Veterans Affairs Contact Management System (Exec VA)-VA (141VA005Q3). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Robert Mark, Application Administrator, (202) 461–6388; Christopher Oakleaf, Project Manager, (512) 326–6690; Debi Bevins, Executive Staff Director, (202) 461–4830.

**SUPPLEMENTARY INFORMATION:** ExecVA was migrated along with its records to *SalesForce.com* the week of September 28, 2018. The SORN covering that information is 75VA001B. ExecVA, along with its records, were then taken offline and decommissioned.

**Signing Authority**

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Dominic A. Cussatt, Acting Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on June 15, 2021 for publication.

Dated: June 15, 2021.

**Amy L. Rose,**

*Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.*

**SYSTEM NAME AND NUMBER:**

ExecVA—141VA005Q3—Executive Veterans Affairs Contact Management System (Exec VA)-VA

**HISTORY:**

**Federal Register** citation is 75 FR 11186. ExecVA was migrated to *SalesForce.com* the week of September 28, 2018.

[FR Doc. 2021–13554 Filed 6–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0179]**

## Agency Information Collection Activity Under OMB Review: Application for Change of Permanent Plan—Medical

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0179.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0179'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* 44 U.S.C. 3501–21.

*Title:* Application for Change of Permanent Plan—Medical VA Form 29–1549.

*OMB Control Number:* 2900–0179.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* These forms are used by veterans to apply to change his/her plan of insurance from a higher reserve to a lower reserve. The information on the form is required by law, 38 CFR 6.48 and 8.36.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 76 on April 22, 2021, page 21437.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 14 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 28.

By direction of the Secretary.

**Dorothy Glasgow,**

*VA PRA Clearance Officer, (Alternate), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2021–13542 Filed 6–24–21; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 86 Friday,

No. 120 June 25, 2021


Part II

## Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Vineyard Wind Offshore Wind Project; Notice

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA881]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Vineyard Wind Offshore Wind Project

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Vineyard Wind 1, LLC (Vineyard Wind) to take, by Level A harassment and Level B harassment, marine mammals during construction of a commercial wind energy project offshore Massachusetts.

**DATES:** The IHA is valid from May 1, 2023 through April 30, 2024.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

### Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

### Summary of Request

On September 7, 2018, NMFS received a request from Vineyard Wind for an IHA to take marine mammals incidental to pile driving associated with the construction of an offshore wind energy project south of Massachusetts. Vineyard Wind submitted revised versions of the application on October 11, 2018 and on January 28, 2019. The application was deemed adequate and complete on February 15, 2019. A notice of proposed IHA was published in the **Federal Register** on April 30, 2019 (84 FR 18346). In response to Vineyard Wind's request and in consideration of public comments, NMFS has authorized the taking of 15 species of marine mammals by harassment. Neither Vineyard Wind nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

### Description of Activity

Vineyard Wind proposes to construct an 800 megawatt (mw) offshore wind energy project in the northern portion of Lease Area OCS–A 0501, offshore Massachusetts (Figure 1). In its request for an IHA, Vineyard Wind states that the project would consist of up to 100 offshore wind turbine generators (WTGs) and one or more electrical service platforms (ESPs), an onshore substation, offshore and onshore cabling, and onshore operations and maintenance facilities. Take of marine mammals may occur incidental to the construction of the project due to in-water noise exposure resulting from pile driving activities associated with installation of WTG and ESP foundations.

BILLING CODE 3510–22–P

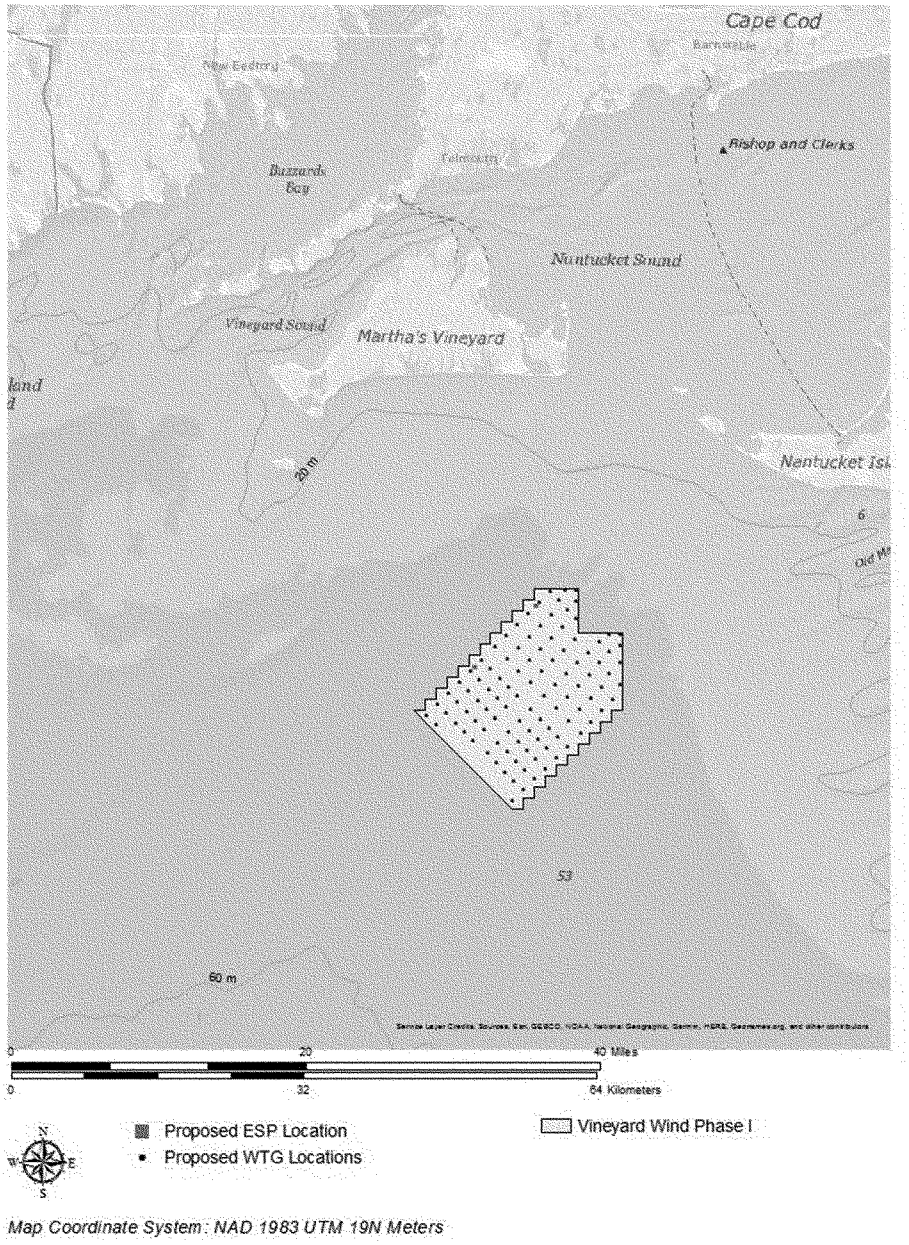



**Figure 1. Location of the Vineyard Wind WDA within the northern portion of Lease Area OCS-A 0501**

BILLING CODE 3510–22–C

Vineyard Wind plans to install the WTGs and ESPs between May and November in the northeast portion of the 675 square kilometer (km²) (166,886 acre) Lease Area, referred to as the Wind Development Area (WDA) (See Figure 1 in the IHA application). At its nearest point, the WDA is just over 23 km (14 mi) from the southeast corner of Martha's Vineyard and a similar distance from Nantucket. Water depths in the WDA range from approximately 37–49.5 meters (m) (121–162 feet (ft)). Construction of the project is planned to commence in May 2023. Up to 102 days of pile driving may occur between May 1 and November 30. Pile driving in December would only occur if unforeseen circumstances arise such that construction is not complete by November and the Bureau of Ocean Energy Management (BOEM) approves pile driving during December. No pile driving activities would occur from January 1 through April 30 under any circumstances.

Two potential foundation types are proposed for the project: Monopiles and jackets. A monopile is a single, hollow cylinder fabricated from steel that is secured in the seabed while the jacket design concept consists of three to four steel piles, a large lattice jacket structure, and a transition piece. Piles for monopile foundations would be constructed for specific locations with maximum diameters ranging from ~8 m (26.2 ft) up to 10.3 m (33.8 ft) and an expected median diameter of ~9 m (29.5 ft). The piles for the monopile foundations are up to 95 m (311.7 ft) in length and will be driven to a penetration depth of 20–45 m (65.6–147.6 ft) (mean penetration depth 30 m

(98.4 ft)). A schematic diagram showing potential heights and dimensions of the various components of a monopile foundation are shown in Figure 2 of the IHA application. Jacket foundations each require the installation of three to four jacket securing piles, known as jacket pin piles, of ~3 m (9.8 ft) diameter. The 3 m (9.8 ft) diameter jacket piles for the jacket foundations are up to ~65 m (213.3 ft) in length and would be driven to a penetration depth of 30–75 m (98.4–196.9 ft) (mean penetration depth of 45 m (147. ft)). A schematic diagram showing potential heights and dimensions of the various components of a jacket foundation are shown in Figure 3 of the IHA application.

WTGs and ESPs may be placed on either type of foundation. Vineyard Wind has proposed that up to 100 WTG foundations may be constructed and that, of those 100 foundations, no more than 10 may be jackets. In addition, either one or two ESPs would be built on a jacket foundation (each foundation is comprised of four piles). Therefore up to 108 piles may be installed in the WDA. Vineyard Wind has incorporated more than one design scenario in their planning of the project. This approach, called the ''design envelope'' concept, allows for flexibility on the part of the developer, in recognition of the fact that offshore wind technology and installation techniques are constantly evolving and exact specifications of the project are not yet certain as of the publishing of this document. Variables that are not yet certain include the number, size, and configuration of WTGs and ESPs and their foundations, and the number of foundations that may be installed per day (a maximum of two foundations would be installed per day). The flexibility provided in the envelope concept is important because it precludes the need for numerous authorization modifications as infrastructure or construction techniques evolve after authorizations are granted but before construction commences. Under the maximum design scenario in Vineyard Wind's IHA application, where 100 WTGs are installed on monopiles, a total of as many as 108 piles may be driven (*i.e.,* 100 monopiles for WTG foundations and 8 pin piles for two ESPs). Specifications for both foundation types are shown in Table 1.

TABLE 1—FOUNDATION TYPES AND SPECIFICATIONS FOR THE VINEYARD WIND PROJECT

| Foundation type | Pile diameter | Pile length | Penetration depth | Maximum number that may be installed * |
|---|---|---|---|---|
| Monopile | ~8 to ~10.3 m (26.2 to 33.8 ft) | ~60 m up to ~95 m (196.9–311.7 ft). | 20–45 m (65.6–147.6 ft) | 100 |
| Jacket (4 piles each) | 3 m (9.8 ft) | ~65 m (213.3 ft) | 30–75 m (98.4–196.9 ft) | 2 |

* The total number of foundations installed would not exceed 102.

For monopile installation, a typical pile driving operation is expected to take less than approximately three hours to achieve the target penetration depth. It is anticipated that a maximum of two monopiles could potentially be driven into the seabed per day. Concurrent driving (*i.e.,* the driving of more than one pile at the same time) would not occur.

A detailed description of Vineyard Wind's planned construction activities is provided in the notice of proposed IHA (84 FR 18346; April 30, 2019). Since that time, Vineyard Wind has not proposed any changes to its construction activities through the IHA process. Therefore, a detailed description is not provided here. Please refer to that notice for the detailed description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting below). Modifications and additions to the mitigation and monitoring measures have occurred since the proposed IHA. All changes since the proposed IHA have been summarized in the Changes From Proposed IHA to Final IHA section and described in detail in their respective sections and/or the Comment Responses below.

**Comments and Responses**

A notice of proposed IHA was published in the **Federal Register** on April 30, 2019 (84 FR 18346). During the 30-day public comment period, NMFS received comment letters from the Atlantic Offshore Lobstermen's Association (AOLA), the Marine Mammal Commission (Commission), Gatzke Dillon & Ballance LLP representing ACK Residents Against Turbines, and a group of environmental non-governmental organizations (ENGOs) including Conservation Law Foundation, National Wildlife Federation, Natural Resources Defense Council, Defenders of Wildlife, Humane Society of the United States, Humane Society Legislative Fund, Whale and Dolphin Conservation, International Fund for Animal Welfare, Mass Audubon, NY4WHALES, and Inland Ocean Coalition. NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* Please see those letters for full detail regarding the commenters' recommendations and underlying rationale.

*Comment 1:* The Commission recommended that NMFS (1) authorize takes of the various marine mammal species that could occur during vibratory pile driving and (2) require Vineyard Wind conduct and report sound source and sound propagation measurements during vibratory pile driving and adjust the Level A and B harassment zones, as needed.

*Response:* According to Vineyard Wind, vibratory driving is not planned and would only be used in extraordinary circumstances in the event that impact driving is not sufficient to ensure pile stability. Vineyard Wind is using a pile gripper to hold the pile in place during impact hammering. If that pile gripper fails (which is not anticipated), Vineyard Wind would either stand-down and fix the pile gripper or be forced to bring in a vibratory hammer to install the pile deep enough so that it is stable before moving to an impact hammer to finish installing the pile. This is an extremely unlikely scenario. As described in Vineyard Wind's application, if it becomes necessary to use a vibratory hammer, the average driving time to get the pile stabilized is anticipated to be 10 minutes (with a rare case of up to 30 minutes). Because use of a vibratory hammer would be extremely costly, this option would be utilized only if absolutely necessary and for the minimum amount of time possible (as

necessary to repair the pile gripper). For those limited number of piles partially installed with a vibratory hammer, less strikes of the impact hammer would be required to fully install the pile. Because of stability issues, use of a vibratory hammer and impact hammer would occur on the same day.

As vibratory driving is not considered likely to occur and, if it did occur, less impact driving would be necessary, we have determined that additional modelling specifically to generate an estimate of take for this unlikely, brief activity is not warranted. If this vibratory driving were to occur, and if any small number of marine mammals not already disturbed by the impact driving in the same day were taken, the existing conservative amount of take authorized is adequate to account for any take that may occur during vibratory pile driving. Likewise, we have determined that a requirement for vibratory driving sound source verification is not warranted given that it is unlikely that this activity will occur and, if it did, would occur only temporarily on a limited number of piles for a limited duration (approximately 10 minutes per pile). We anticipate that if Vineyard Wind determines that the unexpected use of a vibratory hammer is necessary, they will consult with NMFS upon making that decision.

*Comment 2:* The Commission recommended that NMFS consult with external scientists and acousticians to determine the appropriate accumulation time that action proponents should use to determine the extent of the Level A harassment zones based on the associated [cumulative sound exposure level] SELcum thresholds for the various types of sound sources, including stationary sound sources and that NMFS make the issue a priority.

*Response:* NMFS concurs with this recommendation and has prioritized the issue. As identified in the Commission's letter, NMFS has formed an internal committee to identify a more sophisticated approach for determining the extent of Level A harassment zones and is developing a proposal upon which additional internal and external review will be sought. Specific to this IHA, the Commission takes issue that the Level A harassment isopleth for jacket foundation installation (based on the installation of 4 piles in a 24-hour period) is greater than the Level B harassment isopleth and based on the extent of those zones, it is assumed that an animal would experience permanent threshold shift (PTS) before responding behaviorally and leaving or avoiding the area. However, the Commission simplifies application of the zone with such assumption in that they consider if an animal enters the Level A harassment zone, it would incur PTS upon entering, similar to how we consider the potential for Level B harassment to occur. This in fact is not the case, as the distance to the PTS isopleth represents the distance at which the animal would have to remain during installation of all four piles. NMFS recognizes calculating a zone based on work occurring over 24 hours is highly conservative; however, the zone does not represent the area in which PTS would occur simply if an animal enters the zone, as interpreted by the Commission. Further, Vineyard Wind conducted modeling using sophisticated sound propagation and animat modeling. The Commission identified in its letter that it supports the 24-hour approach if an action proponent is able to conduct more sophisticated sound propagation and animat modeling. Therefore, the Commission is contradictory in its comment specific to this action. NMFS has determined the modeling results represent likely zones by which we identify the potential for PTS and behavioral harassment to occur; however, NMFS appropriately considers the temporal component associated with the Level A harassment zone when considering the potential for PTS to occur.

*Comment 3:* The Commission recommended that NMFS reassess the numbers of Level A harassment takes for low-frequency cetaceans and revise authorized take numbers such that the Level A harassment takes account for 77 percent of total takes for installation of monopiles and 100 percent of the total takes for jacket piles.

*Response:* The Commission suggests that the ratio of authorized takes by Level A harassment to takes by Level B harassment for low-frequency cetaceans should exactly match the ratio of the Level A harassment to Level B harassment zone sizes. However, as noted in the Commission's comment, takes by Level A harassment and takes by Level B harassment are modeled differently, with the Level A harassment zones calculated with dual metrics (*i.e.,* SELcum and peak sound pressure level (SPL)). The Level A harassment zone cited by the Commission in their comment (*i.e.,* 3,191 m for impact driving for low-frequency cetaceans) is calculated with the SELcum metric and thereby incorporates a time component. As described in our response to comment 2 above, while this zone based on the SELcum metric is used as a conservative tool for modeling potential exposures above the Level A harassment threshold, an animal documented within that zone does not necessarily mean that animal was taken by Level A harassment when observed within that zone. In contrast, the takes by Level B harassment are based on an instantaneous step function wherein the animal could experience Level B harassment as soon as it is exposed to sound levels above the 160 dB re 1 microPascal (μPa) root mean square (rms) threshold. Therefore, directly comparing zone sizes is not an appropriate approach. Moreover, suggesting the amount of take allocated to Level A harassment and Level B harassment should be proportional to zone sizes is not reflective of what the zones represent and therefore would be a misrepresentation of potential effects on marine mammals. In addition, as noted in the proposed IHA and as described below, the authorized number of takes by Level A harassment are already considered conservative, as there were 0 takes by Level A harassment modeled for the majority of species (including with the SELcum metric) and, in some cases, we increased the authorized number of takes by Level A harassment from 0 to mean group size based on a conservative assumption that a group of each species may be taken despite the modeling results. Further, take estimate modeling does not account for mitigation and monitoring measures included in the IHA. Thus, we reject the Commission's recommendation as the authorized numbers of takes by Level A harassment are sufficient and do not warrant revision.

*Comment 4:* The Commission recommends that NMFS reassess the numbers of Level B harassment takes for all species and authorize an appropriate number of takes relative to the extent of the Level B harassment zones, each species' occurrence in the area, and the 102 days that activities are proposed to occur.

*Response:* The current numbers of takes by Level B harassment authorized are considered conservative for several reasons: Takes were modeled separately for each species through exposure modeling which was run for four separate construction scenarios and the largest resulting exposure number from the four scenarios was carried forward. Thus the number that was carried forward was from the ''maximum case scenario'' in terms of possible construction scenarios. All of the construction scenarios used in the modeling assumed 102 foundations would be installed when ultimately fewer foundations, resulting in fewer pile driving days, may be installed. For comparison, takes by Level B

harassment were also calculated for each species using Vineyard Wind's observer data from site characterization surveys. Vineyard Wind reviewed monitoring data recorded during site characterization surveys in the WDA from 2016–2018 and calculated a daily sighting rate (individuals per day) for each species in each year, then multiplied the maximum sighting rate from the three years by the number of pile driving days under the Maximum Design scenario (*i.e.,* 102 days). This method assumes that the largest average group size for each species observed during the three years of surveys may be present during piling on each day. Then, the larger of the two take numbers calculated for each species (*i.e.,* through exposure modeling or calculated based on Vineyard Wind's monitoring data) was then carried forward as the authorized take number. For these reasons, the authorized take numbers by Level B harassment are sufficient, and we have determined that no revision to authorized numbers of takes by Level B harassment are warranted (aside from the minor revisions described in the Estimated Take section below).

With respect to comparing the authorized amount of take here with HRG surveys, we find the Commission inappropriately compared the amount of take associated with HRG surveys to pile driving activities. The Commission made this recommendation based on the number of days without considering the daily amount of hours during which the activities occur. For example, 40 days of HRG surveys occur over a 24-hour period daily while pile driving associated with the Vineyard Wind project is limited to the installation of one to two piles per day (approximately 3 hours of pile driving per pile which is significantly less than 24 hours). While the number of hours of work per day is not part of the take calculation, it does play a role in making a direct comparison between take allocated for the two activities (*i.e.,* site characterization versus pile driving). Moreover, many delphinid species (*e.g.,* bottlenose dolphins) are attracted to HRG vessels, resulting in unavoidable take during the surveys. Impact pile driving; however, is not an activity expected to attract marine mammals. To compare the amount of take authorized from the proposed project to HRG surveys is inappropriate. Finally, while the Commission identifies the amount of take authorized to Bay State Wind for HRG surveys for some species (*e.g.,* bottlenose dolphins), the subsequent monitoring report required under Bay State Wind's IHA showed detections of only a small fraction of the number of marine mammals authorized for Level B harassment take (Bay State Wind, 2019). For the reasons stated above, we find the authorized amount of take to Vineyard Wind, by Level B harassment, is sufficient considering the scope of the project.

*Comment 5:* The Commission recommended that NMFS require Vineyard Wind to (1) submit the results of the sound source measurements taken during installation of the first monopile for which sound attenuation devices are used and adjust the Level A and B harassment zones accordingly prior to proceeding with installation of any additional monopiles and (2) conduct sound source measurements at least monthly to ensure that the sound attenuation device continues to provide at least a 6-dB reduction in sound levels.

*Response:* The IHA includes extensive acoustic monitoring requirements. The IHA requires that sound field measurements must be conducted during pile driving of the first monopile and first jacket foundation installed over the course of the project and that Vineyard Wind must provide the initial results of the field measurements to NMFS as soon as they are available. In the event that subsequently driven piles are installed that have a larger diameter, or, are installed with a larger hammer or greater hammer energy than the first monopile and jacket pile, sound field measurements must be conducted for those subsequent piles. If initial acoustic field measurements indicate distances to the isopleths corresponding to Level A and/or Level B harassment thresholds are greater than the distances predicted by modeling (as presented in the IHA application), Vineyard Wind must implement additional sound attenuation measures prior to conducting additional pile driving. Additionally, in the event that field measurements indicate distances the isopleths corresponding to Level A harassment and Level B harassment thresholds are greater than the distances predicted by modeling, Vineyard Wind must implement additional attenuation devices such that modeled harassment threshold distances (or smaller) based on a 6 dB reduction are realized in the field. If an additional device(s) still does not achieve the model results and Vineyard Wind has no other means to reduce noise levels (*e.g.,* reduced hammer energy), Vineyard Wind must expand the harassment zones to reflect field measurements, in consultation with NMFS.

Regarding the Commission's recommendation to require Vineyard Wind to conduct sound source measurements at least monthly to ensure that the sound attenuation device continues to provide at least a 6-dB reduction in sound levels, we do not agree this is warranted. Vineyard Wind is required to conduct acoustic monitoring upon commencement of installing each foundation type and demonstrate that the piles monitored are done so under conditions that are reflective of conditions for other piles installed across the WDA (*e.g.,* similar substrate, hammer energy, etc.). If Vineyard Wind finds noise levels associated with the project are higher than modeled (assuming 6 dB attenuation), mitigative action is required and acoustic monitoring must continue. If noise levels are less than those predicted, Vineyard Wind must conduct monitoring on at least 3 monopiles and again demonstrate the pile monitored are installed under conditions representative of future piles to ensure any variability is captured. These measures are sufficient to ensure the sound field produced during pile driving is well understood throughout construction.

*Comment 6:* The Commission recommended that NMFS require Vineyard Wind to conduct passive acoustic monitoring (PAM) at all times during which pile-driving activities occur and implement shutdowns when NARWs are detected within Level A harassment zones.

*Response:* Vineyard Wind is required to conduct passive acoustic monitoring before, during and after all pile driving events. Pile driving must be delayed upon a confirmed PAM detection of a NARW, if the detection is confirmed to have been located within the relevant PAM clearance zones (Table 16a). Vineyard Wind is also required, in consideration of safety and pile integrity, that pile driving for both monopile and jacket foundation piles be shut down should a NARW be observed within 3.2 kms of the pile being driven; this distance represents the Level A harassment zone for monopiles (Table 16b). Because the Level A harassment zone for a jacket foundation represents the energy needed to incur PTS from the installation of four piles, implementing a shutdown zone based on this amount of work over the amount of time it takes to install four piles is unreasonable and not appropriate.

*Comment 7:* The Commission recommended that NMFS require Vineyard Wind to cease activities if any marine mammal comes within 10 m of the equipment, particularly during pile placement; implement delay and shutdown procedures, if a species for

which authorization has not been granted or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level A and/or B harassment zone; and extrapolate the total number of marine mammals taken based on the distance to which visual observations can be made accurately and the extents of the Level A and B harassment zones.

*Response:* Regarding the recommendation that NMFS require Vineyard Wind to cease activities if any marine mammal comes within 10 m of the equipment, we agree and have implemented this requirement in the IHA. The Commission provided a footnote (14) that this distance should be increased due to the size of Vineyard Wind piles; however, given the large clearance and shutdown zones in addition to the large bubble curtain encompassing the piles at distances greater than 10 m, we do not believe this recommendation is warranted simply because the piles are large. Regarding the recommendation that NMFS require Vineyard Wind to delay or shutdown pile driving if a species for which authorization has not been granted or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level A harassment and/or B harassment zones, we have included a measure that Vineyard Wind must shutdown pile driving (as technically feasible) if such circumstances arise.

Regarding the recommendation that NMFS require Vineyard Wind to extrapolate the total number of marine mammals taken based on the distance to which visual observations can be made accurately and the extents of the Level A and B harassment zones, we do not concur with the Commission's recommendation and do not adopt it as stated.

The Commission does not explain why it believes Vineyard Wind should be required to extrapolate the total number of marine mammals taken other than it is ''standard'' which it is not. While NMFS previously included a requirement to report estimated takes based on an undefined extrapolation method in some inshore, estuarine construction project IHAs, we realized the assumptions and uncertainty surrounding this requirement preclude any meaningful analysis. Further, in those IHAs, NMFS did not consider those estimated takes to count against the total take authorized given the high degree of uncertainty surrounding the simplistic approach of estimating take based on the visible area compared to the estimated harassment area. The Commission does not provide recommendations for methods of generating such estimates in a manner that would lead to credible results.

