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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2016–BT–TP–0011]

RIN 1904–AD95

Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Correcting amendments.

SUMMARY: On June 1, 2022, the U.S. Department of Energy (''DOE'' or ''the Department'') published a final rule amending DOE's clothes washer test procedures. This document corrects formatting and typographical errors and omissions in the regulatory text of that final rule. Neither the errors and omissions nor the corrections in this document affect the substance of the rulemaking or any conclusions reached in support of the final rule.

DATES: Effective December 23, 2022.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 2022, DOE published a final rule amending DOE's clothes washer test procedures (''June 2022 Final Rule''). 87 FR 33316. The June 2022 Final Rule amended provisions in DOE's test procedure prescribed at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix J2 (''appendix J2''); established a new test procedure at 10 CFR part 430, subpart B, appendix J (''appendix J''); and amended provisions in DOE's test method for measuring the moisture absorption and retention characteristics of new lots of energy test cloth, which is used in testing clothes washers, at 10 CFR part 430, subpart B, appendix J3 (''appendix J3''). DOE is issuing this rule to correct certain technical errors and omissions in the June 2022 Final Rule, specifically appendices J, J2, and J3 of 10 CFR part 430, and to assist regulated entities with compliance efforts.

II. Discussion

As established in the June 2022 Final Rule, section 4 of appendix J defines the four energy components (HE_T, ME_T, DE_T, and E_{TLP}) [1] comprising the energy efficiency metric. For clothes washers with multiple water fill control systems, each of these four components yields a different result for each type of water fill control system and therefore must be calculated separately for each control type and then averaged, with the average value used for the final calculations in section 4, as directed by section 3.2.3.5 of appendix J. Specifically, section 3.2.3.5 of appendix J specifies that if a clothes washer allows user selection among multiple water fill control systems, all water fill control systems must be tested and, for each one, each energy consumption and water consumption value as set forth in section 4 of appendix J must be calculated and averaged across the water fill control systems. The average value is then used in the final calculations in section 4 of appendix J. But, in the June 2022 Final Rule, the Department inadvertently omitted E_{TLP} from the list of variables used to calculate energy consumption in section 3.2.3.5 of appendix J. DOE is correcting that omission by adding E_{TLP} to the parenthetical list of energy consumption parameters in section 3.2.3.5 of appendix J.

In the June 2022 Final Rule, DOE made a typographical error in section 3.3 of appendix J, stating that testing is to be performed ''on each wash/rinse temperature selection available in the energy test cycle was [*sic*] defined in section 2.12.1 of this appendix.'' 87 FR 33390. In this document, DOE corrects the word ''was'' to ''as'' in section 3.3 of appendix J.

In the June 2022 Final Rule, DOE expanded Table 5.1 of appendix J2; however, the expanded table did not reprint with the two established notes [2] at the end of the table. 87 FR 33402–33403. These two notes have been incorporated in Table 5.1 since the table's inclusion in appendix J2. Additionally, DOE did not propose their removal during the rulemaking process. The regulatory instruction provided for this amendment in the June 2022 Final Rule resulted in the inadvertent removal of the notes from Table 5.1 of appendix J2. This document corrects the omission by adding the two notes at end of the revised table.

In the regulatory text of the June 2022 Final Rule, the title and the column headings of new Table 8.7 of appendix J3 were mis-printed. The title of Table 8.7 inadvertently included an extra line break before the variable name provided in parentheses, *i.e.,* ''($RMC_{standard}$).'' To simplify the table heading, DOE is removing the variable name in parentheses in the title of Table 8.7. Additionally, the column headers for Table 8.7 list the water soak temperature and the spin times used to develop the values presented in the table. In the regulatory text of the June 2022 Final Rule, the spin time column headers were listed in the wrong order. 87 FR 33405. This document corrects the order of the headings in Table 8.7 of appendix J3.

Because this final rule simply corrects errors and omissions in the text without making substantive changes, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the

[1] HE_T is the total weighted per-cycle hot water energy consumption, ME_T is the total weighted per-cycle machine electrical energy consumption, DE_T is the per-cycle energy consumption for removal of moisture content from test load, and E_{TLP} is the per-cycle combined low-power mode.