NMFS does believe that Vineyard Wind should report visibility and has included this requirement in the final authorization. NMFS is also requiring Vineyard Wind to report several details related to all observations of marine mammals, including if observed animals occurred within the Level B harassment zone during pile driving. These pieces of information—numbers of individuals of each species detected within the harassment zones and the estimated visibility—may be used to glean an approximate understanding of whether Vineyard Wind may have exceeded the amount of take authorized. Although the Commission does not explain its reasoning for offering these recommendations, NMFS recognizes the basic need to understand whether an IHA-holder may have exceeded its authorized take. The need to accomplish this basic function of reporting does not necessitate that NMFS require applicants to use methods we do not have confidence in to generate estimates of ''total take'' that cannot be considered reliable. To do so would require a number of assumptions resulting in a high degree of uncertainty regarding take and there would be very limited circumstances in which one could assume take occurred.

*Comment 8:* The Commission recommended that NMFS refrain from using the proposed renewal process for Vineyard Wind's authorization and that NMFS provide the Commission and other reviewers the full 30-day comment opportunity.

NMFS *Response:* Regarding renewals, NMFS issued a one-year IHA with the understanding that Vineyard Wind can complete the planned work for which the IHA authorizes take within the one-year period. As necessary, NMFS makes the decision of whether or not to issue a Renewal after one is requested based on current information, the best available science, and the renewal criteria described in the notice of the proposed IHA (84 FR 18346; April 30, 2019). NMFS may issue a one-time, one-year Renewal IHA if, upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid. If and when Vineyard Wind were to request a Renewal, NMFS would fully consider the best available information available at the time of the request (2023 or 2024) and whether the Renewal criteria could be met. NMFS did not include language in the final IHA related to Renewal. While this does not necessarily preclude a Renewal, we think a Renewal is unlikely in this case, given the potential for changes over the next three years that could affect our analyses.

The Commission expressed concern that a renewal for complex projects would hinder the ability for the public to comment within the 15-day public comment period if a renewal is sought by the initial IHA Holder. NMFS maintains that the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. The Request for Public Comments section in the proposed IHA made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the Request for Public Comments section) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of Proposed Activity section) or the same activities that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible one-year Renewal, should the IHA Holder choose to request one. While additional documents would be required should any such Renewal request be submitted, these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The Renewal request would also need to contain a preliminary monitoring report, specifically to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and

comment on whether they think the criteria for a Renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal is 45 days.

In addition to the IHA Renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for Renewals in the regulations, description of the process and express invitation to comment on specific potential Renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency decision-making process.''

Lastly, in prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process.

*Comment 9:* ACK Residents Against Turbines (represented by Gatzke Dillon & Ballance LLP) stated that NMFS' analysis focused solely on construction-related impacts on marine mammals (*e.g.,* noise effects from pile-driving) and failed to evaluate the extent to which the operation of the project could affect marine mammals.

*Response:* Vineyard Wind's request for authorization to take marine mammals was specific to one-year during construction of the project. The activities considered under this request are those associated with pile driving, which includes the use of vessels necessary to support pile installation. As required under 101(a)(5)(D) of the MMPA, NMFS assessed the impacts of the construction in supporting the issuance of an incidental take authorization for the construction phase. Vineyard Wind has not submitted a request for authorization to take marine mammals incidental to the operational phase of their project. Further, the IHA is valid for one-year, during which time operations would not occur. The MMPA is specific in that upon request, NMFS shall authorize, for periods of not more than one year, the incidental taking of marine mammals while engaging in a specified activity (in this case construction of the project) provided NMFS makes the necessary findings. NMFS has made the necessary findings (see Negligible Impact Analysis and Determination section) and therefore, in accordance with the MMPA, and upon request by Vineyard Wind, NMFS has issued a 1-year IHA for the take of marine mammals incidental to construction of the Vineyard Wind Project.

In addition to our analysis under the MMPA related to the specified activity (*i.e.,* construction of the project), NMFS Greater Atlantic Regional Fisheries Office (GARFO) issued a Biological Opinion on September 11, 2020 that fully evaluated the effects of the construction, operation, maintenance, and decommissioning of the Vineyard Wind Project on ESA-listed species, including marine mammals. The Biological Opinion includes an assessment of the potential effects from WTG operations and concluded that noise from turbines operations is expected to be at or below ambient levels at relatively short distances from the foundations and that if ESA-listed marine mammals are exposed to operational noise, the effects on ESA-listed whales are considered insignificant (*i.e.,* so minor that the effect cannot be meaningfully evaluated or detected). Supporting activities such as vessel and aircraft operation would also occur during operation. The 2020 Biological Opinion concluded that ESA-listed marine mammals are either not likely to respond to vessel noise or are not likely to measurably respond in ways that would significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding or sheltering. Therefore, the effects of vessel noise on ESA-listed marine mammals were also deemed to be insignificant. A similar finding was made for exposure to aircraft noise.

In addition, NMFS is a cooperating agency on BOEM's EIS for the project and a co-signatory to the associated Record of Decision (ROD), issued on May 10, 2021. Under the National Environmental Policy Act (NEPA), BOEM, in coordination with NMFS, evaluated the direct, indirect, and cumulative effects of the proposed action which include construction, operation and decommissioning. See National Environmental Policy Act section below.

*Comment 10:* ACK Residents Against Turbines stated that NMFS' analysis does not assess cumulative impacts on marine mammals, when considered in conjunction with other threats to marine mammals, including those posed by the other proposed wind farms adjacent to the Vineyard Wind leasehold.

*Response:* Neither the MMPA nor NMFS' codified implementing regulations specifically call for consideration of other unrelated activities and their impacts on marine mammal populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. Section 101(a)(5)(D) of the MMPA requires NMFS to modify, suspend, or revoke the IHA if it finds that the activity is having more than a negligible impact on the affected species or stocks of marine mammals. NMFS will closely monitor baseline conditions before and during the period when the IHA is effective and will exercise this authority if appropriate.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity,'' as opposed to other activities not specified in the request, will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Vineyard Wind was the applicant for the IHA, and we are responding to the specified activity as described in their application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, we also indicated (1) that NMFS would consider cumulative effects that are reasonably foreseeable

when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered through the section 7 consultation for ESA-listed species. In this case, cumulative impacts have been adequately addressed under NEPA in BOEM's Environmental Impact Statement regarding Vineyard Wind's proposed project. NMFS is a cooperating agency under NEPA on that EIS and has adopted the Final Environmental Impact Statement (FEIS) for purposes of issuing the IHA to Vineyard Wind. In addition, NMFS was a signatory to the associated Record of Decision issued on May 10, 2021.

Separately, NMFS engaged in intra-agency consultation under section 7 of the ESA, which determined that NMFS' action of issuing the IHA is not likely to adversely affect listed marine mammals or their critical habitat. The resulting Biological Opinion considered activities both within and outside the scope of NMFS' IHA (*e.g.,* operation and decommissioning) and included Terms and Conditions aimed at reducing the potential impacts of the project on marine mammals, including NARWs.

*Comment 11:* ACK Residents Against Turbines stated that the analysis of impacts to marine mammals from vessel strikes is inadequate and is based on an assumption that mitigation to prevent vessel strikes will be 100 percent effective.

*Response:* Vineyard Wind did not request authorization for takes from vessel strikes and NMFS has not authorized any. NMFS analyzed the potential for vessel strikes to occur during construction and determined that vessel strike is unlikely to occur (not that there is no collision threat at all, as suggested by AKC), based on a combination of the low probability of a ship strike generally, and the extensive mitigation and monitoring included. The IHA also includes a provision that NMFS may modify, suspend or revoke the IHA if the holder fails to abide by the conditions prescribed herein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines: (1) The authorized taking is likely to have or is having more than a negligible impact on the species or stocks of affected marine mammals or (2) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat. We find that the prescribed measures are effecting the least practicable adverse impact on marine mammals; however, should an unanticipated ship strike occur (to any marine mammal), the IHA could be modified, suspended, or revoked.

Vineyard Wind is planning on running a limited number of crew transfer vessels during construction and proposed a very conservative suite of mitigation measures related to vessel strike avoidance, including measures specifically designed to avoid impacts to right whales. Section 4(l) in the IHA contains a suite of non-discretionary requirements pertaining to ship strike avoidance, including vessel operational protocols and monitoring. Construction of the project will be based out of New Bedford, Massachusetts, which is a 50 to 60-mile (80 to 97 kilometers (km)) trip by vessel to the WDA. Vineyard Wind has indicated that during construction, the number of crew transfer vessels will be limited to two and that each of those vessels will make only one round trip per day (for a total of two round trips).

To date, NMFS is not aware of a wind industry vessel (*e.g.,* marine site characterization survey vessel or wind energy vessels used in European wind project construction and operation) reporting a ship strike. When considered in the context of the low overall probability of any vessel strike given the limited additional vessel traffic, the comprehensive visual and PAM monitoring required in transit lanes, and that construction would occur during the time of year when NARW density is lowest, NMFS believes these measures are adequately protective to avoid ship strike; thus, we did not authorize take from ship strike. These measures are described fully in the Mitigation section below, and include, but are not limited to training for all vessel observers and captains, daily monitoring of the NARW Sighting Advisory System, WhaleAlert app, and USCG Channel 16 for whale presence awareness, communications protocols if whales are observed by any Vineyard Wind personnel, vessel speed restrictions at certain times of year or if certain monitoring requirements are not met, vessel operational protocols should any marine mammal be observed, and visual and passive acoustic monitoring to clear transit routes and WDA of NARWs.

We have determined the mitigation measures in the IHA provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

*Comment 12:* ACK Residents Against Turbines stated that the proposed mitigation measures are ''inadequate and unenforceable'' and that the proposed seasonal moratorium on pile driving (*i.e.,* from January through April) is ''far too short.''

*Response:* The mitigation measures included in the final IHA, including seasonal closures, are adequate and appropriate for the protection of NARWs and are enforceable. Despite the commenters' suggestion, NMFS does not intend to rely on the wind energy industry to police itself. If Vineyard Wind fails to implement any mitigation measure in the IHA and an unauthorized take occurs, Vineyard Wind will be in violation of the MMPA. NOAA's Office of Law Enforcement is responsible for investigating all violations of the MMPA, including any unauthorized takes that may occur during this project.

In concluding the proposed seasonal pile driving moratorium of January through April is ''far too short'' the commenters incorrectly state that NARW densities are higher in May, June, and December than in January. However, as shown in Table 9, NARW densities during the months of the seasonal closure identified in the IHA (January: 0.510 per 100 $km^2$; February: 0.646 per 100 $km^2$; March: 0.666 per 100 $km^2$; April: 0.599 per 100 $km^2$) are higher than in May (0.204 per 100 $km^2$), June (0.016 per 100 $km^2$) and December (0.274 per 100 $km^2$)) and, in fact, are by far the highest in those four months compared to any other months of the year (December has the next highest density at 0.274 per 100 $km^2$). In addition, Vineyard Wind has agreed to not pile drive in December unless extraordinary circumstances arise necessitating pile driving in December, and this is notified to and approved by BOEM. This measure is included in the IHA. Thus, the seasonal moratorium in the IHA minimizes the exposure of right whales to pile driving noise while allowing the project to move forward (*i.e.,* is practicable). In addition to the seasonal moratorium, enhanced mitigation measures for right whales (which are fully described in the Mitigation section below) include, but are not limited to, the following for times of year when pile driving may occur:

- Pile driving must be delayed upon visual observation of a NARW by protected species observers (PSOs) on the pile driving vessel at any distance from the pile;
- Pile driving must be delayed upon a confirmed PAM detection of a NARW, if the detection is confirmed to have been located within the relevant PAM clearance zone;

- From May 1 through May 14 and November 1 through December 31 an extended clearance zone of 10 km is established for NARWs, monitored using real-time PAM, and an aerial or vessel-based survey must also be conducted that covers the 10 km extended clearance zone;
- From May 1 through May 14 and November 1 through December 31, if a NARW is confirmed via visual observation or PAM within the 10 km extended clearance zone, pile driving must be delayed or shut down until the following day; and
- Pile driving must shut down, if feasible, if a marine mammal enters a designated shut down zone.

The commenters do not provide any recommendations regarding additional or different mitigation measures, or specifically explain why they believe the measures are unenforceable. NMFS has determined the mitigation measures in the IHA provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses (see Mitigation section below).

*Comment 13:* AOLA commented that the IHA should consider the entire life cycle of the wind turbine generators (WTGs) and all potential sources of take (*i.e.,* acoustics, vessel strike, habitat changes, etc.) applicable to those phases.

*Response:* As described above (Comment 9), we analyzed the potential for the take of marine mammals to occur during pile driving activities associated with the construction phase of the project, as identified in Vineyard Wind's application. We have therefore authorized the requested take as a result of the construction phase of the project, specifically pile driving activities. However, we note that the potential impacts of other phases of the project are fully analyzed in BOEM' Final EIS, which NMFS has adopted to satisfy our obligations under NEPA (see National Environmental Policy Act section, above) as well as NMFS 2020 Biological Opinion associated with this action for ESA-listed species. Vineyard Wind has the opportunity to submit an IHA application for operation or decommissioning activities, if appropriate.

*Comment 14:* AOLA requested that NMFS consider recent survey data and any pre-construction data being collected in the analysis of risk to marine mammals.

*Response:* We have relied on the best available scientific evidence in our analysis of potential impacts of the project on marine mammals and the development of take estimates, including recent survey data. For example, where survey data indicated take estimates may be higher than those modeled, we adjusted to represent the higher potential for take. We note that after the proposed IHA was published, updated NARW density data (Roberts et al., 2020) became available that incorporated more recent survey data (through 2018) and that for the first time included data from the 2011–2015 surveys of the Massachusetts and Rhode Island (M/RI) Wind Energy Areas (WEA) (Kraus et al. 2016) as well as the 2017–2018 continuation of those surveys, known as the Marine Mammal Surveys of the Wind Energy Areas (MMS–WEA) (Quintana et al., 2018). As this data represented new information that was deemed the best available information on NARW density in the project area, we based the exposure modeling for right whales in the final IHA on this new density data, for all possible construction scenarios, to confirm whether the incorporation of the new density data would result in a change to modeled exposure numbers. This is described in more detail in the Estimated Take section below. In addition, Pace et al. (2021) describes that the stock abundance of NARW is lower than that considered when the proposed IHA was published and we have evaluated that new information. In developing the final IHA, NMFS also consulted the NARW sighting database, WhaleMap, which aggregates both visual and acoustic sighting information from 2010 to present day. Contributors to the database include the Department of Fisheries and Oceans Canada, Transport Canada, NOAA's Protected Species Branch, Woods Hole Oceanographic Institution/robots4whales, New England Aquarium, Center for Coastal Studies, Candadian Whale Institute, Mingan Island Cetacean Study, Ocean Tracking Network, Dalhouise University, University of New Brunswick, and Nike Hawkins Photography, making it an extensive database and useful tool in identifying spatial and temporal occurrence of whales as well as locations and timing of management actions such as implementation of Dynamic Management Areas (DMAs).

NMFS invests heavily in conserving NARWs and, in analyzing the impacts to NARWs from project construction, has considered and leveraged the wealth of data collected by NOAA and partners to make conservative management decisions in consideration of our statutory authority under the MMPA. Despite the changes in density and population numbers noted above, when the proposed IHA was issued, the status of NARWs was critically endangered and this remains true today. We have applied the best available (and most recent) science and have made the determinations necessary to issue the IHA.

*Comment 15:* AOLA commented that it was concerned that the real-time PAM system has not yet been developed and will only be ''used to inform visual monitoring during construction; no mitigation actions would be required on PAM detection alone'' and asked whether the IHA would be contingent on vetting the design and operation of the currently hypothetical system by experts in the field.

*Response:* As described in the Mitigation section, the real-time PAM system will not only be used to inform visual monitoring, but will also trigger required mitigation actions under certain circumstances. For instance, as described above and as described more fully under the Mitigation section below, from May 1 through May 14, an extended clearance zone of 10 km must be established for NARWs using real-time PAM, and any detection of a NARW via real-time PAM within that 10 km clearance zone would trigger immediate delay or shutdown of pile driving. Regarding the request that the design of the real-time PAM system be vetted by experts in the field, while the commenters do not provide any specific recommendations regarding who should be consulted on the design and operation, we note that the IHA requires that a Passive Acoustic Monitoring Plan, which must describe all proposed PAM equipment, procedures, and protocols including those related to real-time PAM, must be submitted to NMFS for review and approval at least 90 days prior to the planned start of pile driving.

*Comment 16:* AOLA recommended NOAA or BOEM create a third-party certification program for PSOs, similar to the system used for fishery observers, which sets universal standards for all wind projects and requires reporting after each construction activity/trip.

*Response:* At this time, NMFS is not creating a third-party certification program for PSOs. Each IHA requires all PSOs must be approved by NMFS, and that Vineyard Wind must submit PSO resumes to NMFS for approval at least 60 days prior to commencing pile driving activity. A full list of qualifications required of PSOs is included in Vineyard Wind's IHA. For

example, PSO must have a degree in biological sciences and experience and/or training working as a PSO. The lead PSO must have experience as a PSO in an offshore environment. All PSO qualification requirements can be found in the Monitoring and Reporting section and the issued IHA. BOEM and NMFS are also working on developing consistent data reporting requirements for the offshore wind industry.

*Comment 17:* AOLA recommended that all pile driving activity should cease when a NARW is observed within 5 miles (8 km) of a pile being driven, and that all shutdowns called for by a PSO should be reported to NOAA daily with detailed explanation when shutdowns were not deemed feasible. AOLA also recommended that further mitigation should be immediately required if NMFS finds continued pile driving to cause unauthorized risk to marine mammals.

*Response:* The commenters' recommendation for a 5 mile (8 km) shutdown zone is not supported or warranted. First, we have already included a requirement in the IHA that pile driving be delayed upon a visual detection of a NARW by PSOs on the pile driving platform at any distance from the pile, at any time of year. In addition, as noted above and as described fully in the Mitigation section below, the IHA also requires a 10 km clearance zone (larger than the zone recommended by the commenters) during the seasons when NARW abundance is greatest (November–December (although VW would avoid pile driving in December except in unforeseen, extraordinary circumstances) and May 1 through May 14). Further, during these periods, if a NARW is detected within the 10 km extended clearance zone (via visual observation or PAM), pile driving must be delayed. Pile driving must not resume until the following day, or, until a follow-up aerial or vessel-based survey is able to confirm all right whale(s) have departed the 10 km extended clearance zone, as determined by the lead PSO. NMFS also added a minimum shutdown distance of 3.2 km, which is a conservative estimate to the Level A harassment isopleth, more than half the distance to the Level B harassment isopleth for NARWs, and is a practicable shutdown zone.

Regarding the recommendation that all shutdowns called for by a PSO should be reported to NOAA daily with detailed explanation when shutdowns were not deemed feasible, we have determined that this is not necessary as the IHA requires weekly and monthly monitoring reports which will include a summary of any mitigation-related actions (*e.g.,* delay, shutdown, etc.) called for by PSOs but not implemented, and the reason why the mitigation-related action was not implemented.

Regarding the recommendation that further mitigation should be immediately required if NMFS finds continued pile driving to cause unauthorized risk to marine mammals, we note that the IHA explicitly identifies that the taking by serious injury or death of any of the species for which take is authorized or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of the IHA. If an individual from a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized take number has been met, is observed entering or within the Level B harassment zone, Vineyard Wind is required to delay or shutdown pile driving activities (when technically feasible) to avoid unauthorized take. Further, the IHA may be modified, suspended, or withdrawn if Vineyard Wind fails to abide by the conditions prescribed in the IHA, or, if NMFS determines that the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

*Comment 18:* AOLA recommended that the IHA require a mandatory 10 nautical miles per hour (knots; kts) (18.52 nautical km per hour) speed restriction on all vessels in all leased areas of the RI/MA WEA when right whales are present.

*Response:* As noted above (see Comment 11) and as described fully in the Mitigation section below, we have included a suite of mitigation measures related to vessel speed to minimize potential impacts to marine mammals and to NARWs in particular. The mitigation measures in the IHA prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

*Comment 19:* The ENGOs recommended that NMFS: (1) Fund analyses of recently collected sighting and acoustic data for all data-holders; and (2) continue to fund and expand surveys and studies to improve our understanding of distribution and habitat use of marine mammals off Rhode Island and Massachusetts, including the Project area, as well as the broader region, in the very near future.

*Response:* We note that this is a general comment not specific to Vineyard Wind's IHA. NMFS executes, funds, and coordinates several marine mammal studies throughout the Northeast to improve our understanding of marine mammals distribution and habitat use. The primary entity charged with doing so is the Northeast Fisheries Science Center; however, NMFS Office of Protected Resources and GARFO also contribute to studies on marine mammals. These are continuing ongoing efforts. For example, through the Atlantic Marine Assessment Program for Protected Species (AMAPPS), the NEFSC is developing models and tools to provide seasonal abundance estimates that incorporate environmental habitat characteristics for marine mammals and other protected species in the western North Atlantic Ocean, including Rhode Island and Massachusetts.

With respect to funding analyses of recently collected sighting and acoustic data for all data-holders, the ENGOS did not identify which data holders or which data they are referring to. Because data on marine mammals in the project area are collected in different ways (*e.g.,* from PSOs, systematic aerial surveys, anecdotal sightings, stranding reports); it is not possible to integrate all the data on marine mammals. Therefore, it is unclear what type of analyses the ENGOs are referring to. However, NMFS is committed to improving our understanding of distribution and habitat use of marine mammals. NMFS and its many partners (including the government of Canada) already, and continue to, submit all survey reports (effort and sightings) to the NARW Consortium Database maintained by the University of Rhode Island for inclusion in the sightings database and those with photographs are also submitted to the New England Aquarium for integration into a unified photo-identification catalog. Most field research teams match their photographs to this catalog during their field efforts. In addition, NMFS is developing systematic data collection methods, where possible, to maximize the use of those data in conservation and management decisions. For example, with funding from the Marine Mammal Commission, NMFS is currently working with the New England Aquarium to analyze offshore wind site characterization survey PSO data and how those data compare to more systematic, line transect surveys. The results of this project will include recommendations about how PSO data can be collected to provide the greatest conservation value for protected species and recommendations about how PSO data can be utilized for regulatory/

management and scientific purposes. More information on this project can be found at *https://www.mmc.gov/grants-and-research-survey/grant-awards/2020-grant-awards/*.

*Comment 20: Regarding* NMFS' requirement that pile driving be postponed until the following day if a NARW is detected by real-time PAM or a vessel-based or aerial survey within 10 km of the pile driving location from May 1–May 14, the ENGOs recommended NMFS remove the exception that allows the activity to resume the same day if an aerial or vessel-based survey could confirm that the extended clearance zone is free of right whales. They assert that as many NARW sightings go unseen, resuming the same day is too risky.

*Response:* NMFS disagrees that PAM and a visual survey (either vessel or aerial) would not result in adequate protections for NARWs. First, the ENGOs do not acknowledge there will be additional monitoring efforts. PSOs at the pile driving vessel will monitor for NARWs, Vineyard Wind is required to monitor the NARW sighting network, USCG Channel 16, etc., and all Vineyard Wind vessels will have observers. The project area is a known foraging area but it is also a migratory corridor and we anticipate NARWs may remain in the area or pass through rather quickly. If a whale(s) remains, it is likely to be detected by PAM, vessel or aerial surveys, or the pile driving PSO in which case pile driving would not commence. If it is migrating, there is no reason for pile driving to be delayed an additional day as animals may move quickly through the area. For example, in 2000, one whale was photographed in Florida waters on January 12th, then again 11 days later (January 23rd) in Cape Cod Bay, less than a month later off Georgia (February 16th), and back in Cape Cod Bay on March 23rd, effectively making the round-trip migration to the Southeast and back at least twice during the winter season (Brown and Marx 2000). Further, if any animal is missed and pile driving does begin while the NARW is within the Level B harassment zone, we have analyzed the impacts to that individual and have concluded any impacts would be minor in that no fitness consequences are likely (see Negligible Impact Analysis and Determination section). We have also identified that pushing any pile driving to times when NARWs are more likely to be present in greater numbers would result in unnecessary impacts as the potential for take is higher and pile driving could occur over a longer timeframe.

*Comment 21:* The ENGOs recommended that PAM be required for 60 minutes prior to commencement of pile driving.

*Response:* We agree with the recommendation and have incorporated this requirement in the IHA. The IHA requires that acoustic monitoring begin at least 60 minutes prior to initiation of pile driving. See the Mitigation section below for details.

*Comment 22:* The ENGOs recommended that the mitigation requirements include NARW acoustic detections as a shutdown trigger.

*Response:* We agree with the recommendation and have incorporated this requirement in the IHA. The IHA requires that pile driving be delayed or shut down upon a confirmed acoustic detection of a NARW within the relevant exclusion zone. See the Mitigation section and Table 16 for details.

*Comment 23:* The ENGOs recommended that between November 1 and May 14, upon a confirmed sighting of a NARW, vessels should be required to reduce their speed to 10 kts or less for the remainder of the day, and to use real-time PAM in order to more accurately detect the presence of right whales. They also recommended PAM be used in transit corridors.

*Response:* The IHA includes several scenarios under which vessels are required to travel at 10 kts or less and requires use of real-time PAM at all times. The IHA requires that from November 1 through May 14, all vessels, regardless of size, must travel at less than 10 kts within the WDA. In the transit corridor, crew transfer vessels must reduce speed to 10kts if the PAM system within the corridor detects a NARW or one is sighted from the vessel. Further, any vessel traveling over 10 kts is required to have a dedicated observer(s) on board at all times. Crew transfer vessels traveling within any designated DMA must travel at 10 kts or less, unless NARWs are clear of the transit route and WDA for two consecutive days, as confirmed by vessel based surveys conducted during daylight hours and real-time PAM, or, by an aerial survey, conducted once the lead aerial observer determines adequate visibility. If confirmed clear by one of the measures above, vessels transiting within a DMA must employ at least two visual observers to monitor for NARWs. Vineyard Wind is required to submit a Vessel Strike Avoidance Plan to NMFS for approval no later than 90 days prior to utilizing vessels which will include details regarding monitoring and the PAM systems in both the WDA and transit corridors. We note submission of such a plan was not included in the proposed IHA.

*Comment 25:* The ENGOs recommended that the IHA require reporting of NARW sightings to NMFS within 2 hours of the sighting.