[2] Two notes indicate that (1) all test load weights are bone-dry weights; and (2) allowable tolerance on the test load weights is ±0.10 lbs (0.05 kg).

various procedural requirements applicable to the June 2022 Final Rule remain unchanged for this final rule's technical corrections. These determinations are set forth in the June 2022 Final Rule and are adopted here. 87 FR 33316, 33375–33379.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), DOE finds that there is good cause to not issue a separate notice to solicit public comment on those technical corrections contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public interest. As explained above, the corrections in this document do not affect the substance of the June 2022 Final Rule or any of the conclusions reached in support of the final rule. Additionally, given the final rule is a product of an extensive administrative record with numerous opportunities for public comment, DOE finds additional comment on the technical corrections is unnecessary. Therefore, providing prior notice and an opportunity for public comment on correcting objective, typographical errors and omissions that do not change the substance of the test procedure serves no useful purpose.

Further, this rule correcting typographical errors and omissions makes non-substantive changes to the test procedure in the June 2022 Final Rule. As such, this final rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on December 16, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 19, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE corrects part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations by making the following correcting amendments:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix J to subpart B of part 430 is amended by:

■ a. Revising section 3.2.3.5; and

■ b. In section 3.3, in the first sentence, removing the words ''was defined'' and adding in their place ''as defined''.

The revision reads as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

* * * * *

3. * * *

3.2.3.5 *Clothes washers with multiple water fill control systems.* If a clothes washer allows user selection among multiple water fill control systems, test all water fill control systems and, for each one, calculate the energy consumption (HE_T, ME_T, DE_T, and E_{TLP}) and water consumption (Q_T) values as set forth in section 4 of this appendix. Then, calculate the average of the tested values (one from each water fill control system) for each variable (HE_T, ME_T, DE_T, E_{TLP}, and Q_T) and use the average value for each variable in the final calculations in section 4 of this appendix.

* * * * *

■ 3. Appendix J2 to subpart B of part 430 is amended by adding notes 1 and 2 following Table 5.1 in section 5 to read as follows:

Appendix J2 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

* * * * *

5. * * *

Table 5.1—Test Load Sizes

* * * * *

Notes: (1) All test load weights are bone-dry weights.

(2) Allowable tolerance on the test load weights is ±0.10 lbs (0.05 kg).

■ 4. Appendix J3 to subpart B of part 430 is amended by revising Table 8.7 in section 8.7 to read as follows:

Appendix J3 to Subpart B of Part 430—Energy Test Cloth Specifications and Procedures for Determining Correction Coefficients of New Energy Test Cloth Lots

* * * * *

8. * * *

TABLE 8.7—STANDARD RMC VALUES

''g Force''	RMC percentage			
	Warm soak		Cold soak	
	15 min. spin (percent)	4 min. spin (percent)	15 min. spin (percent)	4 min. spin (percent)
100	45.9	49.9	49.7	52.8
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0
650	23.0	26.4	24.1	28.0

* * * * *

[FR Doc. 2022–27877 Filed 12–22–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–STD–0042]

RIN 1905–AE59

Energy Conservation Program: Energy Conservation Standards for Commercial Warm Air Furnaces

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including commercial warm air furnaces (''CWAFs''). EPCA also requires the U.S. Department of Energy (''DOE'' or ''the Department'') to periodically review standards to determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would result in significant additional energy savings. In the case of CWAFs, DOE has determined that it lacks clear and convincing evidence that amended energy conservation standards would be economically justified. As such, in this final determination, DOE has determined not to amend the energy conservation standards for CWAFs.

DATES: The final determination is effective January 23, 2023.