*Response:* We agree with the recommendation that NARW sightings be reported as soon as possible to NMFS. The IHA requires that if a NARW is observed at any time by PSOs or personnel on any project vessels, during any project-related activity or during vessel transit, Vineyard Wind must report sighting information to the NMFS NARW Sighting Advisory System, the U.S. Coast Guard via channel 16, and WhaleAlert app as soon as feasible but no longer than 24 hours after the sighting. We anticipate that most sightings will be reported within the 2 hour timeframe recommended by the ENGOs; however, we also recognize that communications at sea can sometimes be interrupted (*e.g.,* poor cellular or satellite service); therefore, we are allowing 24 hours maximum (with the caveat they report a sighting as soon as feasible) in case such. We note that given the gravity of a situation associated with an unauthorized take from a ship strike, the IHA requires Vineyard Wind to report any such taking to NMFS immediately, dedicating all resources to ensure that incident is reported. Such dedication, including immediately ceasing activities (as required if a ship strike occurs) is not necessary for a sighting report.

See the Mitigation section below for details.

*Comment 26:* The ENGOs recommended that the take analysis be updated to reflect the best available scientific information to account for evidence supporting the importance of the waters off Massachusetts and Rhode Island as NARW foraging habitat, and to more accurately reflect times that right whales are likely to be present in the area. The ENGOs further recommended that NMFS consider any initial data from state monitoring efforts, passive acoustic monitoring data, opportunistic marine mammal sightings data, and other data sources, and to take steps to develop a dataset that more accurately reflects marine mammal presence so it is in hand for future authorizations.

*Response:* As noted above, updated NARW density data (Roberts et al., 2020) that incorporated more recent survey data and that for the first time included survey data from the MA and RI/MA WEAs (Kraus et al. 2016; Quintana et al., 2018) became available after the proposed IHA was published. The exposure modeling for NARWs in the final IHA was updated to

incorporate this more recent and more accurate density data which reflects year-round presence in the project area (albeit highest densities are when pile driving would not occur). Habitat use is indirectly considered in density estimates as the estimates are based on sighting data and those data would reflect if animals are remaining (*i.e.,* present) within an area for prolonged periods; thereby, increasing density. If animals are remaining in the area, it can be assumed they are engaging in critical behaviors such as foraging. We note; however, habitat use is directly considered in our Negligible Impact Analysis and Determination section. We have used the best scientific information available as the basis for generating take numbers for all marine mammal species. This is described in more detail in the Estimated Take section below. In our negligible impact analysis (see Negligible Impact Analysis and Determinations section), we identify how habitat use is factored into our determinations given the type and amount of take authorized.

Regarding the recommendation to consider initial data from other monitoring efforts and to take steps to develop a dataset that more accurately reflects marine mammal presence so it is in hand for future authorizations, we considered all data sources and did not solely rely upon density data when estimating take as the ENGOs suggested we did. For example, we increased the amount of take authorized for some species from the modelling results in consideration of HRG survey monitoring data previously collected by Vineyard Wind. In other cases, when model results suggested take was less than average group size, take was increased. NMFS will continue to rely on the best available scientific information in both the analysis of potential impacts to marine mammals and in the development of exposure estimates and our findings.

*Comment 27:* The ENGOs recommended that vessel strikes be incorporated into the take analysis. The ENGOs also recommended that the potential for vessel strike resulting from displacement as a result of project-related noise be considered.

*Response:* NMFS analyzed the potential for vessel strikes to occur during Vineyard Wind's construction and determined that it is not likely to occur. We do not authorize any take of marine mammals by vessel strike incidental to Vineyard Wind's planned construction activities under this IHA. Also as described under Comment 10 above, we have included a conservative suite of mitigation measures related to vessel strike avoidance, including measures specifically designed to avoid impacts to NARWs. These measures (*e.g.,* reduced vessel speed) also provide protection for other marine mammals. All ship strike avoidance measures are described fully in the Mitigation section below.

Regarding the commenters' recommendation to consider displacement as a result of project-related noise to result in vessel strike, we have considered this possibility and have concluded that while short-term displacement from the project area is a possibility, there is no evidence to suggest that any short-term displacement would result in a change to the likelihood of vessel strike occurring for any marine mammal species. The amount of vessels utilized by Vineyard Wind during the effective period of the IHA results in only a small increase in vessel traffic over baseline (*e.g.,* two crew transfer vessels making one round trip per day).

*Comment 28:* The ENGOs recommended that NMFS avoid describing potential changes resulting from offshore wind development as ''beneficial,'' as it is unclear what implications these changes may have on the wider ecosystem, and instead use terminology such as ''increase,'' ''decrease,'' and ''change.''

*Response:* In the proposed IHA notice, NMFS identified that impacts from the permanent structures (*i.e.,* WTGs) on marine mammal habitat may be beneficial as a result of increased presence of prey due to the WTGs acting as artificial reefs (Russell et al., 2014). However, we recognize, the long-term impact from foundation presence is outside the scope of the effective period of the IHA and that this analysis is more appropriate in the context of the ESA consultation and NEPA analysis as it relates to marine mammal habitat. Regarding the EIS, we agree that the long term ecosystem effects from offshore wind development in the Northwest Atlantic are still being evaluated and that those ecosystem effects are likely to be complex. Accordingly, we acknowledge that documentation of a change that may appear ''beneficial'' (*i.e.,* an increased number of a particular species documented within a wind development area) does not necessarily equate to overall beneficial impacts to a species or ecosystem. BOEM's FEIS describes impacts to coastal and benthic habitats as being adversely negligible to moderate, as defined in the FEIS. That said, just as there are potential negative impacts to marine mammals from noise associated with offshore wind construction, there are also potential benefits that may result from the presence of wind turbine foundations in marine mammal habitat. Thus, BOEM also concluded that some impacts from the Project can be moderately beneficial for those habitats. Thus, while we acknowledge that there is currently insufficient information to draw a conclusion regarding longer term impacts to marine mammals, we disagree with the commenters that the term ''beneficial'' should be avoided altogether when describing potential outcomes of offshore wind for marine mammals.

*Comment 29:* The ENGOs recommended that NMFS' negligible impact determination consider potential cumulative impacts arising from the construction of the proposed project and additional offshore wind projects that are expected to be installed in the future. Specifically, they recommended a cumulative effects analysis include consideration of repeated disturbance from the same activity over time and space, interactions between different types of potential impacts, multiple wind energy development projects, and the broader context of other ocean uses within the leasing area and that may be encountered by transboundary and migratory species during their life cycles.

*Response:* NMFS agrees that consideration of repeated disturbance from the same activity (as identified in the application) over time and space should be incorporated into a negligible impact determination and we have done so as the impact of the specified activity on marine mammals must be considered in accordance with 101(a)(5)(D) of the MMPA. However, neither the MMPA nor NMFS' codified implementing regulations require NMFS to consider impacts from other unrelated activities (such as the construction and operation of additional wind farms) and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and current stressors. In addition, we consider these factors as relevant contextual elements of the analysis. See

the Negligible Impact Analysis and Determinations section of this notice for full detail.

Section 101(a)(5)(A) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals, and will not result in an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity that can be expected to result in incidental taking of marine mammals (50 CFR 216.104(a)(1)). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Vineyard Wind is the applicant and we are responding to the specified activity as described in their petition (and making the necessary findings on that basis).

Our 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There we stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. We indicated (1) that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species.

In addition to above considerations, BOEM's 2021 FEIS, of which NMFS was a cooperating agency, NMFS adopted, and was a co-signatory to the joint Record of Decision, analyzes cumulative impacts from the construction and operation of the Vineyard Wind Project when combined with other past, present and reasonably foreseeable future actions, including development of other wind energy areas and other stressors (*e.g.,* ship strike, entanglement, climate change). That analysis included an assessment of whether the predicted level and amount of take from construction would have meaningful biological consequences at a species or population level. NMFS, therefore, assessed and integrated other contextual factors (*e.g.,* species' life history and biology, distribution, abundance, and status of the stock; mitigation and monitoring; characteristics of the surveys and sound sources) in determining the overall impact of issuance of the IHA to Vineyard Wind. While exposure to noise during construction could temporarily affect marine mammals, the extensive mitigation (including those measures designed to avoid vessel strike) would minimize the severity and amount of harassment such that no meaningful biological consequences would occur.

Similar findings were made in NMFS' 2020 Biological Opinion related to this action. The effects of the action analyzed in the 2020 Biological Opinion reflect all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. It considered whether the action will result in reductions in reproduction, numbers or distribution of these species and then considered whether any reductions in reproduction, numbers or distribution resulting from the action would reduce appreciably the likelihood of both the survival and recovery of these species. The Biological Opinion concluded the proposed action, which included NMFS' action of issuing an IHA to Vineyard Wind, may adversely affect ESA-listed marine mammals but would not likely jeopardize the continued existence of those species or adversely modify or destroy their critical habitat. We note the analysis in BOEM's FEIS and Biological Opinion extends over the duration of the project while our IHA is limited to one year, and to harassment during construction of the project.

*Comment 30:* The ENGOs recommended NMFS expand its analysis to better consider repeated exposure to the same stressor over multiple days, as well as masking and acoustic habitat impacts.

*Response:* As described above, the potential impacts from repeat exposures are incorporated into our negligible impact analysis. As described in the Negligible Impact Determination and Analysis section below, although some animals may be disturbed repeatedly from pile driving over multiple days, we anticipate the impact on marine mammals from resulting behavioral reactions such as temporary avoidance of the ensonified area during pile driving would not result in impacts to reproductive success of any individual marine mammal, much less annual rates of recruitment and survival. For large whales, including the NARW, we authorize only a small number of Level B harassment takes. For example, Vineyard Wind is authorized for 20 takes by Level B harassment of NARW. Each take represents exposure of one NARW above NMFS behavioral harassment threshold (and the expected associated behavioral disturbance) occurring within one day. While 20 instances of take is the maximum anticipated and authorized, we do not know whether these 20 takes occur to 20 different individual NARWs (each taken on one day) or if some individuals might be taken on more than one day, but we do know that the product of individual whales times days of disturbance cannot exceed 20 (*e.g.,* 20 different whales disturbed on 1 day each, 10 different whales disturbed on two days each, etc.), and given the number, it is unlikely that any single whale would be disturbed on more than a few days. Given Vineyard Wind would be pile driving primarily June through October (with limited pile driving in May and November) it is highly unlikely that any single whale would be taken 20 times. Thus any instances of repeated disturbance would be minimal. For smaller cetaceans, their populations are relatively large compared to baleen whales and they have large habitat ranges; therefore, repeated disturbance to a degree that would cause impacts to annual rates and survival to those populations is also unlikely.

The impacts of masking and impacts to marine mammal acoustic habitat from the specified activity were fully considered in the **Federal Register** notice announcing the proposed IHA (see sections entitled Auditory Masking and Potential Effects of the Specified Activity for discussions on masking; see section entitled Anticipated Effects on Marine Mammal Habitat for discussion on potential impacts to acoustic habitat). That analysis was integrated into our negligible impact finding decision-making. For example, we found that impacts from masking would be insignificant and any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for impact pile driving, and which have already been taken into account in the exposure analysis. The temporary elevated noise levels caused by the project would impact acoustic habitat; however, similar to masking, these elevated noise areas are captured in the behavioral harassment zones established in our analysis.

*Comment 31:* The ENGOs believe that NMFS' use of a Renewal IHA process does not allow for adequate public comment because NMFS supplies no legal rationale for why it is authorized to issue an identical IHA for a second year while cutting in half the comment period the statute requires. They state that should the agency wish to establish its new IHA renewal process as a reasonable interpretation of an

ambiguous statutory provision, it should do so through notice-and-comment rulemaking or comparable process with the appropriate indicia of formality. NMFS must also explain why applicants whose activities may result in the incidental harassment of marine mammals over more than one year should not be required to apply for authorization to do so through the incidental take regulation procedure established by sec. 101(a)(5)(A)(i), and justify how its extension process, with a curtailed comment period, is consistent with both statutorily-established processes.

*Response:* In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA and promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Also, please see our response to Comment 8 for additional information.

The ENGOs recommended we utilize a stand-alone rulemaking process to solicit input on the renewal process so that it is open to public comment. However, using the 30-day public comment period for an IHA to provide relevant explanations of the Renewal process and also announce the option to issue a Renewal to an applicant for a specific project is an effective and efficient way for NMFS to provide information to the reader, solicit focused input from the public, and ultimately affords the same opportunities for public comment as a stand-alone rulemaking would. The ENGOs have the opportunity to comment on the potential Renewal, and, by default, the process during the proposed IHA phase. There is no reason to undertake a rulemaking process to carry out a process that is afforded under the MMPA and for which NMFS has discretion to carry out. The eNGOs have not provided reason why the 30 day public comment period during the proposed IHA phase plus the additional 15-day public comment during a proposed Renewal IHA phase (which generally occurs less than one year after the initial 30-day public comment period) for a total public comment period of 45 days does not meet the requirements of the MMPA.

The Renewal process does not allow for an IHA to cover applicants intending on conducting activities for more than one year, as mistakenly interpreted by the eNGOs. Rather, the FR notice for the initial 30-day comment period for the proposed IHA asks the public to review and provide input on both the initial proposed IHA, as well as the potential for a Renewal should the Renewal conditions be met, following an additional 15-day comment period. It would be unnecessary and inefficient for both the applicant and NMFS to require them to go through a rulemaking process in case their project extended beyond the expiration date of their IHA. The most common cases of issuing a Renewal IHA is when there are unforeseen circumstances that prevent the applicant from completing the analyzed activity from being completed before the expiration date of the original IHA. As noted in the response to Comment 8 above, there are strict criteria NMFS has set forth that an applicant must meet prior to being granted a Renewal IHA. Specific to the Vineyard Wind IHA, any request for a Renewal by Vineyard Wind, will be considered against established and transparent Renewal criteria, including the careful consideration of any changes in the status of the affected species or stocks and whether they would change our findings.

**Changes From Proposed IHA to Final IHA**

Since publication of the Proposed IHA (83 FR 18346, April 30, 2019), Vineyard Wind has split into separate corporate entities, Vineyard Wind, LLC (the applicant identified in the IHA application), and Vineyard Wind 1, which now holds assets associated with the project. While the application and the proposed IHA identify Vineyard Wind, LLC as the potential IHA Holder, NMFS has issued, upon request from Vineyard Wind, LLC, the IHA to Vineyard Wind 1.

In the final IHA, NMFS Office of Protected Resources adopted the Terms and Conditions of the November 2020 Biological Opinion for the Vineyard Wind Project and made other modifications as a result of public input on the proposed IHA, which resulted in several changes to mitigation and monitoring measures from proposed to final. We provide a summary here, and the changes are also described in the specific applicable sections below (*e.g.,* Mitigation). A complete list of final measures may be found in the issued IHA (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*).

Vineyard Wind has committed to adding December to the seasonal pile driving moratorium window. However, to be practicable, in the case of unanticipated delays due to weather or technical problems that require extension of pile-driving activities, pile driving may occur in December if BOEM is notified and approves.

In consideration of the best available science and public input, NMFS has increased clearance zone sizes from the proposed IHA to ensure Level A take of NARWs is avoided and that any Level B harassment is minimized to the maximum extent practicable. During all times of the year, if a PSO on the pile driving vessel observes a NARW, at any distance, pile driving will be delayed. However, we recognize in certain circumstances, weather may impede visibility. From June 1 through October 31, we increased the minimum clearance zone (*i.e.,* the zone that must be visibly clear of NARWs for 30 minutes prior to commencing pile driving) from 1 km (which Vineyard Wind had proposed as a result of their Agreement with NGOs) to 2 km. In addition, we have imposed a 5 km PAM clearance zone during the same time of year. In addition to modifications to the clearance zone, we have extended the shutdown zone (*i.e.,* the zone in which Vineyard Wind must shut down pile driving if a NARW approaches or enters, except if not deemed feasible for human safety or structural integrity) for NARW from 1 km to 3.2 kms. The 3.2 km shutdown zone represents the modeled Level A harassment zone assuming a 6 dB of attenuation from the sound attenuation systems. That is, this distance represents where a NARW could incur PTS if it remains at that distance for the number of strikes considered in the model (*i.e.,* the maximum number of strikes for installing a pile). To be conservative, we have identified this distance as the initial shutdown zone; however, should sound source verification (SSV) monitoring determine the Level A harassment isopleth is less than 3.2 km, NMFS may modify the shutdown zone upon receipt of a SSV report detailing measurements from, at minimum, three piles representing conditions reflective of future piles driving scenarios (*e.g.,* similar substrate, hammer energy, etc.).

The final IHA also incorporates all Terms and Conditions of the 2021 Vineyard Wind Biological Opinion. These include not starting to install a new pile less than 1.5 hours prior to civil sunset and that pile driving may only occur at night if pile driving began during daylight hours and the relevant visual and PAM clearance zone were clear of NARWs. We also carried over the suite of vessel strike avoidance measures considered part of the

proposed action in the Biological Opinion. These include mandatory ship speeds and separation distances, use of trained dedicated observers, PAM in the transit corridors, and monitoring of the NARW Sighting Network.

From proposed to final IHA, we modified take numbers for sperm whales. The proposed IHA allocated two takes, by Level A harassment (*i.e.,* PTS) of sperm whales incidental to pile driving, as it was requested by Vineyard Wind. However, after further examination, we have determined the potential for Level A harassment (PTS) for this species is *de minimis* and we have not authorized take by Level A harassment. The area is not a preferred sperm whale habitat as they prefer deeper waters and bathymetric features such as canyons. The monopile and jacket foundation Level A harassment distance for sperm whales is very small (less than 75 m). It is highly unlikely that a sperm whale would remain within this area during the entire duration of pile driving necessary to incur PTS and we have required clearance and shut down zones greater than 75 m. In addition, in the 2020 Biological Opinion, NMFS concluded take of sperm whales by Level A harassment was not reasonably certain to occur and determined no take by injury (PTS) will be exempted in the corresponding Incidental Take Statement issued under the ESA. The final IHA identifies the amount of take authorized for non-listed marine mammals should Vineyard Wind install 100 WTG monopile foundations and two jacket foundations for the ESPs (the maximum design envelope), though fewer WTG foundations will be installed. The ESA incidental take statement (ITS), which NMFS Office of Protected Resources is required to implement, will be scaled so that the amount of ESA-listed marine mammal take authorized will correspond with the actual amount of piles planned to be installed. Thus, if Vineyard Wind installs fewer piles, it will be exempted from the ESA section 9 prohibition on take for a fewer number of ESA-listed marine mammals (see Endangered Species Act section below). The amount of take authorized for non-listed marine mammals is not scaled.

NMFS did not include language in the final IHA related to a Renewal. This does not necessarily preclude a Renewal, but as described above, we think a Renewal is unlikely in this case, given the potential for changes over the next three years that could affect our analyses.

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

There are 26 marine mammal species that could potentially occur in the project area and that are included in Table 3 of the IHA application. However, the temporal and/or spatial occurrence of several species listed in Table 3 of the IHA application is such that take of these species is not expected to occur nor authorized, and they are therefore not discussed further beyond the explanation provided here. Take of these species is not anticipated either because they have very low densities in the project area, or because they are not expected to occur in the project area due to their more likely occurrence in habitat that is outside the WDA, based on the best available information. There are two pilot whale species (long-finned and short-finned (*Globicephala macrorhynchus*)) with distributions that overlap in the latitudinal range of the WDA (Hayes et al., 2020). Because it is difficult to discriminate between the two species at sea, sightings, and thus the densities calculated from them, are generally reported together as *Globicephala* spp. (Hayes et al., 2020; Roberts et al., 2016). However, based on the best available information, short-finned pilot whales occur in habitat that is both further offshore on the shelf break and further south than the project area (Hayes et al., 2018). Therefore, we assume that any take of pilot whales would be of long-finned pilot whales. Blue whales (*Balaenoptera musculus musculus*), dwarf and pygmy sperm whales (*Kogia sima* and *K. breviceps*), Cuvier's beaked whale (*Ziphius cavirostris*), striped dolphins (*Stenella coeruleoalba*) and four species of Mesoplodont beaked whale (*Mesoplodon* spp.), also occur in deepwater habitat that is further offshore than the project area (Hayes et al., 2020, Roberts et al., 2016). Likewise, Atlantic spotted dolphins (*Stenella frontalis*) primarily occur near the continental shelf edge and continental slope, in waters that are further offshore than the project area (Hayes et al., 2019).

Between October 2011 and June 2015 a total of 76 aerial surveys were conducted throughout the MA and RI/MA Wind Energy Areas (WEAs) (the WDA is contained within the MA WEA along with several other offshore renewable energy lease areas). Between November 2011 and March 2015, Marine Autonomous Recording Units (MARU; a type of static PAM recorder) were deployed at nine sites in the MA and RI/MA WEAs. The goal of the study was to collect visual and acoustic baseline data on distribution, abundance, and temporal occurrence patterns of marine mammals (Kraus et al., 2016). Further, between 2004–2014, acoustic detections of four species of baleen whales were examined that show important distributional changes over the range of baleen whales (Davis et al., 2020). That study showed blue whales were more frequently detected in the northern latitudes of the study area after 2010 and no detections occurred in the project area in spring, summer, and fall when pile driving would occur (Davis et al., 2020). In addition, during recent Vineyard Wind marine site characterization surveys, none of the aforementioned species were observed during marine mammal monitoring (Vineyard Wind, 2021). The lack of sightings of any of the species listed above reinforces the fact that these species are not expected to occur in the project area. As these species are not expected to occur in the project area during the planned activities, they are not discussed further in this document.

We expect that the species listed in Table 2 will potentially occur in the project area and will potentially be taken as a result of the project. Table 2 summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow the Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats. Four marine mammal species that are listed under the Endangered Species Act (ESA) may be present in the project area and may be taken incidental to the planned

activity: The NARW, fin whale, sei whale, and sperm whale.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 2 are the most recent available at the time of publication and, except as otherwise noted, are available in the 2019 Atlantic SARs (Hayes *et al.,* 2019), available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY VINEYARD WIND'S ACTIVITY

| Common name (scientific name) | Stock | MMPA and ESA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | Predicted abundance (CV) [3] | PBR [4] | Annual M/SI [4] | Occurrence and seasonality in project area |
|---|---|---|---|---|---|---|---|
| **Toothed whales (Odontoceti)** | | | | | | | |
| Sperm whale (*Physeter macrocephalus*). | North Atlantic ..... | E; Y | 4,349 (0.28; 3,451; 2019) .... | 5,353 (0.12) | 3.9 | 0 | Rare. |
| Long-finned pilot whale (*Globicephala melas*). | W North Atlantic | -; N | 39,219 (0.3; 30,627; n/a) ..... | [5] 18,977 (0.11) | 306 | 21 | Rare. |
| Atlantic white-sided dolphin (*Lagenorhynchus acutus*). | W North Atlantic | -; N | 93,233 (0.71; 54,443; 2019) | 37,180 (0.07) | 544 | 26 | Common year round. |
| Bottlenose dolphin (*Tursiops truncatus*). | W North Atlantic, Offshore. | -; N | 62,851 (0.23; 51,914; 2019) | [5] 97,476 (0.06) | 519 | 28 | Common year round. |
| Common dolphin (*Delphinus delphis*). | W North Atlantic | -; N | 172,974 (0.21; 145,216; 2019). | 86,098 (0.12) | 1,452 | 399 | Common year round. |
| Risso's dolphin (*Grampus griseus*). | W North Atlantic | -; N | 35,493 (0.19; 30,298; 2019) | 7,732 (0.09) | 303 | 54.3 | Rare. |
| Harbor porpoise (*Phocoena phocoena*). | Gulf of Maine/ Bay of Fundy. | -; N | 95,543 (0.31; 74,034; 2019) | * 45,089 (0.12) | 851 | 217 | Common year round. |
| **Baleen whales (Mysticeti)** | | | | | | | |
| NARW (*Eubalaena glacialis*) | W North Atlantic | E; Y | 368 (0; 356; 2020) [6] ..... | * 535 (0.45) | [6] 0.8 | [6] 18.6 | Year round in continental shelf and slope waters, seasonally. |
| Humpback whale (*Megaptera novaeangliae*). | Gulf of Maine ..... | -; N | 1,393 (0.15; 1,375; 2019) .... | * 1,637 (0.07) | 22 | 58 | Common year round. |
| Fin whale (*Balaenoptera physalus*). | W North Atlantic | E; Y | 6,802 (0.24; 5,573; 2019) .... | 4,633 (0.08) | 11 | 2.35 | Year round in continental shelf and slope waters, occur seasonally. |
| Sei whale (*Balaenoptera borealis*). | Nova Scotia ..... | E; Y | 6,292 (1.02; 3,098; 2019) .... | * 717 (0.30) | 6.2 | 1.2 | Year round in continental shelf and slope waters, occur seasonally. |
| Minke whale (*Balaenoptera acutorostrata*). | Canadian East Coast. | -; N | 21,968 (0.31; 17,002; n/a) ... | * 2,112 (0.05) | 170 | 10.6 | Year round in continental shelf and slope waters, occur seasonally. |
| **Earless seals (Phocidae)** | | | | | | | |
| Gray seal [7] (*Halichoerus grypus*). | W North Atlantic | -; N | 27,131 (0.19; 23,158; 2019) | n/a | 1,389 | 4,729 | Common year round. |
| Harbor seal (*Phoca vitulina*) | W North Atlantic | -; N | 75,834 (0.15; 66,884; 2019) | n/a | 2,006 | 350 | Common year round. |
| Harp seal (*Pagophilus groenlandicus*). | W North Atlantic | -; N | 7,411,000 [8] (unk.; unk; 2019) | n/a | unk | 232,422 | Rare. |

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented are from the 2019 Atlantic SARs.

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018, 2020). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP). Annual mortality or serious injury (M/SI), found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2019 Atlantic SARs.

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016) produced density models to genus level for *Globicephala* spp. and produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] Abundance source is Pace *et al.* (2021). PBR and annual M/SI source is draft 2020 SAR (Hayes *et al.* 2020). Because PBR is based on the minimum population estimate, we anticipate it will be slightly lower than what is presented here given the Pace *et al.* (2021) abundance; however, the 2020 SARs are not yet finalized. Regardless of final numbers, NMFS recognizes the NARW stock is critically endangered with a low PRB and high annual M/SI rate due primarily to ship strikes and entanglement.