ADDRESSES: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-STD-0042.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Synopsis of the Final Determination

The Energy Policy and Conservation Act, Public Law 94–163 (42 U.S.C. 6291–6317, as codified), as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C[2] of EPCA, established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes CWAFs, which are the subject of this final determination.[3] (42 U.S.C. 6311(J))

Pursuant to EPCA, DOE is triggered to consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever the American Society of Heating, Refrigerating, and Air Conditioning Engineers (''ASHRAE'') amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''). Under a separate provision of EPCA, DOE is required to review the existing energy conservation standards for those types of covered equipment subject to ASHRAE Standard 90.1, at a minimum, every six years after issuance of any final rule establishing or amending a standard (42 U.S.C. 6313(a)(6)(A)–(C)). DOE is conducting this review of the energy conservation standards for CWAFs under EPCA's six-year-lookback authority. (42 U.S.C. 6313(a)(6)(C))

For this final determination, DOE considered CWAFs subject to the current Federal energy conservation standards specified in the Code of Federal Regulations (''CFR'') at 10 CFR 431.77. The current standards were adopted in a direct final rule published in the **Federal Register** on January 15, 2016 (''January 2016 final rule''), through which DOE, in relevant part, adopted amended CWAF standards for which compliance is required beginning on January 1, 2023. 81 FR 2420, 2529. DOE has determined that there is significant uncertainty regarding whether more-stringent CWAF standards would be economically justified at this time, a matter which the Department discusses in more detail in section III.D of this document. Therefore, DOE has determined that the energy conservation standards for CWAFs do not need to be amended because there is not clear and convincing evidence that amended standards would be economically justified, as required by EPCA to

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[3] Air-cooled commercial package air conditioning and heating equipment (referred to as ''air-cooled unitary air conditioners and air-cooled unitary heat pumps'' or ''ACUACs and ACUHPs'') were also included in the scope of the request for information (''RFI'') published by DOE in the **Federal Register** on May 12, 2020 (''May 2020 RFI'') that preceded the NOPD for this rulemaking. 85 FR 27941. However, DOE only addresses CWAFs in this final determination. DOE will address ACUACs and ACUHPs in a separate proceeding.

establish a more-stringent standard. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

II. Introduction

The following section briefly discusses the statutory authority underlying this final determination, as well as the historical background relevant to the establishment of energy conservation standards for CWAFs.

A. Authority

EPCA, Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CWAFs, the subject of this document. (42 U.S.C. 6311(J))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy conservation requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6316(b)(2)(D), which incorporates the preemption waiver provisions of 42 U.S.C. 6297(d))

EPCA prescribed initial mandatory energy conservation standards for CWAFs. (42 U.S.C. 6313(a)(4)) In doing so, EPCA established Federal energy conservation standards that generally corresponded to the levels in the ASHRAE Standards 90.1 in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989).

In overview, if ASHRAE Standard 90.1 is amended with respect to the standard levels or design requirements applicable under that standard for certain commercial equipment, including CWAFs, not later than 180 days after the amendment of the standard, DOE must publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards. (42 U.S.C. 6313(a)(6)(A)(i)) DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that the adoption of a more-stringent efficiency level as a uniform national standard would produce significant additional energy savings and be technologically feasible and economically justified.[4] (42 U.S.C. 6313(a)(6)(A)(ii))

If DOE decides to adopt, as a uniform national standard, the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines, supported by clear and convincing evidence, that a more-stringent uniform national standard would result in significant additional conservation of energy and is technologically feasible and economically justified, then DOE must establish the more-stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (B)(i))

EPCA also requires that every six years DOE shall evaluate the energy conservation standards for each class of certain covered commercial equipment, including CWAFs, and publish either a notice of determination that the standards do not need to be amended, or a notice of proposed rulemaking (''NOPR'') that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(i)) EPCA further provides that, not later than three years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the equipment do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(iii)(II))

A determination of whether amended energy conservation standards are needed must be based on the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II); 42 U.S.C. 6313(a)(6)(A)–(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6313(a)(6)(C)(ii)) Further, there must be clear and convincing evidence that a determination that more-stringent standards would: (1) result in significant additional conservation of energy, (2) be technologically feasible, and (3) be economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A))

DOE is publishing this final determination in satisfaction of the six-year-lookback review requirement in EPCA, having determined that DOE lacks clear and convincing evidence that amended standards for CWAFs would be economically justified.

B. Background

In a final rule published in the **Federal Register** on October 21, 2004 (''October 2004 final rule''), DOE codified energy conservation standards for CWAFs equal to those established in EPCA (*i.e.,* a thermal efficiency (''TE'') of 80 percent for gas-fired CWAFs, and a TE of 81 percent for oil-fired CWAFs). 69 FR 61916, 61941. The standards established in the October 2004 final rule are the same as DOE's current CWAF standards for CWAFs manufactured before January 1, 2023. 10 CFR 431.77.

As noted previously, DOE most recently amended the energy conservation standards for CWAFs in the January 2016 final rule, which requires compliance beginning on January 1, 2023. 81 FR 2420 (Jan. 15, 2016).

Since publication of the January 2016 final rule, ASHRAE published two updated versions of ASHRAE Standard 90.1, one in 2016 (''ASHRAE Standard

[4] In determining whether a more-stringent standard is economically justified, EPCA directs DOE to determine, after receiving views and comments from the public, whether the benefits of the proposed standard exceed the burdens of the proposed standard by, to the maximum extent practicable, considering the following seven factors: (1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard; (2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial price of, initial charges for, or maintenance expense of the products that are likely to result from the standard; (3) The total projected amount of energy savings likely to result directly from the standard; (4) Any lessening of the utility or the performance of the products likely to result from the standard; (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard; (6) The need for national energy conservation; and (7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6313(a)(6)(B)(ii))

90.1–2016'') and another in 2019 (''ASHRAE Standard 90.1–2019''). The CWAF standards adopted in the January 2016 final rule (*i.e.,* the standards which take effect on and after the January 1, 2023 compliance date) are more stringent than the minimum efficiency levels for CWAFs in ASHRAE Standard 90.1–2016. ASHRAE Standard 90.1–2019 updated the minimum efficiency levels for CWAFs to align with those adopted by DOE in the January 2016 final rule.[5] Because ASHRAE Standard 90.1–2016 and ASHRAE Standard 90.1–2019 did not contain minimum efficiency levels more stringent than the current Federal standards for CWAFs, DOE was not triggered to examine amended standards for this equipment under 42 U.S.C. 6313(a)(6)(A).[6] As a result, despite these intervening ASHRAE actions, the Federal standards for CWAFs are those set forth in the January 2016 final rule and codified in DOE's regulations at 10 CFR 431.77.

More specifically, for gas-fired CWAFs manufactured starting on January 1, 1994, until January 1, 2023, TE at the maximum rated capacity (*i.e.,* rated maximum input) must be not less than 80 percent. For gas-fired CWAFs manufactured starting on January 1, 2023, the TE at the maximum rated capacity must be not less than 81 percent. For oil-fired CWAFs manufactured starting on January 1, 1994, until January 1, 2023, the TE at the maximum rated capacity must be not less than 81 percent. For oil-fired CWAFs manufactured starting on January 1, 2023, the TE at the maximum rated capacity must be not less than 82 percent. 10 CFR 431.77.

In the January 2016 final rule, DOE rejected more-stringent standards on the basis that benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers, negative net present value (''NPV'') of consumer benefits, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in industry net present value (''INPV''). 81 FR 2420, 2522 (Jan. 15, 2016).

In support of its present review of the CWAF energy conservation standards, DOE initially published in the **Federal Register** a request for information (RFI) on May 12, 2020 (May 2020 RFI), which identified various issues on which DOE sought comment, data, and information to inform its determination of whether the current Federal standards need to be amended. 85 FR 27941. After considering comments received in response to the RFI, DOE published in the **Federal Register** a notice of proposed determination on April 26, 2022 (''April 2022 NOPD''), which proposed not to amend the standards for CWAFs. 87 FR 24455. In the April 2022 NOPD, DOE tentatively determined that the current CWAF market conditions are not significantly different now than projected in the January 2016 final rule, and that any analysis of increased standards for CWAFs would not result in a significantly different economic outcome from the January 2016 final rule. As such, DOE determined that it lacks clear and convincing evidence that amended energy conservation standards for CWAFs would be economically justified. *Id* at 87 FR 24465.