[7] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.
[8] The stock abundance of harp seal is considered unknown in the draft 2020 SAR; however, the abundance reflected here is the most recent available.

A detailed description of the species for which take has been authorized, including brief introductions to the relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (84 FR 18346; April 30, 2019). Since that time, the status of some species and stocks have been updated, most notably for large whales. Table 2 includes the most recent population, PBR and annual mortality and serious injury (M/SI) rates for all species. We refer the reader to the proposed IHA **Federal Register** notice for basic descriptions on each species status and provide a summary of updates below where necessary. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

As described in the proposed IHA notice, beginning in 2017, elevated mortalities in the NARW population have been documented, primarily in Canada but some in the U.S., and were collectively declared an Unusual Mortality Event (UME). As of May 2021, 34 NARWs have been confirmed dead and an additional 15 have been determined to be seriously injured. Entanglement and vessel strikes are the primary causes of M/SI. In addition, Pace et al. (2021) has identified a reduction in NARW abundance since the proposed IHA (451 to 368) and Oleson et al. (2020) have established the project area as year-round foraging habitat.

Since the proposed IHA, the annual rate of mortality and serious injury for humpback whales belonging to the Gulf of Maine stock increased from 12.5 to 58. This dramatic increase is a result of changing how the rate is modeled; 12.5 was observed M/SI while 58 represents a model approach considering the observed rate. The draft 2020 SAR applies a new hierarchical Bayesian, state-space model used to estimate mortality (Hayes et al., 2020). The estimated rate is based on the observed rate of serious injury and mortality and an estimated detection rate. The estimated annual rate of total mortality using this modeling approach is 57.6 animals for the period 2011–2015. The IHA does not authorize serious injury or mortality of humpback whales.

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fifteen marine mammal species (twelve cetacean and three pinniped (all phocid species)) have the reasonable potential to co-occur with the planned activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), six are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

The effects of underwater noise from Vineyard Wind's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (84 FR 18346; April 30, 2019) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Vineyard Wind's construction activities on marine

mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (84 FR 18346; April 30, 2019).

**Estimated Take**

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination. As noted in the Summary of Changes from Proposed to Final, a small change was made for Level A harassment for fin whales and sperm whales.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are primarily by Level B harassment, as noise from pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals, either directly or as a result of masking or temporary hearing impairment (also referred to as temporary threshold shift (TTS), as described in the notice of proposed IHA (83 FR 18346, April 30, 2019)). There is also some potential for auditory injury (Level A harassment) to result for select marine mammals. Mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. No marine mammal mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

*Acoustic Thresholds*

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving). Quantifying Level B harassment in this manner is also expected to capture any qualifying changes in behavioral patterns that may result from TTS.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Vineyard Wind's planned activity that may result in the take of marine mammals include the use of impulsive sources.

These thresholds are provided in Table 4. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group | PTS onset acoustic thresholds * (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | *Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB | *Cell 2:* $L_{E,LF,24h}$: 199 dB. |
| Mid-Frequency (MF) Cetaceans | *Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB | *Cell 4:* $L_{E,MF,24h}$: 198 dB. |
| High-Frequency (HF) Cetaceans | *Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB | *Cell 6:* $L_{E,HF,24h}$: 173 dB. |
| Phocid Pinnipeds (PW) (Underwater) | *Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB | *Cell 8:* $L_{E,PW,24h}$: 201 dB. |
| Otariid Pinnipeds (OW) (Underwater) | *Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB | *Cell 10:* $L_{E,OW,24h}$: 219 dB. |

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

**Note:** Peak sound pressure ($L_{pk}$) has a reference value of 1 μPa, and cumulative sound exposure level ($L_E$) has a reference value of 1μPa$^2$s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity that feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

As described above, Vineyard Wind requested NMFS evaluate project construction activity (specifically pile driving) involving installation of up to 100 WTGs and up to two ESPs in the WDA (*i.e.,* a maximum of 102 foundations). Two types of foundations may be used in the construction of the project and were therefore considered in the acoustic modeling study conducted to estimate the potential number of marine mammal exposures above relevant harassment thresholds: Monopile foundations varying in size with a maximum of 10.3 m (33.8 ft.) diameter piles and jacket-style foundations using three or four 3 m (9.8 ft.) diameter piles per foundation.

As described above, Vineyard Wind has incorporated more than one design scenario in their planning of the project. This approach, called the ''design envelope'' concept, allows for flexibility on the part of the developer, in recognition of the fact that offshore wind technology and installation techniques are constantly evolving and exact specifications of the project are not yet certain as of the publishing of this document. Variables that are not yet certain include the number, size, and configuration of WTGs and ESPs and their foundations, and the number of foundations that may be installed per day (though a maximum of two foundations would be installed per day).

In recognition of the need to ensure that the range of potential impacts to marine mammals from the various potential scenarios within the design envelope are accounted for, potential design scenarios were modeled separately in order to conservatively assess the impacts of each scenario. The two installation scenarios modeled are shown in Table 5 and consist of:

(1) The ''maximum design'' scenario consisting of 10010.3 m (33.8 ft.) WTG monopile foundations, 0 jacket foundations, and 2 jacket foundations for ESPs (*i.e.,* eight jacket pin piles); and

(2) The ''most likely design'' scenario consisting of 90 10.3 m (33.8 ft.) WTG monopile foundations, 10 WTG jacket foundations (*i.e.,* 40 total jacket pin piles), and 2 jacket foundations for ESPs (*i.e.,* eight jacket pin piles).

TABLE 5—POTENTIAL CONSTRUCTION DESIGN SCENARIOS MODELED

| Design scenario | WTG monopiles (pile size: 10.3 m (33.8 ft)) | WTG jacket foundations (pile size: 3 m (9.8 ft)) | ESP jacket foundations [1] (pile size: 3 m (9.8 ft)) | Total number of piles | Total number of installation locations |
|---|---|---|---|---|---|
| Most likely design scenario | 90 | 10 | 2 | 138 | 102 |
| Maximum design scenario [3] | 100 | 0 | 2 | 108 | 102 |

[1] Each ESP jacket foundation consists of four pin piles each.
[2] To be conservative and in alignment with Vineyard Wind's request, we considered the maximum design scenario in the IHA; however, the amount of take for ESA-listed species will be contingent upon that authorized in the ITS.

Vineyard Wind's IHA application requested authorization to take marine mammals incidentally while driving 100 monopiles and 2 jacket foundations in the WDA, but other information suggests that Vineyard Wind may actually drive fewer monopiles, which would result in fewer impacts to marine mammals. In December 2020, Vineyard Wind announced it would likely reduce the total number of turbines to 62, and on May 5, 2021, BOEM signed a Record of Decision authorizing the construction of no more than 84 turbines (in addition to the foundations required to construct the two ESPs (for a total of 92 individual piles)). As Vineyard Wind has not amended its original proposal of 102 foundations in its IHA application and because evaluating the impacts from driving those foundations allows for the conservative assessment of the relevant statutory criteria, NMFS finds it appropriate to evaluate the impact of 102 foundations in this IHA.

Vineyard Wind may install either one or two monopiles per day, both the ''maximum design'' and ''most likely design'' scenarios were modeled assuming the installation of one foundation per day and two foundations per day distributed across the same calendar period. No more than one jacket would be installed per day thus one jacket foundation per day (four piles) was assumed for both scenarios. No concurrent pile driving (*i.e.,* driving of more than one pile at a time) would occur and therefore concurrent driving was not modeled. The pile driving schedules for modeling were created based on the number of expected suitable weather days available per month (based on weather criteria determined by Vineyard Wind) in which pile driving may occur to better understand when the majority of pile driving is likely to occur throughout the year. The number of suitable weather days per month was obtained from historical weather data. The modeled pile-driving schedule for the Maximum Design scenario is shown in Table 2 of the IHA application.

Monopile foundation would have maximum diameters ranging from ~8 m (26.2 ft) up to ~10.3 m (33.8 ft) and an expected median diameter of ~9 m (29.5 ft). The 10.3-m (33.8 ft) monopile foundation is the largest potential pile diameter that may be used for the project and was therefore used in acoustic modeling to be conservative. Jacket foundations each require the installation of three to four piles, known as jacket pin piles, of ~3 m (9.8 ft) diameter. All modeling assumed 10.3-m piles would be used for monopiles and 3 m piles would be used for jacket foundations (other specifications associated with monopiles and jacket pin piles are shown in Figures 2 and 3 in the IHA application).

Representative hammering schedules of increasing hammer energy with increasing penetration depth were modeled, resulting in, generally, higher intensity sound fields as the hammer energy and penetration increases. For both monopile and jacket structure models, the piles were assumed to be vertical and driven to a penetration depth of 30 m and 45 m, respectively. While pile penetrations across the site would vary, these values were chosen as reasonable penetration depths. The estimated number of strikes required to drive piles to completion were obtained from drivability studies provided by Vineyard Wind. All acoustic modeling was performed assuming that only one pile is driven at a time.

Additional modeling assumptions for the monopiles were as follows:

- 1,030 cm steel cylindrical piling with wall thickness of 10 cm.
- Impact pile driver: IHC S–4000 (4000 kilojoules (kJ) rated energy; 1977 kips (kN) ram weight).

• Helmet weight: 3234 kN.

Additional modeling assumptions for the jacket pile are as follows:

• 300 cm steel cylindrical pilings with wall thickness of 5 cm.

• Impact pile driver: IHC S–2500 (2500 kJ rated energy; 1227 kN ram weight).

• Helmet weight: 2401 kN.

• Up to four jacket pin piles installed per day.

Sound fields produced during pile driving were modeled by first characterizing the sound signal produced during pile driving using the industry-standard GRLWEAP (wave equation analysis of pile driving) model and JASCO Applied Sciences' (JASCO) Pile Driving Source Model (PDSM).

Underwater sound propagation (*i.e.,* transmission loss) as a function of range from each source was modeled using JASCO's Marine Operations Noise Model (MONM) for multiple propagation radials centered at the source to yield 3D transmission loss fields in the surrounding area. The MONM computes received per-pulse SEL for directional sources at specified depths. MONM uses two separate models to estimate transmission loss.

At frequencies less than 2 kHz, MONM computes acoustic propagation via a wide-angle parabolic equation (PE) solution to the acoustic wave equation based on a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM) modified to account for an elastic seabed. MONM–RAM incorporates bathymetry, underwater sound speed as a function of depth, and a geoacoustic profile based on seafloor composition, and accounts for source horizontal directivity. The PE method has been extensively benchmarked and is widely employed in the underwater acoustics community, and MONM–RAM's predictions have been validated against experimental data in several underwater acoustic measurement programs conducted by JASCO. At frequencies greater than 2 kHz, MONM accounts for increased sound attenuation due to volume absorption at higher frequencies with the widely used BELLHOP Gaussian beam ray-trace propagation model. This component incorporates bathymetry and underwater sound speed as a function of depth with a simplified representation of the sea bottom, as subbottom layers have a negligible influence on the propagation of acoustic waves with frequencies above 1 kHz. MONM–BELLHOP accounts for horizontal directivity of the source and vertical variation of the source beam pattern. Both propagation models account for full exposure from a direct acoustic wave, as well as exposure from acoustic wave reflections and refractions (*i.e.,* multi-path arrivals at the receiver).

The sound field radiating from the pile was simulated using a vertical array of point sources. Because sound itself is an oscillation (vibration) of water particles, acoustic modeling of sound in the water column is inherently an evaluation of vibration. For this study, synthetic pressure waveforms were computed using FWRAM, which is JASCO's acoustic propagation model capable of producing time-domain waveforms.

Models are more efficient at estimating SEL than rms SPL. Therefore, conversions may be necessary to derive the corresponding rms SPL. Propagation was modeled for a subset of sites using a full-wave RAM PE model (FWRAM), from which broadband SEL to SPL conversion factors were calculated. The FWRAM required intensive calculation for each site, thus a representative subset of modeling sites were used to develop azimuth-, range-, and depth-dependent conversion factors. These conversion factors were used to calculate the broadband rms SPL from the broadband SEL prediction.

Two locations within the WDA were selected to provide representative propagation and sound fields for the project area (see Table 6). The two locations were selected to span the region from shallow to deep water and varying distances to dominant bathymetric features (*i.e.,* slope and shelf break). Water depth and environmental characteristics (*e.g.,* bottom-type) are similar throughout the WDA (Vineyard Wind, 2018), and therefore minimal difference was found in sound propagation results for the two sites (see Appendix A of the IHA application for further detail).

TABLE 6—LOCATIONS USED IN PROPAGATION MODELING

| Site | Location (UTM Zone 19N) | | Water depth (m) | Sound sources modeled |
|---|---|---|---|---|
| | Easting | Northing | | |
| P1 | 382452 | 4548026 | 38 | Monopile, Jacket pile. |
| P2 | 365240 | 4542200 | 46 | Monopile, Jacket pile. |

Estimated pile driving schedules were used to calculate the SEL sound fields at different points in time during pile driving. The pile driving schedule for monopiles is shown in Tables A–3 and A–4 in the IHA application. For each hammer energy level, the pile penetration is expected to be 20 percent of the total depth.

The sound propagation modeling incorporated site-specific environmental data that describes the bathymetry, sound speed in the water column, and seabed geoacoustics in the construction area. Sound level estimates are calculated from three-dimensional sound fields and then collapsed over depth to find the ranges to predetermined threshold levels (see the IHA application; Appendix A.3.2). Contour maps (see the IHA application; Appendix A.14) show the planar distribution of the limits of the areas affected by levels that are higher than the specific sound level thresholds.

The modeled source spectra are provided in Figures 11 and 12 of the IHA application. For both pile diameters, the dominant energy is below 100 Hz. The source spectra of the 10.3 m (33.8 ft) pile installation contain more energy at lower frequencies than for the smaller 3 m (9.8 ft) piles. Please see Appendix A of the IHA application for further details on the modeling methodology.

Noise attenuation systems, such as bubble curtains, are used to decrease the sound levels radiated from an underwater source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been measured to reduce sound levels but effective attenuation is highly dependent on depth of water, current,

and configuration and operation of the curtain (Austin, Denes, MacDonnell, & Warner, 2016; Koschinski & Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles and those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski & Lüdemann, 2013; Nehls, Rose, Diederichs, Bellmann, & Pehlke, 2016).

Encapsulated bubble systems (*e.g.,* Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges, *e.g.,* 100–800 Hz, and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. A California Department of Transportation (CalTrans) study tested several systems and found that the best attenuation systems resulted in 10–15 dB of attenuation (Buehler *et al.,* 2015). Similarly, Dähne et al. (2017) found that single bubble curtains reduced sound levels by 7 to 10 dB and reduced the overall sound level by ~12 dB when combined as a double bubble curtain for 6 m steel monopiles in the North Sea. In August 2018, Norther NV started the construction of an offshore wind farm at about 13 NM from Zeebrugge. The diameter of the 45 monopiles installed for that project ranged from 7.2 to 7.8 m. The pile driving was done using a 3500 kJ hydraulic hammer. Monitoring results demonstrated the big bubble curtain achieved 6–7 dB of reduction and, in combination with an additional sound attenuation device, a 10–12 dB reduction was achieved (Degraer et al., 2019). In modeling the sound fields for the planned project, hypothetical broadband attenuation levels of 6 dB and 12 dB were modeled to gauge the effects on the ranges to thresholds given these levels of attenuation.

The acoustic thresholds for impulsive sounds (such as pile driving) contained in the Technical Guidance (NMFS, 2018) are presented as dual metric acoustic thresholds using both $SEL_{cum}$ and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The $SEL_{cum}$ metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

Table 7 shows the modeled radial distances to the dual Level A harassment thresholds using NMFS (2018) frequency weighting for marine mammals, with 0 dB, 6 dB, and 12 dB sound attenuation incorporated. For the peak level, the greatest distances expected are shown, typically occurring at the highest hammer energies. The distances to SEL thresholds were calculated using the hammer energy schedules for driving one monopile or four jacket pin piles, as shown. The radial distances shown in Table 7 are the maximum distances from the piles, averaged between the two modeled locations.

TABLE 7—RADIAL DISTANCES (m) TO LEVEL A HARASSMENT THRESHOLDS FOR EACH FOUNDATION TYPE WITH 0, 6, AND 12 dB SOUND ATTENUATION INCORPORATED

| Foundation type | Hearing group | Level A harassment (peak) | | | Level A harassment (SEL) | | |
|---|---|---|---|---|---|---|---|
| | | No attenuation | 6 dB attenuation | 12 dB attenuation | No attenuation | 6 dB attenuation | 12 dB attenuation |
| 10.3 m (33.8 ft) monopile | LFC | 34 | 17 | 8.5 | 5,443 | 3,191 | 1,599 |
| | MFC | 10 | 5 | 2.5 | 56 | 43 | 0 |
| | HFC | 235 | 119 | 49 | 101 | 71 | 71 |
| | PPW | 38 | 19 | 10 | 450 | 153 | 71 |
| Four, 3 m (9.8 ft) jacket pin piles. | LFC | 7.5 | 4 | 2.5 | 12,975 | 7,253 | 3,796 |
| | MFC | 2.5 | 1 | 0.5 | 71 | 71 | 56 |
| | HFC | 51 | 26 | 13.5 | 1,389 | 564 | 121 |
| | PPW | 9 | 5 | 2.5 | 2,423 | 977 | 269 |

**Note:*** Radial distances were modeled at two different representative modeling locations as described above. Distances shown represent the average of the two modeled locations.

Table 8 shows the modeled radial distances to the Level B harassment threshold with no attenuation, 6 dB and 12 dB sound attenuation incorporated. Acoustic propagation was modeled at two representative sites in the WDA as described above. The radial distances shown in Table 8 are the maximum distance to the Level B harassment threshold from the piles, averaged between the two modeled locations, using the maximum hammer energy.

TABLE 8—RADIAL DISTANCES (m) TO THE LEVEL B HARASSMENT THRESHOLD

| Foundation type | No attenuation | 6 dB attenuation | 12 dB attenuation |
|---|---|---|---|
| 10.3 m (33.8 ft) monopile | 6,316 | 4,121 | 2,739 |
| Four, 3 m (9.8 ft) jacket pin piles | 4,104 | 3,220 | 2,177 |

Please see Appendix A of the IHA application for further detail on the acoustic modeling methodology.

*Marine Mammal Occurrence*

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

We note that NARW density estimates used to inform take estimates have been updated since the proposed IHA was published to include more recent surveys (Roberts et al., 2020).

The best available information regarding marine mammal densities in the project area is provided by habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2020). Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts et al., 2016); more information, including the model results and supplementary information for each model, is available at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. Our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. Marine mammal density estimates in the WDA (animals/km$^2$) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018, 2020). As noted, the updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys, which included some aerial surveys over the RI/MA & MA WEAs (NEFSC & SEFSC, 2011b, 2012, 2014a, 2014b, 2015, 2016), and the 2020 update to the NARW density model (Roberts *et al.,* 2020) that for the first time includes data from the 2011–2015 surveys of the MA and RI/MA WEAs (Kraus et al. 2016) as well as the 2017–2018 continuation of those surveys, known as the Marine Mammal Surveys of the Wind Energy Areas (MMS–WEA) (Quintana et al., 2018).

Mean monthly densities for all animals were calculated using a 13 km (8 mi) buffered polygon around the WDA perimeter and overlaying it on the density maps from Roberts et al. (2016, 2017, 2018, 2020). Please see Figure 13 in the IHA application for an example of a density map showing Roberts et al. (2016, 2017, 2018, 2020) density grid cells with a 13 km buffer overlaid on a map of the WDA. The 13 km (8 mi) buffer is conservative as it encompasses and extends beyond the estimated distances to the isopleth corresponding to the Level B harassment (with no attenuation, as well as with 6 dB and 12 dB sound attenuation) for all hearing groups using the unweighted threshold of 160 dB re 1 μPa (rms) (Table 8). The 13 km buffer incorporates the maximum area around the WDA with the potential to result in behavioral disturbance for the 10.3 m (33.8 ft) monopile installation using (Wood, Southall, & Tollit, 2012) threshold criteria.

The mean density for each month was determined by calculating the unweighted mean of all 10 × 10 km (6.2 × 6.2 mi) grid cells partially or fully within the buffer zone polygon. Densities were computed for the months of May to December to coincide with planned pile driving activities (as described above, no pile driving would occur from January through April). In cases where monthly densities were unavailable, annual mean densities (*e.g.,* pilot whales) and seasonal mean densities (*e.g.,* all seals) were used instead. Table 9 shows the monthly marine mammal density estimates for each species incorporated in the exposure modeling analysis.

TABLE 9—MONTHLY MARINE MAMMAL DENSITY ESTIMATES FOR EACH SPECIES INCORPORATED IN EXPOSURE MODELING ANALYSIS

| Species | Monthly densities (animals/100 km$^2$) [1] | | | | | | | | | | | | Annual | May to Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Mean | Mean |
| Fin whale | 0.151 | 0.115 | 0.122 | 0.234 | 0.268 | 0.276 | 0.26 | 0.248 | 0.197 | 0.121 | 0.12 | 0.131 | 0.187 | 0.203 |
| Humpback whale | 0.033 | 0.018 | 0.034 | 0.204 | 0.138 | 0.139 | 0.199 | 0.109 | 0.333 | 0.237 | 0.078 | 0.049 | 0.131 | 0.16 |
| Minke whale | 0.052 | 0.064 | 0.063 | 0.136 | 0.191 | 0.171 | 0.064 | 0.051 | 0.048 | 0.045 | 0.026 | 0.037 | 0.079 | 0.079 |
| North Atlantic right whale [2] | 0.510 | 0.646 | 0.666 | 0.599 | 0.204 | 0.016 | 0.002 | 0.001 | 0.002 | 0.007 | 0.053 | 0.274 | 0.248 | 0.070 |
| Sei whale | 0.001 | 0.002 | 0.001 | 0.033 | 0.029 | 0.012 | 0.003 | 0.002 | 0.003 | 0.001 | 0.002 | 0.001 | 0.007 | 0.007 |
| Atlantic white sided dolphin | 1.935 | 0.972 | 1.077 | 2.088 | 4.059 | 3.742 | 2.801 | 1.892 | 1.558 | 1.95 | 2.208 | 3.281 | 2.297 | 2.686 |
| Bottlenose dolphin | 0.382 | 0.011 | 0.007 | 0.497 | 0.726 | 2.199 | 5.072 | 3.603 | 4.417 | 4.46 | 2.136 | 1.216 | 2.061 | 2.979 |
| Pilot whales | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 | 0.555 |
| Risso's dolphin | 0.006 | 0.003 | 0.001 | 0.001 | 0.005 | 0.005 | 0.01 | 0.02 | 0.016 | 0.006 | 0.013 | 0.018 | 0.009 | 0.012 |
| Short beaked dolphin | 7.734 | 1.26 | 0.591 | 1.613 | 3.093 | 3.153 | 3.569 | 6.958 | 12.2 | 12.727 | 9.321 | 16.831 | 6.588 | 8.482 |
| Sperm whale * | 0.001 | 0.001 | 0.001 | 0.001 | 0.003 | 0.006 | 0.029 | 0.033 | 0.012 | 0.012 | 0.008 | 0.001 | 0.009 | 0.013 |
| Harbor porpoise | 3.939 | 6.025 | 12.302 | 6.959 | 3.904 | 1.332 | 0.91 | 0.784 | 0.717 | 0.968 | 2.609 | 2.686 | 3.595 | 1.739 |
| Gray seal [3] | 6.844 | 8.291 | 8.621 | 15.17 | 19.123 | 3.072 | 0.645 | 0.372 | 0.482 | 0.687 | 0.778 | 3.506 | 5.633 | 3.583 |
| Harbor seal [3] | 6.844 | 8.291 | 8.621 | 15.17 | 19.123 | 3.072 | 0.645 | 0.372 | 0.482 | 0.687 | 0.778 | 3.506 | 5.633 | 3.583 |
| Harp seal [3] | 6.844 | 8.291 | 8.621 | 15.17 | 19.123 | 3.072 | 0.645 | 0.372 | 0.482 | 0.687 | 0.778 | 3.506 | 5.633 | 3.583 |

[1] Density estimates from habitat-based density modeling of the entire Atlantic EEZ from Roberts et al. (2016, 2017, 2018, 2020).
[2] NARW density estimates have been updated from the Notice of Proposed IHA based on data from 2010 through 2018 (Roberts et al, 2020).
[3] All seal species are grouped together in the density models presented by Roberts et al. (2018).

JASCO's Animal Simulation Model Including Noise Exposure (JASMINE) animal movement model was used to predict the probability of marine mammal exposure to project-related sound. Sound exposure models like JASMINE use simulated animals (also known as ''animats'') to forecast behaviors of animals in new situations and locations based on previously documented behaviors of those animals. The predicted 3D sound fields (*i.e.,* the output of the acoustic modeling process described earlier) are sampled by animats using movement rules derived from animal observations. The output of the simulation is the exposure history for each animat within the simulation.

The precise location of animals (and their pathways) are not known prior to a project, therefore a repeated random sampling technique (Monte Carlo) is used to estimate exposure probability with many animats and randomized starting positions. The probability of an animat starting out in or transitioning into a given behavioral state can be defined in terms of the animat's current behavioral state, depth, and the time of day. In addition, each travel parameter and behavioral state has a termination function that governs how long the parameter value or overall behavioral state persists in the simulation.

The output of the simulation is the exposure history for each animat within the simulation, and the combined history of all animats gives a probability density function of exposure during the project. Scaling the probability density function by the real-world density of animals (Table 9) results in the mean number of animals expected to be exposed over the duration of the project. Due to the probabilistic nature of the process, fractions of animals may be predicted to exceed threshold. If, for example, 0.1 animals are predicted to

exceed threshold in the model, that is interpreted as a 10 percent chance that one animal will exceed a relevant threshold during the project, or equivalently, if the simulation were re-run ten times, one of the ten simulations would result in an animal exceeding the threshold. Similarly, a mean number prediction of 33.11 animals can be interpreted as re-running the simulation where the number of animals exceeding the threshold may differ in each simulation but the mean number of animals over all of the simulations is 33.11. A portion of an animal cannot be taken during a project, so it is common practice to round mean number animal exposure values to integers using standard rounding methods. However, for low-probability events it is more precise to provide the actual values. For this reason, mean number values are not rounded.