DOE received numerous comments in response to the April 2022 NOPD from the interested parties listed in Table II.1.

TABLE II.1—INTERESTED PARTIES THAT PROVIDED WRITTEN COMMENT IN RESPONSE TO THE APRIL 2022 NOPD

Commenter(s)	Acronym used in this final determination	Commenter type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	Manufacturer Trade Association.
American Gas Association and American Public Gas Association	AGA and APGA	Utility Trade Associations.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, New York State Energy Research and Development Authority, Natural Resources Defense Council.	Joint Advocates	Efficiency Advocacy Organizations and State Government.
California Investor-Owned Utilities	CA IOUs	Utilities.
Lennox International, Inc	Lennox	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Advocacy Organization.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[7]

III. General Discussion and Rationale

DOE developed this final determination after a review of the CWAF market, including product literature and product listings in the DOE Compliance Certification Management System (CCMS) database. DOE also considered comments, data, and information from interested parties that represent a variety of interests. This document addresses issues raised by these commenters.

A. Test Procedures

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) As a general matter, manufacturers of covered ASHRAE equipment must use these test procedures to certify to DOE that their equipment complies with energy conservation standards and to quantify the efficiency of their equipment. (42 U.S.C. 6316(b); 42 U.S.C. 6296) DOE's current energy conservation standards for CWAFs are expressed in terms TE in percent. (*See* 10 CFR 431.77) The applicable test procedure for CWAFs is found at 10 CFR 431.76, ''Uniform Test Method for Measurement of Energy Efficiency of Commercial Warm Air Furnaces.''

[5] It is DOE's understanding that the relevant provisions of ASHRAE Standard 90.1–2019 pertaining to CWAF standards contained a typographical error. Table 6.8.1–5 of ASHRAE Standard 90.1–2019 specifies a thermal efficiency (TE) requirement of 82 percent for oil-fired CWAFs applicable after January 1, 2023, which aligns with the standard adopted by the January 2016 final rule. However, Table 6.8.1–5 of ASHRAE 90.1–2019 also specifies a TE requirement of only 80 percent for oil-fired CWAFs applicable before January 1, 2023, whereas ASHRAE 90.1–2016 specifies a TE requirement of 81 percent for this class. As such, DOE understands the 80-percent level in ASHRAE Standard 90.1–2019 to be a typographical error.

[6] DOE assessed whether it was triggered based upon consideration of the current Federal standards codified at 10 CFR 431.77, which were promulgated through the final rule published in the **Federal Register** at 81 FR 2420 (Jan. 15, 2016). In doing so, DOE considered the totality of these CWAF standard levels, even though compliance with certain of those standards is not yet required (*i.e.,* a compliance date of January 1, 2023).

[7] The parenthetical reference provides a reference for information located in the docket (Docket No. EERE–2019–BT–STD–0042, which is maintained at *www.regulations.gov/docket?D=EERE-2019-BT-STD-0042*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

On February 25, 2022, DOE published a NOPR in the **Federal Register** that proposed to update the CWAF test procedure (''February 2022 TP NOPR''). 87 FR 10726. In the February 2022 TP NOPR, DOE proposed to adopt the latest versions of the industry test standards that are currently incorporated by reference, to make minor revisions to the CWAF test procedure to clarify how to test certain equipment,[8] and to establish a new metric—Thermal Efficiency Two (''TE2''). The proposed TE2 metric would, unlike the current TE metric, account for heat loss through the CWAF cabinet (*i.e.,* jacket losses) and performance at a minimum fire rate (*i.e.,* part-load). *Id.* at 87 FR 10729–10730. However, DOE proposed to make use of the TE2 metric and test procedure optional until such time as compliance with amended energy conservation standards based on TE2 is required, should DOE adopt such standards. *Id.* at 87 FR 10735.