Sound fields were input into the JASMINE model and animats were programmed based on the best available information to ''behave'' in ways that reflect the behaviors of the 15 marine mammal species expected to occur in the project area during the planned activity. The various parameters for forecasting realistic marine mammal behaviors (*e.g.,* diving, foraging, surface times, etc.) are determined based on the available literature (*e.g.,* tagging studies); when literature on these behaviors was not available for a particular species, it was extrapolated from a similar species for which behaviors would be expected to be similar to the species of interest. See Appendix B of the IHA application for a description of the species that were used as proxies when data on a particular species was not available. The parameters used in JASMINE describe animal movement in both the vertical and horizontal planes. The parameters relating to travel in these two planes are briefly described below:

Travel sub-models:

• Direction—determines an animat's choice of direction in the horizontal plane. Sub-models are available for determining the heading of animats, allowing for movement to range from strongly biased to undirected. A random walk model can be used for behaviors with no directional preference, such as feeding and playing. A directional bias can also be incorporated in the random walk for use in situations where animals have a preferred absolute direction, such as migration.

• Travel rate—defines an animat's rate of travel in the horizontal plane. When combined with vertical speed and dive depth, the dive profile of the animat is produced.

Dive sub-models:

• Ascent rate—defines an animat's rate of travel in the vertical plane during the ascent portion of a dive.

• Descent rate—defines an animat's rate of travel in the vertical plane during the descent portion of a dive.

• Depth—defines an animat's maximum dive depth.

• Bottom following—determines whether an animat returns to the surface once reaching the ocean floor, or whether it follows the contours of the bathymetry.

• Reversals—determines whether multiple vertical excursions occur once an animat reaches the maximum dive depth. This behavior is used to emulate the foraging behavior of some marine mammal species at depth. Reversal-specific ascent and descent rates may be specified.

• Surface interval–determines the duration an animat spends at, or near, the surface before diving again.

An individual animat's received sound exposure levels are summed over a specified duration, such as 24 hours, to determine its total received energy, and then compared to the threshold criteria described above. As JASMINE modeling includes the movement of animats both within as well as in and out of the modeled ensonified area, some animats enter and depart the modeled ensonified area within a modeled 24 hour period; however, it is important to note that the model accounts for the acoustic energy that an animat accumulates even if that animat departs the ensonified area prior to the full 24 hours (*i.e.,* even if the animat departs prior to a full 24 hour modeled period, if that animat accumulated enough acoustic energy to be taken, it is accounted for in the take estimate). Also note that animal aversion was not incorporated into the Jasmine model runs that were the basis for the take estimate for any species. See Figure 14 in the IHA application for a depiction of animats in an environment with a moving sound field. See Appendix B of the IHA application for more details on the JASMINE modeling methodology, including the literature sources used for the parameters that were input in JASMINE to describe animal movement for each species that is expected to occur in the project area.

*Take Calculation and Estimation*

Here we describe how the information provided above is brought together to produce a quantitative take estimate. We note the only change from proposed to final IHA was the removal of two Level A takes for sperm whales. The following steps were performed to estimate the potential numbers of marine mammal exposures above Level A and Level B harassment thresholds as a result of the planned activity:

(1) The characteristics of the sound output from the planned pile-driving activities were modeled using the GRLWEAP (wave equation analysis of pile driving) model and JASCO's PDSM;

(2) Acoustic propagation modeling was performed using JASCO's MONM and FWRAM that combined the outputs of the source model with the spatial and temporal environmental context (*e.g.,* location, oceanographic conditions, seabed type) to estimate sound fields;

(3) Animal movement modeling integrated the estimated sound fields with species-typical behavioral parameters in the JASMINE model to estimate received sound levels for the animals that may occur in the operational area; and

(4) The number of potential exposures above Level A and Level B harassment thresholds was calculated for each potential scenario within the project design envelope.

As described above, two project design scenarios were modeled: The ''maximum design'' consisting of 100 10.3-m (33.8 ft) WTG monopile foundationsand two jacket foundations for ESPs, and the ''most likely design'' consisting of 90 10.3-m (33.8 ft) WTG monopile foundations, 10 WTG jacket foundations, and two ESP jacket foundations (Table 5). Both of these design scenarios were also modeled with either one or two monopile foundations installed per day. All scenarios were modeled with both 6 dB sound attenuation and 12 dB sound attenuation incorporated. Results of marine mammal exposure modeling of these scenarios is shown in Tables 10–13. Note that while fractions of an animal cannot be taken, these tables are meant simply to show the modeled exposure numbers, versus the actual take estimate. Authorized take numbers are shown below in Table 15.

TABLE 10—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS USING THE MAXIMUM DESIGN SCENARIO AND ONE FOUNDATION INSTALLED PER DAY

| Species | 0 dB attenuation | | | 6 dB attenuation | | | 12 dB attenuation | | |
|---|---|---|---|---|---|---|---|---|---|
| | Level A (SEL) | Level A (peak) | Level B | Level A (SEL) | Level A (peak) | Level B | Level A (SEL) | Level A (peak) | Level B |
| Fin Whale | 0.25 | 16.78 | 49.76 | 0.1 | 4.13 | 33.11 | 0.02 | 0.29 | 21.78 |
| Humpback Whale | 0.12 | 27.25 | 45.33 | 0.03 | 9.01 | 30.1 | 0.01 | 1 | 19.66 |
| Minke Whale | 0.12 | 2.72 | 17.74 | 0.04 | 0.22 | 12.21 | 0 | 0.07 | 7.9 |
| North Atlantic Right Whale* | 0.04 | 2.99 | 9.03 | 0.02 | 0.63 | 5.97 | 0 | 0.04 | 3.94 |
| Sei Whale | 0.01 | 0.57 | 1.63 | 0 | 0.14 | 1.09 | 0 | 0.01 | 0.74 |
| Atlantic White-Sided Dolphin | 0 | 0 | 706.25 | 0 | 0 | 449.2 | 0 | 0 | 277.82 |
| Bottlenose Dolphin | 0.33 | 0 | 159.14 | 0 | 0 | 96.21 | 0 | 0 | 62.21 |
| Pilot Whales | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Risso's Dolphin | 0.01 | 0 | 2.48 | 0 | 0 | 1.61 | 0 | 0 | 1.04 |
| Common Dolphin | 1.58 | 0 | 1603.82 | 0.1 | 0 | 1059.97 | 0.1 | 0 | 703.81 |
| Sperm Whale | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Harbor Porpoise | 8.85 | 0.27 | 236.74 | 4.23 | 0.17 | 150.13 | 1.54 | 0 | 91.96 |
| Gray Seal | 0.61 | 0.6 | 314.75 | 0.11 | 0.3 | 196.4 | 0.04 | 0.07 | 118.06 |
| Harbor Seal | 0.82 | 0.81 | 340.11 | 0.36 | 0.21 | 214.04 | 0.33 | 0.07 | 136.33 |
| Harp Seal | 1.53 | 2.08 | 349.08 | 0.73 | 0.87 | 217.35 | 0 | 0.04 | 132.91 |

**Note:** * NARW exposure estimates have been revised from the Notice of Proposed IHA based on updated density estimates for the species in the project area (Roberts et al., 2020).

TABLE 11—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS USING THE MAXIMUM DESIGN SCENARIO AND TWO FOUNDATIONS INSTALLED PER DAY

| Species | 0 dB attenuation | | | 6 dB attenuation | | | 12 dB attenuation | | |
|---|---|---|---|---|---|---|---|---|---|
| | Level A (SEL) | Level A (peak) | Level B | Level A (SEL) | Level A (peak) | Level B | Level A (SEL) | Level A (peak) | Level B |
| Fin Whale | 0.29 | 18.09 | 41.57 | 0.1 | 4.49 | 29.71 | 0 | 0.41 | 20.57 |
| Humpback Whale | 0.15 | 27.65 | 38.91 | 0.03 | 9.59 | 27.23 | 0 | 1.09 | 18.48 |
| Minke Whale | 0.09 | 2.87 | 16.05 | 0.03 | 0.23 | 11.52 | 0 | 0.05 | 7.76 |
| North Atlantic Right Whale* | 0.03 | 3.02 | 7.42 | 0.01 | 1.39 | 5.32 | 0 | 0.05 | 3.6 |
| Sei Whale | 0.01 | 0.57 | 1.32 | 0 | 0.14 | 0.93 | 0 | 0.01 | 0.65 |
| Atlantic White-Sided Dolphin | 0.25 | 0 | 632.3 | 0.13 | 0 | 428.23 | 0 | 0 | 272.67 |
| Bottlenose Dolphin | 0.17 | 0 | 103.3 | 0 | 0 | 67.71 | 0 | 0 | 43.87 |
| Pilot Whales | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Risso's Dolphin | 0 | 0 | 1.95 | 0 | 0 | 1.38 | 0 | 0 | 0.95 |
| Common Dolphin | 0.89 | 0 | 1260.46 | 0.44 | 0 | 897.91 | 0.1 | 0 | 622.78 |
| Sperm Whale | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Harbor Porpoise | 8.24 | 0.33 | 183.1 | 4.23 | 0.17 | 125.23 | 1.85 | 0.06 | 82.28 |
| Gray Seal | 1.32 | 1.12 | 209.52 | 0.29 | 0.47 | 145.2 | 0.04 | 0.25 | 96.41 |
| Harbor Seal | 2.45 | 1.62 | 235.29 | 1.01 | 0.86 | 164.48 | 0.16 | 0.39 | 110.25 |
| Harp Seal | 1.36 | 2.6 | 238.09 | 0.38 | 0.53 | 162.03 | 0.17 | 0.04 | 108.19 |

**Note:** * NARW exposure estimates have been revised from the Notice of Proposed IHA based on updated density estimates for the species in the project area (Roberts et al., 2020).

TABLE 12—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS USING THE MOST LIKELY SCENARIO AND ONE FOUNDATION INSTALLED PER DAY

| Species | 0 dB attenuation | | | 6 dB attenuation | | | 12 dB attenuation | | |
|---|---|---|---|---|---|---|---|---|---|
| | Level A (SEL) | Level A (peak) | Level B | Level A (SEL) | Level A harassment (peak) | Level B harassment | Level A (SEL) | Level A harassment (peak) | Level B harassment |
| Fin Whale | 0.26 | 11.86 | 46.71 | 0.11 | 2.84 | 29.85 | 0.02 | 0.23 | 19.43 |
| Humpback Whale | 0.13 | 20.26 | 41.32 | 0.04 | 6.54 | 26.27 | 0.01 | 0.83 | 17.08 |
| Minke Whale | 0.12 | 1.7 | 15.41 | 0.04 | 0.13 | 10.28 | 0 | 0.06 | 6.77 |
| North Atlantic Right Whale* | 0.03 | 1.59 | 7.38 | 0.02 | 0.31 | 4.6 | 0 | 0.02 | 3.01 |
| Sei Whale | 0.01 | 0.4 | 1.48 | 0 | 0.09 | 0.95 | 0 | 0.01 | 0.65 |
| Atlantic White-Sided Dolphin | 0 | 0 | 630.06 | 0 | 0 | 380.82 | 0 | 0 | 236.77 |
| Bottlenose Dolphin | 0.37 | 0 | 165 | 0 | 0 | 98.56 | 0 | 0 | 64.19 |
| Pilot Whales | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Risso's Dolphin | 0.01 | 0 | 2.37 | 0 | 0 | 1.48 | 0 | 0 | 0.94 |
| Common Dolphin | 1.55 | 0 | 1480.84 | 0.01 | 0 | 941.41 | 0.01 | 0 | 617.01 |
| Sperm Whale | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Harbor Porpoise | 8.12 | 0.15 | 221.91 | 3.86 | 0.14 | 134.88 | 1.38 | 0 | 80.89 |
| Gray Seal | 0.37 | 0.02 | 292.13 | 0 | 0.01 | 176.92 | 0 | 0 | 104.6 |
| Harbor Seal | 0.68 | 0.35 | 312.37 | 0.34 | 0.01 | 191.06 | 0.34 | 0 | 120.64 |
| Harp Seal | 1.43 | 0.76 | 320.84 | 0.72 | 0.72 | 193.65 | 0 | 0 | 116.13 |

**Note:** * NARW exposure estimates have been revised from the Notice of Proposed IHA based on updated density estimates for the species in the project area (Roberts et al., 2020).

TABLE 13—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS USING THE MOST LIKELY SCENARIO AND TWO FOUNDATIONS INSTALLED PER DAY

| Species | 0 dB attenuation | | | 6 dB attenuation | | | 12 dB attenuation | | |
|---|---|---|---|---|---|---|---|---|---|
| | Level A harassment (SEL) | Level A harassment (peak) | Level B harassment | Level A harassment (SEL) | Level A harassment (peak) | Level B harassment | Level A harassment (SEL) | Level A harassment (peak) | Level B harassment |
| Fin Whale | 0.3 | 13.31 | 37.62 | 0.11 | 3.24 | 26.07 | 0 | 0.36 | 18.08 |
| Humpback Whale | 0.16 | 20.71 | 34.21 | 0.04 | 7.18 | 23.09 | 0 | 0.93 | 15.77 |
| Minke Whale | 0.09 | 1.86 | 13.57 | 0.03 | 0.15 | 9.53 | 0 | 0.04 | 6.62 |
| North Atlantic Right Whale* | 0.03 | 1.63 | 5.7 | 0.01 | 0.32 | 3.91 | 0 | 0.03 | 2.66 |
| Sei Whale | 0.01 | 0.4 | 1.15 | 0 | 0.09 | 0.78 | 0 | 0.01 | 0.55 |
| Atlantic White-Sided Dolphin | 0.28 | 0 | 548.53 | 0.14 | 0 | 357.71 | 0 | 0 | 231.09 |
| Bottlenose Dolphin | 0.19 | 0 | 102.67 | 0 | 0 | 66.75 | 0 | 0 | 43.72 |
| Pilot Whales | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Risso's Dolphin | 0 | 0 | 1.78 | 0 | 0 | 1.22 | 0 | 0 | 0.84 |
| Common Dolphin | 0.79 | 0 | 1099.62 | 0.39 | 0 | 761.48 | 0.01 | 0 | 527.04 |
| Sperm whale | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Harbor Porpoise | 7.44 | 0.22 | 163.17 | 3.86 | 0.14 | 107.61 | 1.72 | 0.07 | 70.29 |
| Gray Seal | 1.1 | 0.56 | 183.32 | 0.19 | 0.19 | 123.97 | 0 | 0.18 | 82.23 |
| Harbor Seal | 2.37 | 1.19 | 203.98 | 1.01 | 0.68 | 139.82 | 0.17 | 0.34 | 93.67 |
| Harp Seal | 1.26 | 1.29 | 206.08 | 0.36 | 0.36 | 136.45 | 0.18 | 0 | 90.56 |

**Note:** *NARW exposure estimates have been revised from the Notice of Proposed IHA based on updated density estimates for the species in the project area (Roberts et al., 2020).

As shown in Tables 10–13, the greatest potential number of marine mammal exposures above the Level B harassment threshold occurs under the Maximum Design scenario with one monopile foundation installed per day (Table 10) while the greatest potential number of marine mammal exposures above the Level A harassment thresholds occurs under the Maximum Design scenario with two monopile foundations installed per day (Table 11). With the inclusion of more jacket foundations, which would require more piles and more overall pile driving, marine mammal exposure estimates for the Maximum Design scenario (Tables 10 and 11) are higher than under the Most Likely scenario (Tables 12 and 13). In all scenarios, the maximum number of jacket foundations modeled per day was one (four jacket pin piles). Modeling indicates that whether one monopile foundation is installed per day or two makes little difference with respect to estimated Level A harassment exposures; total exposures above the Level A harassment threshold differed by less than one exposure over the duration of the project, for each species. For exposures above the Level B harassment threshold, exposure estimates for one monopile foundation per day are somewhat higher than for two monopile foundations per day. With two monopile foundations per day, there are half as many days of pile driving so there is likewise a reduced number of overall predicted Level B harassment exposures over the duration of the project.

Exposure modeling indicated that no Level A harassment takes are expected for several species (*i.e.,* minke whale, sei whale, and all small cetaceans and pinnipeds). However, Vineyard Wind requested Level A harassment takes for most species as a precautionary measure, based on the fact that shutdown of pile driving may not be technically feasible once pile driving has begun, thus if a marine mammal were to enter the Level A harassment zone after pile driving has commenced Vineyard Wind may not be able to avoid that animal(s) being taken by Level A harassment. Vineyard Wind requested Level A harassment takes for these species based on mean group size for each respective species, assuming that if one group member were to be exposed, it is likely that all animals in the same group would receive a similar exposure level, especially in a scenario with a larger area ensonified above the Level A harassment threshold. Thus, for the species for which exposure modeling indicated less than the number of individuals in a mean group size would be taken (by either Level A or Level B harassment), Vineyard Wind increased the value from the exposure modeling results to equal one mean group size, rounded up to the nearest integer, for species with predicted exposures of less than one mean group size (with the exception of NARWs, as described below). Mean group sizes for species were derived from Kraus et al. (2016), where available, as the best representation of expected group sizes within the RI/MA & MA WEAs. These were calculated as the number of individuals sighted, divided by the number of sightings summed over the four seasons (see Tables 5 and 19 in Kraus et al., 2016). Sightings for which species identification was considered either definite or probable were used in the Kraus et al. (2016) data. For species that were observed very rarely during the Kraus et al. (2016) study (*i.e.,* sperm whales and Risso's dolphins) or observed but not analyzed (*i.e.,* pinnipeds), data derived from AMAPPS surveys (Palka et al., 2017) were used to evaluate mean group size. For sperm whales and Risso's dolphins, the number of individuals divided by the number of groups observed during 2010–2013 AMAPPS NE summer shipboard surveys and NE aerial surveys during all seasons was used (Appendix I of Palka et al., 2017). Though pinnipeds congregate in large numbers on land, at sea they are generally foraging alone or in small groups. For harbor and gray seals, Palka et al. (2017) report sightings of seals at sea during 2010–2013 spring, summer, and fall NE AMAPPS aerial surveys. Those sightings include both harbor seals and gray seals, as well as unknown seals, and thus a single group size estimate was calculated for these two species. Harp seals are occasionally recorded south of the RI/MA & MA WEAs on Long Island, New York, and in the nearshore waters, usually in groups of one or two individuals. During 2002–2018, the Coastal Research and Education Society of Long Island (CRESLI) reported seven sightings of harp seals (CRESLI, 2018). Five of these were of single individuals and two were of two animals. Calculated group sizes for all species are shown in Table 14.

TABLE 14—MEAN GROUP SIZES OF MARINE MAMMAL SPECIES IN THE PROJECT AREA

| Species | Mean group size |
|---|---|
| Fin Whale | 1.8 |
| Humpback Whale | 2 |
| Minke Whale | 1.2 |
| North Atlantic Right Whale | 2.4 |
| Sei Whale | 1.6 |
| Atlantic White-Sided Dolphin | 27.9 |
| Common Bottlenose Dolphin | 7.8 |
| Pilot whale | 8.4 |
| Risso's Dolphin | 5.3 |
| Short-Beaked Common Dolphin | 34.9 |
| Sperm Whale | 1.5 |
| Harbor Porpoise | 2.7 |
| Gray Seal | 1.4 |
| Harbor Seal | 1.4 |
| Harp Seal | 1.3 |

Vineyard Wind requested Level B take numbers for some species that differ from the numbers modeled and were instead based on monitoring data from site characterization surveys conducted at the same location. Vineyard Wind reviewed monitoring data recorded during site characterization surveys in the WDA from 2016–2018 and calculated a daily sighting rate (individuals per day) for each species in each year, then multiplied the maximum sighting rate from the three years by the number of pile driving days under the Maximum Design scenario (*i.e.,* 102 days). This method assumes that the largest average group size for each species observed during the three years of surveys may be present during piling on each day. Vineyard Wind used this method for all species that were documented by protected species observers (PSOs) during the 2016–2018 surveys. For sei whales, this approach resulted in the same number of estimated Level B harassment takes as Level A harassment takes (two), so to be conservative Vineyard Wind doubled the Level A harassment value to arrive at their requested number of Level B harassment takes. Risso's dolphins and harp seals were not documented by PSOs during those surveys, so Vineyard Wind requested take based on two average group sizes for those species. The Level B harassment take calculation methodology described here resulted in higher take numbers than those modeled (Table 10) for 10 out of 15 species expected to be taken.

We have authorized take numbers that are slightly different than the numbers requested by Vineyard Wind for some species. Vineyard Wind's requested take numbers for Level A harassment authorization are based on an expectation that 12 dB sound attenuation will be effective during the planned activity. NMFS reviewed the CalTrans bubble curtain ''on and off'' studies conducted in San Francisco Bay in 2003 and 2004. Based on 74 measurements (37 with the bubble curtain on and 37 with the bubble curtain off) at both near (<100 m) and far (>100 m) distances, the linear averaged received level reduction is 6 dB (CalTrans, 2015). Nehls et al. (2016) reported that attenuation from use of a bubble curtain during pile driving at the Borkum West II offshore wind farm in the North Sea was between 10 dB and 17 dB (mean 14 dB) (peak).

Based on the best available information, we believe it reasonable to assume some level of effective attenuation due to implementation of noise attenuation during impact pile driving. Vineyard Wind did not provide information regarding the attenuation system that will ultimately be used during the planned activity (*e.g.,* what size bubbles and in what configuration a bubble curtain would be used, whether a double curtain will be employed, whether hydro-sound dampers, noise abatement system, or some other alternate attenuation device will be used, etc.) to support their conclusion that 12 dB effective attenuation can be expected. In the absence of this information regarding the attenuation system that will be used, and in consideration of the available information on attenuation that has been achieved during impact pile driving, we conservatively assume that 6 dB of sound attenuation will be achieved. We further recognize that the pile size and hammer strength ultimately chosen by Vineyard Wind may be less than that considered under the maximum design scenario. Regardless, in absence of *in situ* data, NMFS conservatively assumes the sound field generated from pile driving will resemble that of the model assuming 6dB of attenuation and the amount of take we have authorized reflects that assumption.

In some cases Vineyard Wind's site characterization survey monitoring efforts revealed species presence at lower values than the Level B harassment exposure numbers modeled (assuming 6 dB of attenuation) based on marine mammal densities reported by Roberts et al. (2016, 2017, 2018, 2020) (Table 10). While we agree that Vineyard Wind's use of visual observation data as the basis for Level B harassment take requests is generally sound, we believe that, to be conservative, the higher of the two calculated take numbers (*i.e.,* take numbers based on available visual observation data, or, based on modeled exposures above threshold) should be used to estimate Level B exposures. Therefore, for species for which the Level B harassment exposure numbers modeled based on marine mammal densities reported by Roberts et al. (2016, 2017, 2018, 2020) with 6 dB sound attenuation applied (Table 10) were higher than the take numbers based on visual observation data (*i.e.,* fin whale, bottlenose dolphin, harbor porpoise, harbor seal and harp seal) we authorize take numbers based on those modeled using densities derived from Roberts et al. (2016, 2017, 2018, 2020) with 6 dB sound attenuation applied.

As noted above, there were zero takes of sperm whales modeled under all modeling scenarios (Table 10, 11, 12 and 13) and sightings of sperm whales were extremely rare in the Kraus et al (2016) data. However, Vineyard Wind requested Level A takes of sperm whales based on the potential for there to be one group of average size exposed to noise above the Level A harassment threshold and we proposed to authorize 2 takes of sperm whales by Level A harassment in the notice of proposed IHA (84 FR 18346; April 30, 2019). However, through the analysis conducted during ESA section 7 consultation, we determined the likelihood of a sperm whale to incur PTS (Level A harassment) is *de minimis* because the area is not a preferred sperm whale habitat as they prefer deeper waters and bathymetric features such as canyons and the monopile and jacket foundation Level A harassment distances for sperm whales is very small (less than 75 m). It is highly unlikely that a sperm whale would remain within this area during the entire duration of pile driving necessary to incur PTS and we have required clearance and shut down zones greater than 75 m. Accordingly, the Biological Opinion's ITS does not include an exemption for any takes by Level A harassment of sperm whales. For these reasons, we did not authorize take by Level A harassment of sperm whales.

For NARWs, exposure modeling presented in the IHA application was based on the best available density data available at the time (*i.e.,* Roberts et al. 2016, 2017, 2018). Because takes by Level B harassment calculated based on Vineyard Wind's PSO data were higher than those modeled using the best available density data, in the proposed IHA (84 FR 18346; April 30, 2019) we proposed to authorize Level B harassment based on the numbers calculated from Vineyard Wind's PSO data (*i.e.,* 20 takes by Level B harassment). After the proposed IHA

was published, NARW density data (Roberts et al., 2020) was updated to incorporate more recent survey data (through 2018) including those data from the 2011–2015 surveys of the MA and RI/MA WEAs (Kraus et al. 2016) as well as the 2017–2018 continuation of those surveys, known as the Marine Mammal Surveys of the Wind Energy Areas (MMS–WEA) (Quintana et al., 2018) (Table 9). As this data represented new information that was deemed the best available information on NARW density in the project area, we requested that Vineyard Wind re-run the exposure modeling for NARWs using this new density data, for all possible construction scenarios, to confirm whether the incorporation of the new density data would result in a change to modeled exposure numbers. The resulting modeled number of takes by Level B harassment of right whales were lower under all four potential construction scenarios than the numbers that had been previously modeled and presented in the IHA application and the proposed IHA, and, remained lower under all four potential construction scenarios than the number calculated using Vineyard Wind's PSO data. To be conservative in our impact assessment and given the year-round presence of NARWs in the project area (albeit still very low in the summer months as indicated in the density estimates), the number of authorized takes by Level B harassment of right whales in the IHA remains at 20 (the same number of authorized takes proposed in the proposed IHA (84 FR 18346; April 30, 2019)) based on calculations using Vineyard Wind's PSO data. Modeled NARW exposure numbers (based on the newer density data (Roberts et al., 2020)) for all construction scenarios are shown in Tables 10–13. The updated NARW density data incorporated in the revised exposure modeling (Roberts et al., 2020) is shown in Table 9.

For NARWs, one exposure above the Level A harassment threshold was modeled over the duration of the planned project based on the Maximum Design scenario and 6 dB effective attenuation (Tables 10 and 11). However, exposure modeling does not consider mitigation and Vineyard Wind requested no authorization for Level A harassment takes of NARWs based on an expectation that any potential exposures above the Level A harassment threshold will be avoided through enhanced mitigation and monitoring measures implemented specifically to minimize potential NARW exposures. As described in the notice of proposed IHA, based on the enhanced mitigation and monitoring measures implemented specifically for NARWs (described below, see ''Mitigation''), including, but not limited to, the seasonal moratorium on construction from January through April, delay of pile driving upon any sighting of a NARW at any distance by observers on the pile driving platform, extended PAM clearance and monitoring zones beyond the Level B harassment zone, and pile driving shutdown called for at the Level A harassment distance, any potential take of right whales by Level A harassment will be avoided. Therefore, we do not authorize any takes of NARWs by Level A harassment.