In response to the April 2022 NOPD, NEEA and the Joint Advocates recommended that DOE should consider the potential energy savings that would result from analyzing new CWAF standards based on an updated test procedure and metric. (NEEA, No. 34 at pp. 1–2; Joint Advocates, No. 31 at pp. 1–2) NEEA also recommended that DOE evaluate the energy savings that would result from amending the CWAF test procedure to incorporate aspects of CSA Standard P.8–2022, ''Thermal efficiencies of industrial and commercial gas-fired package furnaces'' (''CSA P.8–2022''), which includes a test procedure that assesses CWAF performance based on the not only the CWAF, but also accounts for features within a commercial unitary air conditioner (''CUAC'') that the commenter stated would affect CWAF performance (*e.g.,* total enclosure insulation, low-leak dampers, and energy recovery).[9] (NEEA, No. 34 at pp. 2–5) Additionally, NEEA and the Joint Advocates asserted that accounting for the technology options in CSA P.8–2022 could result in significant energy savings, and that obtaining this energy savings would be technologically feasible and economically justified. (NEEA, No. 34 at p. 3; Joint Advocates, No. 31 at p. 2) Specifically, NEEA argued that although the effects of these technologies are not accounted for in the TE metric, DOE should look into the energy savings associated with them before adopting a final test procedure, because assessing the energy savings of these technology options help to justify adding them to the test procedure. (NEEA, No. 34 at p. 3) NEEA also presented data showing the potential energy savings based improvements in enclosure insulation, damper leakage, and energy recovery. *Id.* NEEA stated that the technologies that achieve this level of energy savings are readily available on the market today, and, therefore, are technologically feasible. (NEEA, No. 34 at p. 4) NEEA also asserted that these technologies may have lower incremental costs and, therefore, may be economically justified. (NEEA, No. 34 at pp. 4–5) To support its conclusion, NEEA presented preliminary results from a benefit-cost analysis being conducted in partnership with the Northwest Power and Conservation Council that shows the benefit-cost ratios for low-leak dampers and increased insulation. *Id.*

DOE acknowledges there could be potential for additional energy savings, if DOE were to consider technologies that would improve efficiency as measured by TE2 or by an amended test procedure that incorporates aspects of CSA P.8–2022 that are not included in the current TE metric. However, DOE notes that as currently proposed, the TE2 test procedure for CWAFs does not address the technologies that NEEA has identified, and that rulemaking is still ongoing. DOE received similar comments in response to the February 2022 TP NOPR and will address those comments as part of that rulemaking. Therefore, DOE is declining to analyze energy conservation standards (denominated in terms of TE) in light of such technologies at this time, because an amended TE standard level would not be impacted by whether such technologies would be used in CWAFs. Should DOE ultimately decide to amend the CWAF test procedure to include the technologies NEEA has identified or to finalize the TE2 metric and should sufficient TE2 performance data become available, DOE could consider energy savings based on such technologies in a subsequent review of CWAF energy conservation standards.

B. General Comments

In the April 2022 NOPD, DOE requested comment on its proposed determination that the existing energy conservation standards for CWAFs do not need to be amended. 87 FR 24455, 24465 (April 26, 2022).

DOE received comments from AHRI, the CA IOUs, and Lennox supporting DOE's proposed determination. (AHRI, No. 29 at p. 1, CA IOUs, No. 32 at p. 1, Lennox, No. 30 at pp. 1–2) Specifically, AHRI stated that there have not been significant changes in the CWAF market that would warrant an amended energy conservation standard that would be both technically feasible and economically justified. (AHRI, No. 29 at p. 1) Additionally, Lennox commented that since the time of the January 2016 final rule market conditions, including manufacturer costs and costs to improve CWAF efficiency have worsened since the 2016 final rule. Lennox also argued that implementing more-stringent standards at this time would be premature because DOE's 2023 CWAF standards have not yet taken effect, and under the statute, any new CWAF standards could not take effect until 2029. (Lennox, No. 30 at p. 2) AHRI and Lennox also agreed with DOE's tentative conclusion in the April 2022 NOPD that raising the TE standards would likely result in a condensing standard, and these commenters asserted that there are technological problems associated with implementing condensing operation for CWAFs that would add significant burden to manufacturers if such a standard were to be adopted. (AHRI, No. 29 at p. 1; Lennox, No. 30 at p. 1)