Estimates of take by Level A harassment are based on exposure modeling with 6 dB sound attenuation applied rather than Vineyard Wind's PSO data. However, for all species for which the modeled number of takes by Level A harassment was lower than the estimated mean group size (Table 9), we proposed to authorize takes by Level A harassment based on mean group size to be conservative (except for NARWs, for which no takes by Level A harassment were proposed because of the enhanced mitigation protocols). There were three species for which estimated takes by Level A harassment based on exposure modeling were higher than the estimated mean group size, and therefore the proposed number of takes by Level A harassment were based on exposure modeling rather than mean group size: Fin whale, humpback whale and harbor porpoise. Thus for these three species, we recalculated takes by Level A harassment based on exposure modeling assuming a scenario of 100 piles driven with 6 dB attenuation and two piles driven with no attenuation. This resulted in the following change to takes by Level A harassment from the proposed IHA (84 FR 18346; April 30, 2019): Fin whale takes by Level A harassment increased from 4 to 5 (recalculation of Level A harassment takes for humpback whale and harbor porpoise did not result in a change to the estimated Level A harassment take number). Although no unattenuated pile driving will occur, we have issued the amount of take of fin whales in Table 15 to be conservative. This take also aligns with the amount of take exempted in the Biological Opinion and associated ITS. Authorized take numbers are shown in Table 15.

TABLE 15—TOTAL AMOUNT OF TAKE AUTHORIZED, BY SPECIES

| Species | Takes by Level A harassment | Takes by Level B harassment | Total takes authorized | Total takes as a percentage of stock taken [2] |
|---|---|---|---|---|
| Fin whale [1] | 5 | 33 | 38 | 0.5 |
| Humpback Whale | 10 | 56 | 66 | 4.7 |
| Minke Whale | 2 | 98 | 100 | 0.4 |
| North Atlantic Right Whale [1] | 0 | 20 | 20 | 5.4 |
| Sei Whale [1] | 2 | 4 | 6 | 0.1 |
| Sperm whale [1] | 0 | 5 | 5 | 0.1 |
| Atlantic White-Sided Dolphin | 28 | 1,107 | 1,135 | 1.2 |
| Bottlenose Dolphin | 8 | 96 | 104 | 0.2 |
| Long-finned Pilot Whale | 9 | 91 | 100 | 0.3 |
| Risso's Dolphin | 6 | 12 | 18 | 0.1 |
| Common Dolphin | 35 | 4,646 | 4,681 | 2.7 |
| Harbor porpoise | 4 | 150 | 155 | 0.2 |
| Gray seal | 2 | 414 | 416 | 1.5 |
| Harbor seal | 2 | 214 | 216 | 0.3 |
| Harp seal | 2 | 217 | 219 | 0.0 |

[1] Here we present take numbers of ESA-listed marine mammals provided Vineyard Wind installs 102 foundations. Ultimately this take is contingent upon the amount of take authorized in the associated Incidental Take Statement which is scaled based on final design.

[2] Calculations of percentage of stock taken are based on the Nbest abundance estimate as shown in Table 2. For all other species the best available abundance estimates are derived from the most recent NMFS Stock Assessment Reports (Hayes et al., 2020).

The take numbers authorized (Table 15) are considered conservative for the following reasons:

- Authorized take numbers are based on an assumption that all installed monopiles would be 10.3 m in diameter, when some or all monopiles ultimately installed may be smaller;
- Authorized take numbers are based on an assumption that 102 foundations would be installed, when ultimately the total number installed may be lower;
- Authorized take numbers are based on a scenario that includes up to 10 jacket foundations, when it is possible that fewer than 10 jacket foundations may be installed;
- Authorized Level A take numbers do not account for the likelihood that marine mammals will avoid a stimulus when possible before that stimulus reaches a level that would have the potential to result in injury;
- Authorized take numbers do not account for the effectiveness of mitigation and monitoring measures in reducing the number of takes (with the exception of NARWs, for which mitigation and monitoring measures are factored into the Level A harassment take number);
- For 9 of 15 species, no Level A takes were predicted based on modeling, however Level A take numbers have been conservatively increased from zero to mean group size for these species.

**Mitigation**

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water pile-driving activities (*e.g.,* ramp-up, establishing harassment zone, implementing shutdown zones, etc.). Additional measures have also been incorporated to account for the fact that the planned activities would occur offshore. Modeling was performed to estimate zones of influence (ZOI; see ''Estimated Take''); these ZOI values were used to inform mitigation measures for pile driving activities to minimize Level A harassment and Level B harassment to the extent possible, while providing estimates of the areas within which Level B harassment might occur. Several measures have been added or modified since the proposed IHA was published, and are identified and described in detail below.

In addition to the specific measures described later in this section, Vineyard Wind would conduct briefings for construction supervisors and crews, the marine mammal and acoustic monitoring teams, and Vineyard Wind staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures. Vineyard Wind must use available sources of information on right whale presence, including, at least, daily monitoring of the Right Whale Sightings Advisory System, monitoring of Coast Guard VHF Channel 16 throughout the day to receive notifications of any sightings, and information associated with any Dynamic Management Areas and Slow Zones to plan pile driving to minimize the potential for exposure of any right whales to pile driving noise. This measure was not included in the proposed IHA and affords increased protection of NARWs by raising awareness of NARW presence in the area by both visual and passive acoustic monitoring efforts outside of Vineyard Wind's efforts and allows for planning of pile driving to minimize potential impacts.

*Seasonal Restriction*

As described in the proposed IHA, no pile driving activities may occur between January 1 and April 30. More recently, as identified in the final IHA, Vineyard Wind has also committed to avoiding pile driving in December except under unforeseen, extraordinary circumstances that require them to do so to complete the project and they may only do so upon approval from BOEM. This seasonal restriction is established to minimize the potential for NARWs to be exposed to pile driving noise. Based on the best available information (Kraus et al., 2016; Roberts et al., 2017, 2020), the highest densities of right whales in the project area are expected during the months of December through April. This restriction is expected to greatly reduce the potential for NARW exposure to pile driving noise associated with the planned project.

*Clearance Zones*

Vineyard Wind must use PSOs to establish clearance zones around the pile driving equipment to ensure these zones are clear of marine mammals prior to the start of pile driving. The purpose of ''clearance'' of a particular zone is to prevent potential instances of auditory injury and potential instances of more severe behavioral disturbance as a result of exposure to pile driving noise (serious injury or death are unlikely outcomes even in the absence of mitigation measures) by delaying the activity before it begins if marine mammals are detected within certain pre-defined distances of the pile driving equipment. The primary goal in this case is to prevent auditory injury (Level A harassment) of NARWs and reduce the risk of PTS to other marine mammals where there is potential it may occur. The clearance zones are

larger than the modeled distances to the isopleths corresponding to Level A harassment (based on peak SPL) for all marine mammal functional hearing groups, assuming an effective 6 dB attenuation of pile driving noise. For NARWs, a detection at any distance by a PSO on the pile driving vessel will trigger a delay. The clearance zone identified in Table 16a is the minimum zone that must be visible and clear prior to commence pile driving; however, PSO will be able to detect a whale at farther distances on clear days. Further, at all times of year, any large whale sighted by a PSO within 1,000 m of the pile that cannot be identified to species must be treated as if it were a NARW, triggering a delay in pile driving.

The proposed IHA identified a pile driving clearance zone of 1,000 m (1 km) for NARWs from May 15 through October 31. In the final IHA, the clearance zone for NARWs during this time period was greatly expanded to 5 km and a minimum visibility zone was established. The clearance zones for non-NARWs species remained as proposed in the final IHA. Clearance zones apply to both monopile and jacket installation. These zones vary depending on species and are shown in Table 16 for all piles. All distances to clearance zones are the radius from the center of the pile.

TABLE 16a AND b—REQUIRED NARW CLEARANCE ZONES (16a) AND SHUTDOWN ZONES (16b)

| Clearance and PAM Monitoring Zones | | | | |
|---|---|---|---|---|
| Time of year | Pile type | Minimum visual clearance zone [1 2] | PAM clearance zone [5] | PAM monitoring zone (km) |
| May 1–May 14 | All | 10 km | 10 km [6] | 10 |
| May 15–May 31 | monopile/jacket | 2 km/1.6 km [3 4] | 5 km/3.2 km [3] | 10 |
| June 1–Oct 31 | monopile/jacket | 2 km/1.6 km [3 4] | 5 km/3.2 km [3 6] | [7] 5 |
| Nov 1–Dec 31 | monopile/jacket | 2 km/1.6 km [3] | 10 km [6] | 10 |

[1] At any time of year, a visual detection of a NARW by a PSO at the pile driving platform triggers a delay in pile driving.
[2] At all times of year, any large whale sighted by a PSO within 1,000 m of the pile that cannot be identified to species must be treated as if it were a NARW.
[3] Upon receipt of an interim SSV report, NMFS may adjust the clearance zones to reflect SSV measurements such that the minimum visual clearance zones represent the Level A (SELcum) zones and the PAM clearance zones represent the Level B harassment zones. However, zone sizes will not be decreased less than 1 km from June 1–Oct 31 and not less than 2 km during May 15–May 31 or if a DMA or Slow Zone is established that overlaps with the Level B harassment zone.
[4] If a DMA or Slow Zone overlaps the Level B harassment zone, Vineyard Wind will employ a third PSO at the pile driving platform such that 3 PSOs will be on duty. The primary duty of the 3rd PSO is to observe for NARWs.
[5] At any time of year, a PAM detection (75 percent confidence) within the clearance zone must be treated as a visual detection, triggering a delay in pile driving.
[6] From May 1–14 and Nov 1–Dec 31, the PAM system must be operated 24/7 if pile driving will occur and must not be less than 10 km.
[7] If a DMA or Slow Zone overlaps the Level B zone, the PAM system must be extended to the largest practicable detection zone to increase situational awareness but must not be smaller than the Level B zone.

| NARW shutdown zone (visual and PAM) | |
|---|---|
| Pile type | Shutdown zone [1 2] (km) |
| Monopile/Jacket | 3.2 |

[1] If a marine mammal is observed entering or within the respective clearance zone after pile driving has commenced, a shutdown of pile driving must be implemented when technically feasible.
[2] Upon receipt of an interim SSV report, NMFS may adjust the shutdown zone.

TABLE 17—REQUIRED NON-NARW CLEARANCE AND SHUTDOWN ZONES

| Species group | Clearance and shutdown zones (m) |
|---|---|
| Non-NARW mysticete whales (including humpback, sei, fin and minke) and sperm whale | 500 |
| Harbor porpoise | 120 |
| All other marine mammals (including dolphins and pinnipeds) | 50 |

If a marine mammal is observed within or entering the relevant clearance zones prior to the start of pile driving operations, pile driving activity must be delayed until either the marine mammal has voluntarily left the respective clearance zone and been visually confirmed beyond that clearance zone, or, 30 minutes have elapsed without re-detection of the animal in the case of mysticetes, sperm whales, Risso's dolphins and pilot whales, or 15 minutes have elapsed without re-detection of the animal in the case of all other marine mammals.

Prior to the start of pile driving activity, the clearance zones will be monitored for 60 minutes to ensure that they are clear of the relevant species of marine mammals. Pile driving may only commence once PSOs and PAM operators have declared the respective clearance zones clear of marine mammals. Marine mammals observed within a clearance zone must be allowed to remain in the clearance zone (*i.e.,* must leave of their own volition), and their behavior will be monitored and documented. The clearance zones may only be declared clear, and pile driving started, when the entire clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 30 minutes prior to pile driving.

From May 1 through May 14 an extended clearance zone of 10 km (radial distance from the pile being driven) must be established for NARWs. This zone must be monitored using real-time PAM. An aerial or vessel-based survey must also be conducted that covers the 10 km extended clearance zone during this period. Vessel-based surveys must not begin until the lead PSO on duty determines there is adequate visibility. Aerial surveys must not begin until the lead PSO on duty determines adequate visibility and at least one hour after sunrise (on days with sun glare). From November 1 through December 31 an extended clearance zone of 10 km (radial distance from the pile being driven) must be established for NARWs. This zone must be monitored using real-time PAM (no survey is required prior to pile driving during this period).

From May 1 through May 14 and November 1 through December 31, if a NARW is confirmed via visual observation or PAM within the 10 km extended clearance zone, pile driving must be delayed (if it has not yet

commenced) or shut down (if it has already begun, and if technically feasible) and must not resume until the following day or until a survey confirms NARWs are no longer in the zone. From May 15 through May 31 an extended PAM monitoring zone of 10 km must be established for NARWs. While the clearance zone is 5 km, a confirmed PAM detection of a NARW from 5 to 10 km does not trigger delay or shutdown of pile driving but must be immediately relayed to visual PSOs to increase situational awareness. From June 1 through October 31, the PAM clearance and monitoring zone is 5 km.

NMFS did consider a 5 km minimum visibility clearance zone; however, to do so during a time of year when NARW density is very low, and in consideration of all the enhanced mitigation and monitoring measures, we determined a zone of that size would only delay the project such that pile driving would be pushed to the shoulder seasons when NARWs are present in higher densities. Further, a 5 km minimum visibility clearance zone is impracticable as it would likely result in a delay in construction. According to Vineyard Wind, the project must be constructed in one construction season to meet the commercial operations date under its contractual obligations and maintain the commercial viability of the project. Vineyard Wind is planning for a 6-month construction season. Of the hours available for pile driving during the 6-month construction season, almost 60 percent are lost due to prohibitions on pile driving at night and pile driving not being allowed to begin until at least one hour after sunrise and not before 1.5 hours of civil sunset. Further restricting the available hours for pile driving are wind and wave conditions that preclude the ability to work safely offshore. Overall, Vineyard Wind estimates that of the total available hours for pile driving, an average of 75 percent are lost due to regulatory restrictions and sea/weather conditions. This does not account for lost time due to technical difficulties or stoppages for protected species. If we were to increase the minimum visual clearance zone to 5 km, the project would likely not be completed within the time necessary and therefore the measure is impracticable. Further, pushing pile driving to times when NARWs are more abundant (but still within the pile driving window), could result in adverse and unnecessary impacts to NARWs. Finally, we have included a minimum 5 km PAM clearance zone which is not impacted by weather/visibility.

*Additional Measures for North Atlantic Right Whales*

Enhanced measures for right whales, including extended clearance zones during certain times of year, are included in the IHA and are designed to further minimize the potential for right whales to be exposed to pile driving noise. Extended clearance zones are required during times of year that are considered to be ''shoulder seasons'' in terms of NARW presence in the project area (November, December and May). While NARW presence during these times of year is considered less likely than during the required seasonal closure (January through April), based on the best available information right whales may occur in the project area during these times of year (Roberts et al, 2017, 2020; Kraus et al. 2016). Extended clearance zones must be maintained through PAM, as well as by visual observation conducted on aerial or vessel-based surveys during certain seasons, as described below.

Pile driving must be delayed upon visual observation of a NARW by PSOs on the pile driving vessel at any distance from the pile. We note that in the proposed IHA, the delay in pile driving was triggered from May 15–October 31 by a detection within 1km of the pile; therefore, the measure in the final IHA is more protective of NARWs. Pile driving must be delayed upon a confirmed PAM detection of a NARW, if the detection is confirmed to have been located within the relevant clearance zone (Table 16). Any large whale visually observed by a PSO within 1,000 m of the pile that cannot be identified to species must be treated as if it were a NARW for clearance purposes (we note this measure was not included in the IHA). Any sighting of a NARW by Vineyard Wind personnel or by personnel contracted by Vineyard Wind (including vessel crews and construction personnel) must be immediately reported to the lead PSO on duty.

Real-time acoustic monitoring must begin at least 60 minutes prior to pile driving. The real-time PAM system must be designed and established such that detection capability extends to 10 km from the pile driving location. The real-time PAM system must ensure that acoustic detections can be classified (*i.e.,* potentially originating from a NARW) within 30 minutes of the original detection. The PAM operator must be trained in identification of mysticete vocalizations. The PAM operator responsible for determining if the acoustic detection originated from a NARW within the 10 km PAM monitoring zone would be required to make such a determination if they have at least 75 percent confidence that the vocalization within 10 km of the pile driving location originated from a North Atlantic right whale. A record of the PAM operator's review of any acoustic detections must be reported to NMFS.

If a NARW is observed at any time by PSOs or personnel on any project vessels, during any project-related activity or during vessel transit, Vineyard Wind must report sighting information to the NMFS NARW Sighting Advisory System, to the U.S. Coast Guard via channel 16, and through the WhaleAlert app (*http://www.whalealert.org/*) as soon as feasible but no longer than 24 hours after the sighting. If a NARW is detected via PAM, a report of the detection must be submitted to NMFS as soon as feasible but no longer than 24 hours after the detection. In addition, within 48 hours, metadata associated with the detection must be submitted to the NMFS NARW Passive Acoustic Reporting System website. None of these reporting requirements were included in the proposed IHA and offer additional protection to marine mammals via increased awareness for all mariners.

*Soft Start*

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning marine mammals or providing them with a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. Vineyard Wind must utilize soft start techniques for impact pile driving by performing an initial set of three strikes from the impact hammer at a reduced energy level followed by a 1 minute waiting period. We note that it is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes''; however, Vineyard Wind has proposed that they will target less than 40 percent of total hammer energy for the initial hammer strikes during soft start. The soft start process would be conducted a total of three times prior to driving each pile (*e.g.,* three single strikes followed by a one minute delay, then three additional single strikes followed by a one minute delay, then a final set of three single strikes followed by an additional one

minute delay). Soft start would be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

*Shutdown*

The purpose of a shutdown is to prevent some undesirable outcome, such as auditory injury or behavioral disturbance of sensitive species, by halting the activity. The proposed IHA included a shutdown zone equal to the proposed clearance zones (*i.e.,* 1 km for NARWs, 500 m for all other mysticetes, 120 m for harbor porpoise, and 50 m for all other marine mammals). However, after further consideration, we determined that a shutdown zone equal to the Level A harassment zone for monopiles was warranted for NARWs year-round. This expansion of the shutdown zone affords additional protection to NARWs from both Level A harassment (*e.g.,* PTS) and reduces the severity of Level B harassment as a received level at 3.2 km will be much less than that at 1km. The shutdown zones for all other marine mammals remain as proposed. If a marine mammal is observed entering or within the respective clearance zones (Table 16) after pile driving has begun, the PSO will request a temporary cessation of pile driving. Vineyard Wind has proposed that, when called for by a PSO, shutdown of pile driving would be implemented when feasible but that shutdown would not always be technically practicable once driving of a pile has commenced as it has the potential to result in pile instability. We therefore require that shutdown would be implemented when technically feasible, with a focus on other mitigation measures as the primary means of minimizing potential impacts on marine mammals from noise related to pile driving. If shutdown is called for by a PSO, and Vineyard Wind determines a shutdown to be technically feasible, pile driving would be halted immediately.

In situations when shutdown is called for but Vineyard Wind determines shutdown is not practicable due to human safety or operational concerns, reduced hammer energy would be implemented when practicable. In cases where pile driving is already started and a PSO calls for shutdown, the lead engineer on duty will evaluate the following to determine whether shutdown is technically feasible: (1) Use the site-specific soil data and the real-time hammer log information to judge whether a stoppage would risk causing piling refusal at re-start of piling; and (2) Check that the pile penetration is deep enough to secure pile stability in the interim situation, taking into account weather statistics for the relevant season and the current weather forecast. Determinations by the lead engineer on duty will be made for each pile as the installation progresses and not for the site as a whole.

If a shutdown is called for by PSOs but Vineyard Wind determines shutdown is not technically feasible due to human safety concerns or to maintain installation feasibility then reduced hammer energy must be implemented, when the lead engineer determines it is technically feasible.

Following a shutdown, pile driving may not commence until either the animal has voluntarily left and been visually confirmed beyond the relevant clearance zone or when 30 minutes have elapsed without re-detection (for mysticetes, sperm whales, Risso's dolphins and pilot whales) or 15 minutes have elapsed without re-detection (for all other marine mammals), or if required to maintain installation feasibility.

*Visibility Requirements*

The proposed IHA included a measure that pile driving must not be initiated after sunset or at nighttime. The final IHA affords additional protection to marine mammals in that no pile driving may begin until at least one hour after (civil) sunrise and no pile driving may begin within 1.5 hours of (civil) sunset, after sunset or at nighttime. Pile driving may continue after dark only when the installation of the same pile began during daylight (within 1.5 hours of (civil) sunset) when clearance zones were fully visible for at least 30 minutes immediately prior to pile driving. Pile driving must not be initiated at night, or, when the full extent of all relevant clearance zones cannot be confirmed to be clear of marine mammals, as determined by the lead PSO on duty. The clearance zones may only be declared clear, and pile driving started, when the full extent of all clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 30 minutes prior to pile driving. During periods of obscured visibility, alternative detection devices (*e.g.,* night vision, thermal, infrared) must be used.

*Sound Attenuation*

The proposed IHA indicated Vineyard Wind may drive unattenuated piles to identify the effectiveness of the bubble curtain and confirm that at least a 6dB attenuation was being achieved using such devices. After further consideration, we determined that driving such large piles to meet the 6dB attenuation requirement was not warranted. Instead, Vineyard Wind is prohibited from driving unattenuated piles and instead must ensure such devices are achieving the anticipated harassment isopleths based on modeling assuming 6 dB reduction. This measure results in reduced noise levels, benefiting all marine mammals. The final IHA states that Vineyard Wind must implement a noise attenuation device(s) during all impact pile driving. The attenuation system may include one of the following or some combination of the following: A Noise Mitigation System, Hydro-sound Damper, Noise Abatement System, and/or bubble curtain. Vineyard Wind would also have a second back-up attenuation device (*e.g.,* bubble curtain or similar) available, if needed, to ensure the harassment zones do not exceed those modeled (assuming at least a 6dB reduction), pending results of sound field verification testing. A Pile Driving Plan including a complete description of the sound attenuation systems planned for use must be submitted to NMFS for approval no less than 90 days prior to commencement of pile driving. We note that submission of such a plan was not included in the proposed IHA. We have also included additional requirements related to field measurements (see Monitoring and Reporting section below).

*Marine Mammal Monitoring Protocols*

Monitoring would be conducted before, during, and after pile driving activities. In addition, observers will record all incidents of marine mammal occurrence, regardless of distance from the construction activity, and monitors will document any behavioral reactions in concert with distance from piles being driven. Observations made outside the clearance zones will not result in delay of pile driving; that pile segment may be completed without cessation, unless the marine mammal approaches or enters the clearance zone, at which point pile driving activities would be halted when practicable, as described above. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

*Vessel Strike Avoidance*

The IHA contains numerous vessel strike avoidance measures. Vineyard Wind is required to comply with these measures except under circumstances when doing so would create an imminent and serious threat to a person or vessel or to the extent that a vessel

is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Vineyard Wind must submit a NARW strike avoidance plan 90 days prior to commencement of vessel use. The plan will, at minimum, describe how the required vessel, PAM, or aerial based monitoring will be conducted to ensure the transit corridor is clear of NARWs. The plan will also provide details on the vessel-based observer protocol on transiting vessels and PAM required between November 1 and May 14. Submission of this plan was not included in the proposed IHA.

Additional measure included in the final IHA that was not included in the proposed IHA includes one that states, year-round, vessel operators will use all available sources of information on right whale presence, including at least daily monitoring of the Right Whale Sightings Advisory System, WhaleAlert app, and monitoring of Coast Guard VHF Channel 16 throughout the day to receive notifications of any sightings and/or consideration of information associated with any Dynamic Management Areas to plan vessel routes to minimize the potential for co-occurrence with any right whales.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal. Vineyard Wind must adhere to the following measures:

Whenever multiple vessels are operating, any visual observations of ESA-listed marine mammals must be communicated to a PSO and/or vessel captains associated with other vessels. Under any condition, vessel speeds will immediately be reduced to 10 kts or less if a NARW is sighted by the observer or anyone on the vessel.

From November 1 through May 14, all vessels, regardless of size, must travel at less than 10 kts within the WDA. From November 1 through May 14, when transiting to or from the WDA, vessels must either travel at less than 10 kts, or, must implement visual surveys with at least one visual observer to monitor for NARWs (with the exception of vessel transit within Nantucket Sound unless a DMA is in place).

In the event that any DMA is established that overlaps with an area where a vessel would operate, that vessel, regardless of size, will transit that area at 10 kts or less unless it is a crew transfer vessel and certain monitoring conditions are met.

Crew transfer vessels traveling within any designated DMA must travel at 10 kts (18.5 km/hr.) or less, unless NARWs are clear of the transit route and WDA for two consecutive days, as confirmed by vessel-based surveys conducted during daylight hours and real-time PAM, or, by an aerial survey, conducted once the lead aerial observer determines adequate visibility. If confirmed clear by one of the measures above, vessels transiting within a DMA over 10 kts must employ at least two visual observers to monitor for NARWs. If a NARW is observed within or approaching the transit route, vessels must operate at less than 10 kts until clearance of the transit route for 2 consecutive days.

Since the proposed IHA was released, NMFS has developed the NARW ''Slow Zone'' Program. This program notifies vessel operators of areas where maintaining speeds of 10 kts or less can help protect right whales from vessel collisions. Maintaining speeds of 10 kts or less in a Slow Zone is voluntary (*i.e.,* there is no requirement any mariner reduce speeds). All DMAs (triggered by the visual detection of three or more NARWs) fall under the Slow Zone program. Slow Zones may also be triggered by acoustic detections on PAM systems meeting certain criteria. Acoustically-triggered Slow Zones are in place for 15 days (similar to a DMA) and extend 20 miles from the recorder on which the NARW was detected. NMFS determined that measures associated with Slow Zones that are acoustically triggered should be included in the final IHA. Therefore, crew transfer vessels travelling over 10 kts within an acoustically-triggered Right Whale Slow Zone must employ an additional observer (for a total of two similar to a DMA) or other enhanced detection methods (*e.g.,* thermal cameras) to monitor for NARWs in addition to PAM monitoring in the transit corridor.

All vessels greater than or equal to 65 ft (19.8 m) in overall length must comply with the 10 kt speed restriction in any Seasonal Management Area (SMA).

Crew transfer vessels may travel at over 10 kts if, in addition to the required dedicated observer, real-time PAM of transit corridors is conducted prior to and during transits. If a NARW is detected via visual observation or PAM within or approaching the transit route, all crew transfer vessels must travel at 10 kts or less for the remainder of that day. All vessels will reduce vessel speed to 10 kts or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft.)) an underway vessel.

NMFS did consider whether all vessels associated with Vineyard Wind's specified activity should travel at 10 kts or less at all times of the year under all conditions (except when there is risk to human and vessel safety). NMFS finds this measure both impracticable and unnecessary. First and foremost, to limit vessel speeds during a time when NARW presence is extremely low could result in delays to the project that push work into times of year when NARW presence is higher. In addition, given the 50–60 mile distance from port to the WDA, traveling at 10kts or less would take approximately 4.5 to 5 hours each way (9–10 hours total). Vineyard Wind has indicated that workers are limited to a 12-hour workday, including transit time. Therefore, 10 hours of their 12 hour workday would be taken up by transit, which is not feasible when workers are limited to a 12 hour work day.

All vessels must maintain a minimum separation distance of 500 m (1,640 ft) from a NARW. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action. If underway, vessels must steer a course away from any sighted NARW at 10 kts or less such that the 500 m (1,640 ft.) minimum separation distance is not violated. If a NARW is sighted within 500 m (1,640 ft.) of an underway vessel, the underway vessel must shift the engine to neutral. Engines will not be engaged until the right whale has moved outside of the vessel's path and beyond 500 m.

All vessels must maintain a minimum separation distance of 100 m from sperm whales and non-NARW baleen whales. If one of these species is sighted within 100 m (330 ft.) of an underway vessel, the underway vessel must shift the engine to neutral. Engines will not be engaged until the whale has moved outside of the vessel's path and beyond 100 m.

All vessels must, to the maximum extent practicable, attempt to maintain a

minimum separation distance of 50 m (164 ft) from all delphinoid cetaceans and pinnipeds, with an exception made for those that approach the vessel (*e.g.,* bowriding dolphins). If a delphinoid cetacean or pinniped is sighted within 50 m (164 ft.) of an underway vessel, the underway vessel must shift the engine to neutral, with an exception made for those that approach the vessel (*e.g.,* bowriding dolphins). Engines will not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m.

When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distances, *e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area. If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

All vessels underway will not divert or alter course in order to approach any marine mammal. Any vessel underway will avoid excessive speed or abrupt changes in direction.

Project-specific training must be conducted for all vessel crew prior to the start of in-water construction activities. Confirmation of the training and understanding of the requirements must be documented on a training course log sheet. Vineyard Wind must ensure that vessel operators and crew maintain a vigilant watch for marine mammals by slowing down or stopping the vessel to avoid striking marine mammals. When not on active watch duty, members of the monitoring team must consult NMFS' NARW advisory systems for the presence of NARWs in the project area at least once a day.

With the measure described herein, we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

## Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the project area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

### *Visual Marine Mammal Observation*

Vineyard Wind will collect sighting data and behavioral responses to pile driving activity for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. PSOs will monitor all clearance zones at all times. PSOs will also monitor Level B harassment zones (*i.e.,* 4,121 m for monopiles and 3,220 m for jacket pin piles) and will document any marine mammals observed within these zones, to the extent practicable (noting that some distances to these zones are too large to fully observe). Vineyard Wind will conduct monitoring 60 minutes before, during, and 30 minutes after pile driving, with observers located at the best practicable vantage points on the pile driving vessel. Full details regarding marine mammal monitoring must be included in a Marine Mammal Monitoring Plan that, under the IHA, Vineyard Wind is required to submit to NMFS for approval at least 90 days in advance of commencement of pile driving. We note submission of this plan was not included in the proposed IHA.

Monitoring will be conducted by qualified, trained PSOs, who will be placed on the installation vessel, which represents the best vantage point to monitor for marine mammals and implement shutdown procedures when applicable. The proposed IHA included a measure that a minimum of two PSOs will be on-watch from 60 minutes prior to commencement of pile driving, throughout the time required to drive a pile, and for 30 minutes following the conclusion of pile driving. The final IHA carries this measure over but includes an enhanced measure in that, if a DMA or Slow Zone is in place that overlaps the Level B harassment zone, an additional PSO will be required (for a total of three PSOs on active duty on the pile driving vessel). PSOs may not exceed four consecutive watch hours; must have a minimum two hour break between watches; and may not exceed a combined watch schedule of more than 12 hours in a 24- hour period. Monitoring will be conducted. PSOs will have no other construction-related tasks while conducting monitoring.

All PSOs must be approved by NMFS. Vineyard Wind must submit resumes of the initial set of PSO resumes necessary to commence the project to NMFS for approval at least 60 days prior to the first day of pile driving activity.

PSOs must have the following minimum qualifications:

(1) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(2) Ability to conduct field observations and collect data according to assigned protocols;

(3) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(4) Sufficient training, orientation, or experience with the construction

operation to provide for personal safety during observations;

(5) Writing skills sufficient to document observations including, but not limited to: The number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and marine mammal behavior; and

(6) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observer teams employed by Vineyard Wind in satisfaction of the mitigation and monitoring requirements described herein must meet the following additional requirements:

- Be independent observers (*i.e.,* not construction personnel) are required;
- At least one observer must have prior experience working as an observer in an offshore environment;
- Other observers may substitute education (degree in biological science or related field) or training for experience;
- One observer will be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
- NMFS will require submission and approval of observer resumes.

Vineyard Wind must conduct briefings between construction supervisors and crews and the PSO team prior to the start of all pile driving activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. An informal guide must be included with the Marine Mammal Monitoring Plan to aid in identifying species if they are observed in the vicinity of the project area. PSOs must be located at best vantage point(s) in order to observe the entire clearance zones and must record all incidents of marine mammal occurrence, regardless of distance from the construction activity. PSOs must document any behavioral reactions of marine mammals in concert with distance from the pile being driven. During all pile driving, PSOs must use high-magnification (25X), as well as standard handheld (7X) binoculars, and the naked eye to search continuously for marine mammals. During periods of poor visibility, PSOs must use alternative monitoring technologies to monitor clearance zones (*e.g.,* night vision devices, IR/Thermal camera). A full description of this technology will be included in Vineyard Wind's Alternative Monitoring Plan which will be submitted to NMFS no later than 90 days prior to the commencement of pile driving. We note submission of this plan was not included in the proposed IHA. Monitoring distances must be measured with range finders or reticule binoculars. Distances to marine mammals observed must be based on the best estimate of the PSO, relative to known distances to objects in the vicinity of the PSO. Bearings to animals shall be determined using a compass.

When monitoring is required during vessel transit (as described above), the PSO(s) will be stationed on vessels at the best vantage points to ensure maintenance of standoff distances between marine mammals and vessels (as described above). Vineyard Wind would implement the following measures during vessel transit when there is an observation of a marine mammal:

- PSOs will record the vessel's position and speed, water depth, sea state, and visibility will be recorded at the start and end of each observation period, and whenever there is a change in any of those variables that materially affects sighting conditions.
- PSOs will record the time, location, speed, and activity of the vessel, sea state, and visibility.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. PSOs will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and Vineyard Wind.

*Data Collection*

We require that observers use standardized data forms. Among other pieces of information, Vineyard Wind will record detailed information about any implementation of delays or shutdowns, including the distance of animals to the pile and a description of specific actions that ensued and resulting behavior of the animal, if any. The following information will be collected by PSOs during pile driving:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting and time spent within harassment zone (if pile driving was occurring at time of sighting);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity;
- Type of construction activity (*e.g.,* monopile or jacket pile installation) when marine mammals are observed;
- Description of implementation of mitigation measures (*e.g.,* delay or shutdown) or why mitigation was not implemented;
- Locations of all marine mammal observations; and
- Other human activity in the area.

*Marine Mammal Passive Acoustic Monitoring*

Vineyard Wind would utilize a PAM system to supplement visual monitoring. The PAM system would be monitored by a minimum of one acoustic PSO beginning at least 60 minutes prior to ramp-up of pile driving and at all times during pile driving. Acoustic PSOs must immediately communicate all detections of marine mammals to visual PSOs, including any determination regarding species identification, distance, and bearing and the degree of confidence in the determination. The PAM system would not be located on the pile installation vessel.

Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches. Acoustic PSOs would be required to demonstrate that they have completed specialized training for operating PAM systems. PSOs can act as acoustic or visual observers (but not simultaneously) as long as they demonstrate that their training and experience are sufficient to perform each task. Acoustic PSO(s) must immediately communicate all detections of marine mammals to visual PSOs, including any determination regarding species identification, distance, and bearing and the degree of confidence in the determination.

A Passive Acoustic Monitoring Plan must be submitted to NMFS and BOEM for review and approval at least 90 days prior to the planned start of pile driving.

The Plan must describe all proposed PAM equipment, procedures, and protocols. We note submission of this plan was not included in the proposed IHA.

Sound Field Verification Acoustic Monitoring

Vineyard Wind will also conduct hydroacoustic monitoring during pile driving of the first monopile and first jacket foundation installed over the course of the project, with noise attenuation activated. We note the proposed IHA did not specify that the first of these piles were to be monitored. In the event that subsequently driven piles are installed that have a larger diameter, or, are installed with a larger hammer or greater hammer energy than the first monopile and jacket pile, sound field measurements must be conducted for those subsequent piles. A Sound Field Verification Plan must be submitted to NMFS for review and approval at least 90 days prior to planned start of pile driving (this measure was not included in the proposed IHA). This plan must describe how Vineyard Wind will ensure that the location selected is representative of the rest of the piles of that type to be installed and, in the case that it is not, how additional sites will be selected for sound field verification, or, how the results from the first pile can be used to predict actual installation noise propagation for subsequent piles. The plan must describe how the effectiveness of the sound attenuation methodology will be evaluated based on the results. Vineyard Wind must provide the initial results of the field measurements to NMFS as soon as they are available.

Vineyard Wind would be required to empirically determine the distances to the isopleths corresponding to the Level A and Level B harassment thresholds either by extrapolating from *in situ* measurements conducted at several points from the pile being driven, or by direct measurements to locate the distance where the received levels reach the relevant thresholds or below. Isopleths corresponding to the Level A and Level B harassment thresholds would be empirically verified for impact driving of the largest diameter monopile used over the duration of the IHA, and impact driving of the largest diameter jacket pile used over the duration of the IHA. For verification of the extent of the Level B harassment zone, Vineyard Wind would be required to report the measured or extrapolated distances where the received levels SPLrms decay to 160-dB, as well as integration time for such SPLrms. If initial acoustic field measurements indicate distances to the isopleths corresponding to Level A and/or Level B harassment thresholds are greater than the distances predicted by modeling (Tables 5 and 6), Vineyard Wind must implement additional sound attenuation measures prior to conducting additional pile driving. Additionally, in the event that field measurements indicate distances the isopleths corresponding to Level A and Level B harassment thresholds are greater than the distances predicted by modeling, NMFS may expand the relevant clearance and shutdown zones. We note that none of these measures regarding specific action based on results of the acoustic monitoring were included in the proposed IHA. The acoustic monitoring report would include: Peak sound pressure level (SPLpk), root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPLrms), single strike sound exposure level, integration time for SPLrms, SELss spectrum, and 24-hour cumulative SEL extrapolated from measurements. All these levels would be reported in the form of median, mean, max, and minimum. The sound levels reported would be in median and linear average (*i.e.,* taking averages of sound intensity before converting to dB). The acoustic monitoring report would also include a description of depth and sediment type at the recording location.

Recording would also occur when no construction activities are occurring in order to establish ambient sound levels. Vineyard Wind would also conduct real-time PAM during certain times of year to facilitate mitigation (as described above).

*Reporting*

The proposed IHA included a measure that, similar to other coastal pile driving projects, Vineyard Wind would submit a final report to NMFS within 90 days after expiration of the IHA that contained both marine mammal and pile driving acoustic monitoring data. Since that time, NMFS determined more frequent review of Vineyard Wind's pile driving activities and monitoring data was warranted. In the final IHA, Vineyard Wind is required to submit weekly and monthly marine mammal monitoring reports in addition to submitting a draft final marine mammal monitoring report to NMFS within 90 days of the completion of monitoring activities (not 90 days upon expiration of the IHA). The reports would include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and would also provide descriptions of any behavioral responses to construction activities by marine mammals. The reports would detail the monitoring protocol, summarize the data recorded during monitoring including an estimate of the number of marine mammals that may have been harassed during the period of the report, and describe any mitigation actions taken (*i.e.,* delays or shutdowns due to detections of marine mammals, and documentation of when shutdowns were called for but not implemented and why). The reports would also include results from marine mammal passive acoustic monitoring including dates and times of all detections, types and nature of sounds heard, whether detections were linked with visual sightings, water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, a record of the PAM operator's review of any acoustic detections, and any other notable information. The weekly reports would contain a summary of this information while the final report would contain more detailed information. After receipt of the 90-day draft final report, NMFS will provide comments on the report, if necessary, to Vineyard Wind. Vineyard Wind must submit a final report within 30 days following resolution of comments on the draft report.

The final IHA also requires Vineyard Wind to submit results of pile driving sound field verification to NMFS as soon as possible but no later than within 30 days following completion of acoustic monitoring.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness

of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving activities associated with the project, as described previously, have the potential to disturb or temporarily displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment (potential injury) or Level B harassment (potential behavioral disturbance) from underwater sounds generated from pile driving. Potential takes could occur if individual marine mammals are present in the ensonified zone when pile driving is occurring.

To avoid repetition, the majority of our analyses apply to all the species listed in Table 2, given that many of the anticipated effects of the planned project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks—as is the case of the NARW—they are included as separate sub-sections below. As noted above, some new data and literature have become available since the Proposed IHA was published (*e.g.,* NARW abundance and distribution information), and this information has been considered fully in the analysis below.

*North Atlantic Right Whales*

NARWs are currently threatened by low population abundance, higher than average mortality rates and lower than average reproductive rates. Pace et al. (2021) recently released an update of his NARW abundance model. From 1990–2014, the female apparent survival rate fluctuated around 0.96. In 2014, survival decreased to approximately 0.93 and hit an all-time low of 0.89 in 2017. However, in 2018, survival increased dramatically back to around 0.95. The average survival rate, based on the Pace et al. (2021) regime model from 2014–2018 is approximately 0.93, slightly lower than the average long term rate from 1990–2014 (0.96). Since 1990, the estimated number of new entrants (which can be used as a proxy for recruitment rates) has widely fluctuated between 0 and 39 (Pace et al., 2021, NMFS 2021). In the last 10 years (2011–2020), the average number of calves born into the population is approximately 11. Unfortunately, not all calves born into the population survive. Most recently, a dead NARW calf was reported stranded on February 13, 2021, along the Florida coast. On December 22, 2020, a newborn calf was sighted off El Hierro, an island in the Canary Islands, but has not been subsequently detected with its mother suggesting it did not survive.

As described above, the project area represents part of an important migratory area for NARWs. Core year-round foraging habitats have also been identified south of Martha's Vineyard and Nantucket within and around the project area (Oleson et al., 2020); however, abundance in this area in summer months remains low compared to winter. It also appears the majority of sightings between the June–October timeframe (when Vineyard Wind would be conducting most if not all of its pile driving work) are concentrated approximately 20–30 kms west of the WDA boundary line on Nantucket Shoals (which triggered DMAs in 2019 and 2020) with occasional, random sightings east of the project area. In general, due to the current status of NARWs, and the spatial overlap of the planned project with an area of biological significance for right whales, the potential impacts of the planned project on right whales warrant particular attention.

The IHA includes nine overarching mitigation measures related to pile driving. The following measures are related to pile driving: (1) Time of year restrictions; (2) time of day restrictions; (3) implementation of pre-pile driving clearance zones; (4) implementation of shutdown zones; (5) use of soft-start; (6) use of sound attenuation systems; (7) use of PSOs to visually observe for NARWs (with any detection triggering delay or shutdown); (8) use of PAM to acoustically detect NARWs (with any detection within designated zones triggering delay or shutdown); and (9) requirement to monitor NARW sighting network platforms to be aware of NARW presence within or near the project area and transit corridors. The specifics regarding these measures are dependent upon the time of year.

As described in Oleson et al. (2020), NARWs respond to environmental changes and may use habitat intermittently over time. They have been known to nearly abandon a frequently used foraging habitat only to come back in future years in large numbers. In recent years, the whales have demonstrated actual shifts in distribution, frequenting previously unrecognized foraging habitats. Sighting data also indicate that NARWs may investigate a previously preferred habitat, but not stay if the prey resource is insufficient, so some habitats previously used no longer have high densities of NARWs (Davies et al. 2019; Davis et al. 2017). As described above, NARW presence in the project area is year-round; however, abundance during summer months is low compared to winter months with spring and fall serving as ''shoulder seasons'' wherein abundance waxes (fall) or wanes (spring). During aerial surveys conducted from 2011–2015 in the project area, NARW sightings occurred only December through April, with no sightings from May through November (Kraus et al., 2016). There was not significant variability in sighting rate among years, indicating consistent annual seasonal use of the area by right whales during those years (Kraus et al., 2016). More recently, seasonal distribution patterns of right whales have been less consistent, with right whales observed near the project area in late summer and fall. For example, in 2019 and 2020, NARWs were observed in August and September around Nantucket Shoals, triggering NMFS to establish a DMA that last several weeks each year; however, these sightings around Nantucket Shoals are approximately 20–30 kms east of the most eastern edge of the project area and outside the Level B harassment zones created by the activities. Figure 2 provides a map of all sightings from June 1 through November 31, annually, for the years 2010 through 2020 as well as 2021 to date (Johnson, 2018). The 2019 and 2020 cluster of sightings around Nantucket Shoals is prominent. Given this year-round habitat usage and in recognition where whales may actually occur during pile driving is largely influenced by unpredictable, patchy prey availability, NMFS has included a suite of mitigation measures designed to reduce impacts to NARWs to the maximum extent practicable. However, even in consideration of these recent habitat-use and distribution shifts, Vineyard Wind would be conducting pile driving when presence of NARWs is lower than in winter months, as reflected in the density data (Roberts et al., 2020; Table 9).

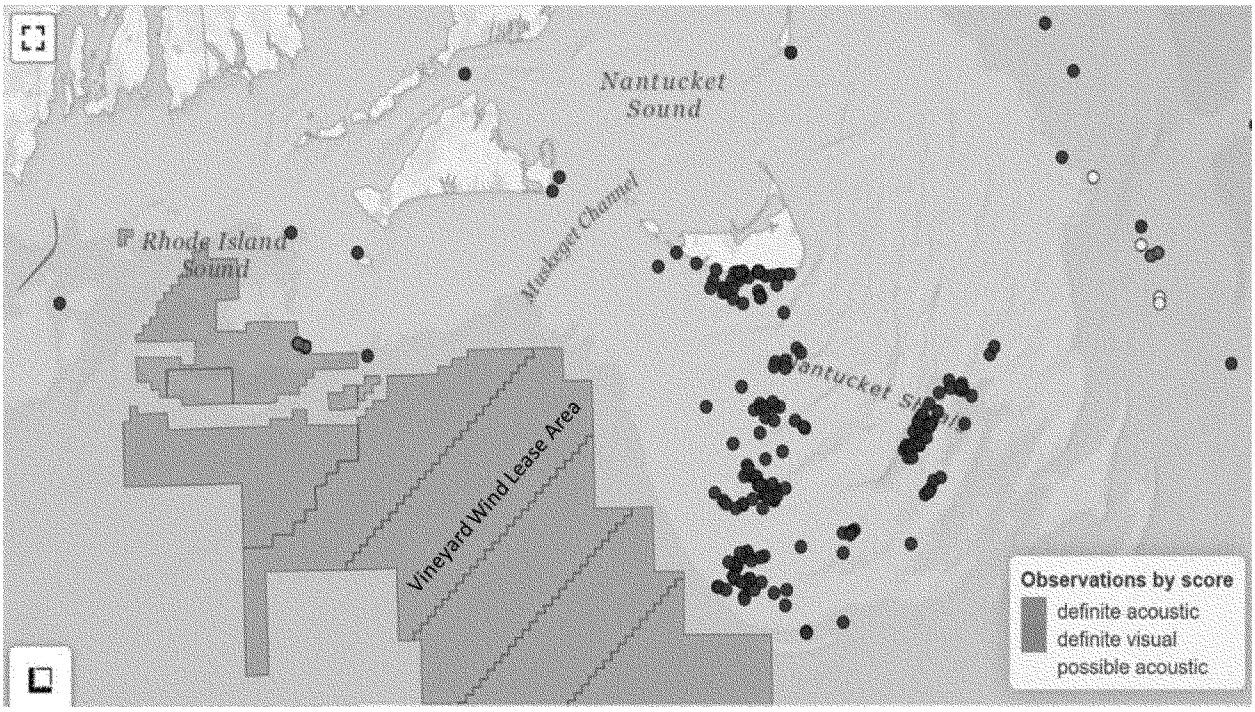



**Figure 2. All NARW detections (both visual and acoustic) from June 1 through November 31, annually, 2010 through 2021. (Source: WhaleMap Accessed May 2021)**

The most significant measure in minimizing impacts to right whales is the seasonal pile driving moratorium that would occur from January through April, when NARW abundance in the project area is expected to be greatest. NMFS has also included a measure that no pile will occur in December (a time when NARW density is lower than January–April; however, is greater than summer and fall through November) unless unforeseen circumstances arise that require Vineyard Wind to complete the project. We also expect these measures to greatly reduce the potential for mother-calf pairs to be exposed to project-related noise above the Level B harassment threshold during their annual migration through the project area. In addition, mitigation and monitoring measures outside of those months will greatly minimize any takes that may otherwise occur.

When pile driving does occur, Vineyard Wind is committed to reducing the noise levels generated by pile driving to the lowest levels practicable such that they do not exceed a noise footprint above that which was modeled assuming a 6 dB attenuation. Use of a soft start will allow animals to move away from (*i.e.,* avoid) the sound source prior to reaching the hammer energy needed to install the pile (Vineyard Wind will not use a hammer energy greater than necessary to install piles). To reduce the amount of time the area may be ensonified (and thereby decrease exposure risk), Vineyard Wind will drive no more than two monopiles or four jacket pin piles per day.

We expect that any avoidance of the project area by NARWs would be temporary in nature and that any NARW that avoids the project area during construction would not be permanently displaced. The IHA authorizes 20 takes of NARWs based on the maximum design scenario. This may be comprised of 20 individuals taken once or less than 20 individuals taken on multiple days. The most likely scenario is some combination wherein a few individuals are taken only once and a few individuals are taken on more than one day. For those individuals where take is limited to one day, behavioral disturbance and other Level B harassment impacts that may occur during exposure to elevated noise levels (*e.g.,* masking, stress) is likely insignificant. As described in the notice of proposed IHA, nearly all Population Consequences of Disturbance (PCOD) studies and experts agree that infrequent exposures from a single day or less are unlikely to impact individual fitness, let alone lead to population-level effects.

There is potential for the same individual NARW to be exposed on multiple days; however, the risk is low. Pile driving is limited per day and would only begin in the absence of NARWs detected from PSOs on the pile driving vessel (at any distance) or within the designated PAM clearance zone. If pile driving has commenced, we anticipate NARWs would avoid the area, utilizing nearby habitats not impacted by the project. Further, during times of the year NARWs are most likely to be in the area, the clearance zones are much greater than the Level B harassment zone. However, should a NARW be exposed to pile driving noise above the Level B harassment threshold, pile driving would be shut down (if safe) thereby minimizing the duration and intensity of exposure. We anticipate if NARWs go undetected and they are exposed to pile driving noise, it would be to noise levels only slightly above the Level B harassment threshold as it is likely a NARW would not approach pile driving locations to the degree they would purposely expose themselves to very high noise levels. The implementation of a soft start would provide an opportunity for whales to move away from the source. Given any given exposure would likely involve noise levels on the low end of the Level B harassment spectrum and that animals would likely be at some great distance to the source, the magnitude of any Level B harassment is expected to be low.

There are no known NARW mating or calving areas within the project area; however, as described above, it is as part of a larger core foraging area (Oleson et al., 2020). If a NARW does avoid foraging within the project area, there is ample foraging habitat for it adjacent to the project area that is not ensonified by the project's pile driving noise. For example, in the fall of 2019 and 2020, NARWs were particularly attracted to Nantucket Shoals, a known foraging hot spot. The nearest NARWs detections were approximately 30 kms away from the most western edge of the project area where pile driving would occur. Therefore, any noise from the project would not have impacted NARW foraging in this habitat should it have been occurring at the time.

Prey for NARWs are mobile and broadly distributed throughout the project area; therefore, right whales that may be temporarily displaced during Vineyard Wind's pile driving activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to right whales and the food sources that they utilize are not expected to cause significant or long-term consequences for individual right whales or their population. Even repeated Level B harassment of some smaller number (<20) of individuals as a subset of the overall stock over several days is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

With respect to potential vessel strike, the IHA includes an extensive suite of mitigation measures designed to avoid ship strike and close approaches, including, but not limited it, separation distances, limiting vessel speed to 10 kts (18.5 km/hr) (except in the case of transiting crew transfer vessels in the transit route under specific conditions), use of observers and PAM for crew transfer vessels travelling in excess of 10 kts (18.5 km/hr), training and communication protocols, and NARW observation system monitoring. As described above, given anticipated effectiveness of these measures on top of the already very low probability of a vessel strike, take from vessel strike is not anticipated or authorized.

As described above, NARWs are experiencing an ongoing UME. The loss of even one individual could significantly impact the population. However, no mortality, serious injury or injury of right whales as a result of the project is expected or authorized. Any disturbance to NARWs due to exposure to pile driving noise (Level B harassment) is expected to result in temporary avoidance of the immediate area of construction. As no injury or mortality is expected or authorized, and Level B harassment of NARWs will be reduced to the level of least practicable adverse impact through use of mitigation measures, the authorized takes of right whales would not exacerbate or compound the ongoing UME in any way.

NMFS concludes that exposures to NARWs would be greatly reduced due to the seasonal restrictions, and additional mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed. With implementation of the mitigation requirements, take by Level A harassment is unlikely and is therefore not authorized. Potential impacts associated with Level B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior or potential alteration of vocalizations. Although unlikely given the NARW-specific mitigation, temporary threshold shift is another potential form of Level B harassment and could result in brief periods of slightly reduced hearing sensitivity that could affect behavioral patterns by making it more difficult to hear or interpret acoustic cues in the frequency range of pile driving (and slightly above)—however, it is unlikely that any individuals would be exposed to piling noise at a distance or duration that would have more than brief and minor impacts, which would not be expected to affect the fitness of any individuals.

In order to evaluate whether or not individual behavioral responses, in combination with other stressors, impact animal populations, scientists have developed theoretical frameworks which can then be applied to particular case studies when the supporting data are available. One such framework is the Population Consequences of Disturbance Model (PCoD), which attempts to assess the combined effects of individual animal exposures to stressors at the population level (NAS 2017). Nearly all PCoD studies and experts agree that infrequent exposures of a single day or less are unlikely to impact individual fitness, let alone lead to population level effects (Booth et al. 2016; Booth et al. 2017; Christiansen and Lusseau 2015; Farmer et al. 2018; Harris et al. 2017; Harwood and Booth 2016; King et al. 2015; McHuron et al. 2018; NAS 2017; New et al. 2014; Pirotta et al. 2018; Southall et al. 2007; Villegas-Amtmann et al. 2015). Since NMFS expects that any exposures would be brief, and the likelihood or repeat exposures to the same individuals is low (but possible), any behavioral responses that would occur due to animals being exposed to pile driving noise are expected to be temporary, with behavior returning to a baseline state shortly after the acoustic stimuli ceases. Given this, and NMFS' evaluation of the available PCoD studies, any such behavioral responses are not expected to impact individual animals' health or have effects on individual animals' survival or reproduction, thus no detrimental impacts at the population or stock level are anticipated. NARWs may temporarily avoid the immediate area but are not expected to permanently abandon the area. Further, while the project area may be used as foraging habitat, the surrounding area, including Nantucket Shoals where NARWs are most likely to congregate, is approximately 20–30 kms west of the project area. Therefore, noise from the project in this area will be minimal to none and well below the 160 dB rms Level B harassment threshold. In addition, the amount of Level B take authorized in the IHA is limited to 20. Under the ITS, less take is authorized if fewer piles are ultimately installed, meaning the authorized level of take may be lower for NARW.

In our IHA, up to 20 NARW individuals could be behaviorally disturbed or some fewer number of individual right whales could be behaviorally disturbed on more than one day, but no more than 20 instances of take would occur. Given most pile driving would occur during a time when NARW is much lower than January through May (when pile driving is, under no circumstances, allowed to proceed) and given the required mitigation and monitoring, it is highly unlikely a single NARW would absorb all the authorized take (*i.e.,* the same whale taken on 20 different days). Because the project area is both a migratory corridor and foraging area, it is likely a subset of whales will be exposed only once and some subset would be exposed on more than one day.

While there may be temporary impacts to behaviors such as foraging near pile driving activities, meaningful shifts in habitat use, distribution, or foraging success are not anticipated. Given the suite of mitigation measures in the IHA, if a NARW is exposed to

noise levels that may result in Level B harassment, this exposure would occur at distance. Because sound loses energy as it moves away from the source, received levels at distance would be low and any resulting behavioral changes are anticipated to be low in severity. We also expect NARWs to avoid areas with high noise levels. NMFS does not anticipate NARW harassment that may result from Vineyard Wind's planned pile driving would impact the reproduction or survival of any individual NARWs, much less annual rates of recruitment or survival.

*All Other Marine Mammal Species*

Impact pile driving has source characteristics (short, sharp pulses with higher peak levels and sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. However, modeling indicates there is limited potential for injury even in the absence of the mitigation measures, with several species predicted to experience no Level A harassment based on modeling results (Tables 10–13). In addition, the potential for injury is expected to be greatly minimized through implementation of mitigation measures including soft start, use of a sound attenuation system, and the implementation of clearance zones that would facilitate a delay of pile driving if marine mammals were observed approaching or within areas that could be ensonified above sound levels that could result in auditory injury. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious (*i.e.,* PTS) or resulting in more severe behavioral reactions. The requirement that pile driving can only commence when the full extent of all clearance zones are fully visible to PSOs will ensure a high marine mammal detection capability, enabling a high rate of success in implementation of clearance zones to avoid injury.

We expect that any take resulting from exposures above the Level A harassment threshold would be in the form of slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving (*i.e.,* the low-frequency region below 2 kHz), not severe hearing impairment. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. However, given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious or resulting in more severe behavioral reactions.

Additionally, the numbers of exposures above the Level A harassment authorized are relatively low for all marine mammal stocks and species: For 13 of 15 stocks, we authorize no more than 10 takes by Level A harassment over the duration of Vineyard Wind's planned pile driving activities; for the other two stocks we propose to authorize no more than 35 takes by Level A harassment. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start, thereby minimizing the degree of PTS that would be incurred. Any PTS incurred would likely be a slight shift in hearing threshold and be limited to lower frequencies produced by pile driving.

NMFS has authorized an amount of Level B harassment take for all marine mammal species based on either sophisticated modeling or information reflected in field data (*e.g.,* monitoring reports, group sizes). To be conservative, NMFS authorized whichever method resulted in a greater amount of take). This take reflects behavioral disturbance directly in response to noise exposure (*e.g.,* avoidance) or indirectly from associated impacts such as TTS or masking. Both the amount and intensity of Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures and, if sound produced by pile driving is sufficiently disturbing, marine mammals are likely to simply avoid the area while the activity is occurring. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where pile driving is occurring. Therefore, we expect that animals annoyed by project sound would simply avoid the area during pile driving in favor of other, similar habitats. We expect that any avoidance of the project area by marine mammals would be temporary in nature and that any marine mammals that avoid the project area during construction would not be permanently displaced.

Feeding behavior is not likely to be significantly impacted, as prey species are mobile and are broadly distributed throughout the project area and likely only respond temporarily to exposure to pile driving noise; therefore, marine mammals that may be temporarily displaced during construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Soft starts would allow prey to move away from the source prior to any noise levels that may physically injure prey and the use of the noise attenuation devices would reduce noise levels to the degree any mortality or injury of prey is also minimized. Use of bubble curtains, for example, is a key mitigation measure in reducing injury and mortality of ESA-listed salmon on the west coast. However, we recognize some mortality, physical injury and hearing impairment in marine mammal prey may occur but we anticipate the amount of prey impacted in this manner is minimal compared to overall availability. Any behavioral responses by marine mammal prey are expected to be brief. For example, Jones et al. (2020) found that when squid (*Doryteuthis pealeii*) were exposed to impulse pile driving noise, body pattern changes, inking, jetting, and startle responses were observed and nearly all squid exhibited at least one response. However, these responses occurred primarily during the first eight impulses and diminished quickly, indicating potential rapid, short-term habituation. We expect that other impacts such as stress or masking would occur in fish that serve as marine mammals prey (Thomas et al. 2006); however, those impacts would be limited to the duration of pile driving and, if prey were to move out the area in response to noise, these impacts would be minimized.

Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no notable areas of biological significance for non-NARW marine mammal feeding activity known to exist within the WDA. A fin whale BIA (foraging; March–October) is delineated to the east of the WDA and a minke whale BIA (foraging, March–

November) is delineated west of the WDA. While marine mammals may be able to detect pile driving noise within the edges of the BIAs closest to pile driving activities, it is unlikely noise levels would rise to the level where any foraging behavior is anticipated to be impacted from pile driving activities. In addition, there are no rookeries or mating or calving areas known to be biologically important to marine mammals within the project area.

Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

NMFS concludes that exposures to marine mammals due to Vineyard Wind's activity would result in only short-term effects to individuals exposed to pile driving. Marine mammals may temporarily avoid the immediate area but are not expected to permanently abandon the area. Impacts to breeding, feeding, sheltering, resting, or migration are not expected, nor are shifts in habitat use, distribution, or foraging success. NMFS does not anticipate the marine mammal takes that would result from the planned activity would impact annual rates of recruitment or survival.

As described in the notice of proposed IHA (84 FR 18346; April 30, 2019), humpback whales, minke whales, and gray, harbor and harp seals are experiencing ongoing UMEs. For minke whales and seals, although the ongoing UME is under investigation (as occurs for all UMEs), this event does not provide cause for concern regarding population level impacts. The minke whale population abundance is greater than 20,000 whales. Even though the PBR value is based on an abundance for U.S. waters that is negatively biased and a small fraction of the true population abundance, annual M/SI does not exceed the calculated PBR value for minke whales. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes et al., 2018). For gray seals, the population abundance is over 27,000, and abundance is likely increasing in the U.S. Atlantic EEZ and in Canada (Hayes et al., 2018). For harp seals, the current population trend in U.S. waters is unknown, as is PBR (Hayes et al., 2018), however the population abundance is over 7 million seals, suggesting that the UME is unlikely to result in population-level impacts (Hayes et al., 2018). With regard to humpback whales, the population is facing a UME wherein elevated strandings have occurred since 2016 and are ongoing. A portion of the whales have shown evidence of pre-mortem vessel strike; however, this finding is not consistent across all whales examined and investigations are ongoing. Animals involved in this UME primarily belong to the West Indies Distinct Population Segment (DPS) of which the Gulf of Maine stock is a part. While the MMPA designated Gulf of Maine stock is relatively small (n = 1,393), the most recent population estimate for the ESA-designated West Indies DPS (of which animals belonging to the Gulf of Maine stock also belong) is approximately 10,400 animals (Smith et al, 2009). The UME is a cause for concern to the Gulf of Maine stock; however, the taking associated with the issuance of the IHA is not anticipated to contribute to the UME or impact the stock such that it would affect annual rates or recruitment or survival. Authorized takes by Level A harassment for all species are very low (*i.e.,* no more than 10 takes by Level A harassment authorized for any of these species) and as described above, any Level A harassment would be expected to be in the form of slight PTS, *i.e.,* minor degradation of hearing capabilities which is not likely to meaningfully affect the ability to forage or communicate with conspecifics. Even absent mitigation, no serious injury or mortality from pile driving is anticipated. The suite of measures for vessel operation and monitoring ensure risk of serious injury or mortality from ship strikes is minimized such that the probability of a strike is *de minimus.* Mortality and serious injury is neither expected nor authorized, and Level B harassment of humpback whales and minke whales and gray, harbor and harp seals will be reduced to the level of least practicable adverse impact through implementation of mitigation measures. As such, the authorized takes of these species would not exacerbate or compound the ongoing UMEs in any way.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any marine mammal species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized and no Level A take of ESA-listed marine mammals is authorized;
- Instances of Level A harassment are limited for all impacted species and would be in the form of a slight PTS;
- Level B harassment would be in the form of behavioral disturbance, primarily resulting in avoidance of the project area around where pile driving is occurring, and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief amounts of time.
- Repeated disturbance to some individuals, including a very limited number of NARWs, may occur; however, any resulting behavioral reactions from exposure to pile driving noise (*e.g.,* avoidance, short-term cessation of foraging) are not expected to result in impacts to any stock's reproduction or survival.
- Total authorized takes as a percentage of population are very low for all species and stocks impacted (*i.e.,* less than 5.5 percent for all stocks, and less than 1 percent for 10 of 15 stocks);
- Areas of similar habitat value are available for marine mammals that may temporarily vacate the project area during construction;
- Effects on species that serve as prey for marine mammals from the activity are expected to be short-term and are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations;
- A biologically important migratory area exists for NARWs, however the required seasonal moratorium on construction is expected to largely avoid impacts to the NARW migration, as described above. The project area encompasses a subset of a core year-round foraging habitat; however, there are areas within this core foraging habitat that would not be impacted by project noise. Further, any noise within the project area would be temporary given the limitation to the amount of pile driving and time of day pile driving could occur. Moreover, potential for exposure from noise causing behavioral disruptions such as a cessation of foraging is also more reduced through implementation of the required mitigation measures (*e.g.,* requiring a delay in pile driving should a NARW be observed at any distance by PSOs on the pile driving vessel would limit any disruption of foraging).
- There are no known important feeding, breeding or calving areas in the project area for all other marine mammals within the project area. A foraging BIA exists for fin and minke whales in the general region of southern New England; however, any received levels within these areas would be low given their distance from the WDA and

therefore exposure to these low levels (while possibly audible) are not expected to result in disruption of foraging within the BIAs.

• The required mitigation measures, including visual and acoustic monitoring, clearance zones, and soft start, are expected to minimize potential impacts to marine mammals and effect the least practicable adverse impact on all marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from Vineyard Wind's planned activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

We authorize incidental take of 15 marine mammal stocks. The total amount of taking authorized is less than 5.5 percent for five of these stocks, and less than 1 percent for the remaining 10 stocks (Table 15), which we consider to be relatively small percentages and we find are small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of all affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. In compliance with NEPA, as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508 (1978)), the Bureau of Ocean Energy Management (BOEM) prepared an Environmental Impact Statement (EIS) to consider the direct, indirect and cumulative effects to the human environment resulting from the Vineyard Wind project. NMFS has participated as a cooperating agency on BOEM's EIS and provided technical expertise to BOEM in development of the document as it pertains to NMFS trust resources, including marine mammals. BOEM's Draft EIS was made available for public comment from December 7, 2018 to February 22, 2019. A Supplement to the Draft EIS was subsequently made available for public comment from June 12, 2020 to July 27, 2020; both the Draft EIS and Supplement to the Draft EIS were made available online at: *www.boem.gov/Vineyard-Wind.* BOEM published a Notice of Availability of the Final EIS on March 8, 2021. As a cooperating agency, NMFS reviewed and provided comments related to NMFS trust resources, including marine mammals, on the Draft EIS, Supplement to the Draft EIS and cooperating agency review draft of the Final EIS. In compliance with NEPA and the CEQ regulations (40 CFR 1506.3), as well as NOAA Administrative Order 216–6 and its Companion Manual, NMFS has reviewed BOEM's Final EIS, determined it to be sufficient, and adopted that Final EIS which adequately evaluates the direct, indirect and cumulative impacts of NMFS's proposed action to issue an IHA under the MMPA to Vineyard Wind for its offshore commercial wind project. NMFS has further determined that its comments and suggestions as a cooperating agency have been satisfied and recirculation of BOEM's EIS is therefore unnecessary (40 CFR 1506.3(c)). NMFS signed a joint Record of Decision (ROD) on May 10, 2021.

**Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Permits and Conservation Division is authorizing the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on April 26, 2019, for the issuance of this IHA. On September 11, 2020, NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of North Atlantic right, fin, sei and sperm whales.

The ITS issued with the Biological Opinion authorizes take of ESA-listed species based on the number of turbines that will actually be constructed. This means that if fewer turbines are constructed, fewer takes of ESA-listed species are authorized by the ITS. This scaled approach reflects how NMFS GARFO chose to satisfy requirements under ESA. Under Section 7 of the ESA, a biological opinion reviews a proposed action, as reasonably defined by the action agency, and assesses the ''effects of the action.'' BOEM sought consultation on its proposed action, which it defined using a reasonable ''maximum design envelope.'' The maximum design envelope, however, was not necessarily what would actually be constructed. Under regulations implementing Section 7 of the ESA, ''effects of the action'' include all consequences to listed species caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. In the Biological Opinion, NMFS GARFO evaluated effects from driving a range of piles up to the design envelope's maximum number of pile foundations (57 to 102) and then scaled the take numbers in the ITS based on the number of turbines that will be constructed so that the amount of

incidental take that is reasonably certain to occur and, therefore, commensurate with the actual construction. Without scaling, the ITS would have exempted more incidental take of ESA-listed species than is reasonably certain to occur. Since the scaled approach is a function of the ITS for this project, it only applies to ESA-listed marine mammals in the IHA.

Consultation has been reinitiated on the September 11, 2020 Biological Opinion and ITS. However, they remain valid and effective until reinitiated consultation is completed.

## Authorization

NMFS has issued an IHA to Vineyard Wind authorizing take of marine mammals incidental to pile driving associated with the construction of the proposed wind project offshore of Massachusetts, for a period of one year, from May 1, 2023 through April 30, 2024. Vineyard Wind is required to abide by all mitigation, monitoring, and reporting requirements in the IHA.

Dated: June 15, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–13501 Filed 6–24–21; 8:45 am]

BILLING CODE 3510–22–P

# Reader Aids

**Federal Register**

Vol. 86, No. 120

Friday, June 25, 2021

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6050** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

### E-mail

**FEDREGTOC** (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, JUNE

29173–29482 ..... 1
29483–29674 ..... 2
29675–29928 ..... 3
29929–30130 ..... 4
30131–30374 ..... 7
30375–30532 ..... 8
30533–30752 ..... 9
30753–31086 .....10
31087–31426 .....11
31427–31584 .....14
31585–31902 .....15
31903–32184 .....16
32185–32360 .....17
32361–32628 .....21
32629–32716 .....22
32717–33076 .....23
33077–33478 .....24
33479–33852 .....25

## CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**2 CFR**

1000 .....29483

**3 CFR**

**Proclamations:**
10218 .....29925
10219 .....29929
10220 .....30131
10221 .....30133
10222 .....30135
10223 .....30137
10224 .....30139
10225 .....30141
10226 .....30143
10227 .....31903
10228 .....32359
10229 .....32717
10230 .....32719

**Executive Orders:**
13959 (partially superseded and amended by 14026) .....30145
13974 (revoked by 14032) .....30145
14031 .....29675
14032 .....30145
14033 .....31079
13942 (revoked by EO 14034) .....31423
13943 (revoked by EO 14034) .....31423
13971 (revoked by EO 14034) .....31423
14034 .....31423

**Administrative Orders:**
Memorandums:
Memorandum of January 28, 2021 .....33077
Memorandum of June 4, 2021 .....30533
Memorandum of June 8, 2021 .....32629
Presidential Determinations:
PD No. 2021–08 of June 11, 2021 .....32631
Notices:
Notice of June 8, 2021 .....31083
Notice of June 8, 2021 .....31085
Notice of June 21, 2021 .....33075
Orders:
Order of May 28, 2021 .....29927

**3 CFR**

**Proclamations:**
10228 .....32359

**5 CFR**

335 .....30375
Ch. CII .....29931

**Proposed Rules:**
890 .....32813

**6 CFR**

**Proposed Rules:**
37 .....31987

**7 CFR**

3 .....30535
205 .....33479
457 .....33081, 33485
984 .....32721
1206 .....33491
4284, Subpart L .....31585

**Proposed Rules:**
272 .....30795
273 .....30795
3555 .....30555

**9 CFR**

310 .....33085

**Proposed Rules:**
2 .....33567

**10 CFR**

Ch. I .....29683
15 .....32146
34 .....29173
170 .....32146
171 .....32146
1061 .....29932

**Proposed Rules:**
Ch. I .....32817
429 .....29888
430 .....29704, 29888, 29954, 29964
431 .....30796, 31182, 32332

**12 CFR**

Ch. III .....32728
Ch. X .....32723
204 .....29937
1026 .....29685

**Proposed Rules:**
210 .....31376
365 .....33570

**14 CFR**

11 .....31006
39 .....29176, 29178, 29181, 29183, 29185, 29187, 29483, 29486, 29939, 29942, 29944, 30151, 30153, 30155, 30158, 30162, 30380, 30383, 30753, 30756, 30759, 30761, 30763, 30766, 30768, 30770, 31087, 31089, 31092, 31095, 31097, 31101, 31599, 31601, 31604, 31609, 31612, 31905, 32735,

33088, 33091, 33094, 33097, 33099, 33101, 33103, 33105, 33108, 33110, 33112, 33116, 33494, 33498
71 .....29488, 29489, 29946, 30164, 30165, 30167, 30168, 31103, 31104, 31105, 31107, 31108, 31109, 31111, 31112, 31113, 31114, 31907
73.....29687
91.....31006
97 .....29688, 29690, 33501, 33503
111.....31006, 32185
**Proposed Rules:**
25.....33147
39 .....29212, 29216, 29705, 29707, 30216, 30218, 30395, 30398, 30819, 30822, 30824, 31194, 31451, 31453, 31989, 31992, 31995, 32653, 33149, 33152, 33574, 33576, 33579
71 .....29530, 29531, 29967, 29969, 30399, 31998, 32363, 33581, 33584, 33585, 33586, 33588

**15 CFR**
Ch. VII.....32757
732.....29189
734.....29189
744 .....29190, 31909, 33119
760.....30533
922.....32737

**16 CFR**
1112.....33022
1130.....33022
1236.....33022
1632.....32758
**Proposed Rules:**
305.....29533

**17 CFR**
200.....31115
240.....31115
242.....29195
249.....31115

**18 CFR**
37.....29491
38.....29491
154.....29503
260.....29503
284.....29503

**19 CFR**
Ch. I.....32764, 32766
12.....31910

**21 CFR**
130.....31117
131.....31117
1308 .....29506, 30772, 30775, 31427, 32633, 33508
1310.....30169

**22 CFR**
22.....31614, 31617
120.....30778
121.....29196
123.....29196
124.....29196
126.....29196
129.....29196
213.....31139
306.....30169
**Proposed Rules:**
212.....30558

**24 CFR**
5.....30779
28.....31619
91.....30779
92.....30779, 32767
570.....30779
574.....30779
576.....30779
903.....30779
**Proposed Rules:**
100.....33590

**26 CFR**
1.....31146, 32185
301.....31146
**Proposed Rules:**
54.....32813

**27 CFR**
9 .....32186, 32189, 32191
**Proposed Rules:**
478.....30826
479.....30826

**28 CFR**
31.....31152

**29 CFR**
1473.....29196
1910.....32376
2204.....31165
4044.....31619
**Proposed Rules:**
10.....32818
531.....32818
2590.....32813

**30 CFR**
723.....29509
724.....29509
845.....29509
846.....29509
**Proposed Rules:**
917.....29709
1206.....31196
1241.....31196

**31 CFR**
50.....30537, 31620
525.....29197

**32 CFR**
45.....32194
310.....31430

**33 CFR**
100 .....29691, 32768, 33122
117.....29204
165 .....30178, 30180, 31166, 31167, 31170, 31431, 31620, 31916, 32215, 32218, 32219, 32635, 33124, 33126, 33128, 33130, 33133, 33135, 33511, 33512, 33514, 33515, 33516
**Proposed Rules:**
100 .....29711, 30221, 30224, 30851, 33598
117.....33153
165 .....29725, 29727, 30228, 30230, 31456, 31459, 31999, 32846

**34 CFR**
668.....33518
685.....31432
Ch. I.....32637
Ch. III.....32770

**37 CFR**
11.....32640
201.....32640
202.....32640
203.....32640
210.....32640
351.....31172
370.....32640
**Proposed Rules:**
385.....33601

**38 CFR**
5.....30182
9.....30541
61.....33518

**39 CFR**
**Proposed Rules:**
20.....29732
111.....29734

**40 CFR**
1.....31172
9 .....30184, 30190, 30196
30.....29515
49.....31918
51.....29948
52 .....29205, 29517, 29520, 29948, 29949, 30201, 30387, 30543, 30545, 30793, 31918, 31920, 31922, 31924, 31926, 31927, 32363, 32366, 33525, 33527, 33528, 33539, 33541, 33542, 33544
70.....33544, 33547
78.....29948
81 .....29522, 30204, 31438, 33547
97.....29948
124.....31172
141.....29526, 31939
142.....31939
147.....32221
180 .....29694, 30206, 31948, 31950
261.....31622
271.....29207, 31622
372.....29698
721 .....30184, 30190, 30196, 30210
**Proposed Rules:**
52 .....29219, 29222, 29227, 30232, 30234, 30854, 31218, 31645, 32006, 32656, 32848, 32850, 33154
63.....31225
81.....31460
121.....29541
141.....32856
174.....29229
180.....29229
261.....30237
271.....31233
721.....31239
725.....31239

**41 CFR**
**Proposed Rules:**
300–3.....31659
302–2.....31659
302–3.....31659
302–12.....31659
302–15.....31659
302–17.....31659

**42 CFR**
405.....29526
417.....29526
422.....29526
423.....29526
455.....29526
460.....29526
510.....33135
**Proposed Rules:**
51c.....32008
412.....33157
413.....33157
425.....33157
455.....33157
495.....33157

**43 CFR**
3160.....30548
9230.....30548
**Proposed Rules**
8365.....31665

**44 CFR**
61.....31177
328.....31448

**45 CFR**
1225.....30169
**Proposed Rules:**
149.....32813
1174.....33603

**47 CFR**
1.....30389, 32775
27.....30389, 32775
51.....33136
54 .....30391, 33549, 33551
64.....29952
73 .....29702, 30550, 31954, 32221, 33551
302.....31638
**Proposed Rules:**
Ch. I.....31464
1.....29735
2 .....29735, 30860, 32669
15.....32669
25.....32669
27.....29735, 32669
52.....31404
64 .....29969, 30571, 31668
73.....32011, 33612
87.....30860
90.....30860
101.....32669

**48 CFR**
Ch. I.....31070, 31075
7.....31070
11.....31074
16.....31073
19.....31074
22.....31074
26.....31074
42.....31074
52.....31074
53.....31074
**Proposed Rules:**
2.....31468
5.....31468

6 ....31468
13 ....31468
19 ....31468
52 ....31468

**49 CFR**

107 ....29528
383 ....32643
384 ....32643
391 ....32643

**Proposed Rules:**

1180 ....30243

**50 CFR**

17 ....30688, 31830, 31955, 31972, 33159
300 ....31178
622 ....29209, 30393
648 ....32651, 33552, 33553
660 ....29210, 30551, 32361, 32804, 33142
665 ....32239

**Proposed Rules:**

17 ....29432, 29975, 30888, 31668, 32241, 32857, 32859, 33137, 33177, 33613
18 ....29364
91 ....32878
219 ....30080
648 ....31262, 33191
660 ....29544
665 ....30582
679 ....29977, 31474

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available at *https://www.govinfo.gov*. Some laws may not yet be available.

**H.R. 711/P.L. 117–18**

West Los Angeles VA Campus Improvement Act of 2021 (June 23, 2021; 135 Stat. 288)

**H.J. Res. 27/P.L. 117–19**
Providing for the appointment of Barbara Barrett as a citizen regent of the Board of Regents of the Smithsonian Institution. (June 23, 2021; 135 Stat. 290)

**Last List June 21, 2021**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free email notification service of newly enacted public laws. To subscribe, go to *https://listserv.gsa.gov/cgi-bin/wa.exe?SUBED1=PUBLAWS-L&A=1*

**Note:** This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.