NEEA disagreed with DOE's proposed determination. (NEEA, No. 34 at p. 1) As discussed in section III.A of this document, NEEA asserted that DOE should consider the energy savings of technology options that are not captured by the current CWAF test procedure and metric. (NEEA, No. 34 at p. 2) Additionally, NEEA recommended that DOE should update its energy use analysis to account for changes in the CWAF market since 2016. (NEEA, No. 34 at pp. 7–8) NEEA stated that DOE's 2016 analysis was based on the Commercial Building Stock Energy Consumption Survey (CBECS 2003); however, since the publication of that survey, a new CBECS 2018 has been published. NEEA also recommended that DOE should seek new shipment data to account for changing trends in the market. *Id.*

In response to NEEA, DOE reiterates that its analysis for this final determination was based on the existing TE metric, as updates to the required test method as would be needed to account for additional technologies that NEEA identified are not yet adopted. The CWAFs test procedure rulemaking is currently ongoing. Further, it would be premature to evaluate energy conservation standards in terms of a new metric without sufficient data on equipment performance according to

[8] These revisions included additional specifications for CWAFs with multiple vent hoods or small-diameter vent hoods.

[9] NEEA also recommended DOE consider amending the CWAF test procedure and metric to incorporate aspects based on CSA P.8–2022 in the February 2022 NOPR. (*See* EERE–2019–BT–TP–0041–0024).

any potential new metric. As a result, DOE has concluded that further consideration of TE2 is not appropriate at this time and is better suited for consideration in a future review of CWAF standards, if TE2 were to be finalized and sufficient performance data becomes available.

In response to NEEA's suggestion that DOE seek new shipment data to account for the changing market, DOE notes that it sought feedback on its approach to estimating shipments and/or shipments data in the May 2020 RFI. 85 FR 27941, 27953 (May 12, 2020). Subsequently, in the April 2022 NOPD, DOE considered several comments related to shipments, and the Department ultimately concluded that given the mature market, the expectation that most shipments will be at the baseline level in 2023, and lack of any anticipated increase in equipment lifetime, DOE did not expect the shipments estimates and no-new-standards distributions from the January 2016 final rule to have changed significantly for CWAFs. 87 FR 24455, 24464 (April 26, 2022). After a careful review, DOE has not obtained any new or additional information regarding shipments, and, therefore, maintains the conclusion regarding CWAF shipments set forth in the April 2022 NOPD for this final determination. Regarding NEEA's recommendation to conduct an updated analysis that relies on CBECS 2018, as stated in the April 2022 NOPD, while the previous analysis relied on CBECS 2003, CWAF energy consumption was adjusted for projected decreases in heating degree days between CBECS 2003 and the compliance year.[10] 87 FR 24455, 24463 (April 26, 2022). DOE also noted that the main driver of CWAF energy consumption in the January 2016 final rule was the building heating load, which is based on the reported space heating energy consumption of buildings with a furnace in CBECS 2003, and that the previous analysis was not based on full-load hours or perimeter conditions. *Id.* As such, and given the fact that DOE has determined that the characteristics of the CWAF market are largely the same as when analyzed for the January 2016 final rule, DOE does not anticipate the energy use to have changed sufficiently so as to drive a different outcome, as compared to that in the January 2016 final rule.

As discussed further in section III.D of this document, DOE has determined that it lacks clear and convincing evidence to show that the potential amended standard levels considered would be economically justified. To satisfy the statutory requirements to consider more-stringent standards, DOE must support by clear and convincing evidence that such standards are economically justified, in addition to being technologically feasible and to likely result in significant additional energy savings. Therefore, although DOE could update its analysis to further investigate aspects of energy savings and shipments, the Department finds that doing so would not change DOE's rationale supporting its decision to not amend the existing CWAF standards at this time.

C. Equipment Classes and Scope of Coverage

EPCA and DOE define a ''warm air furnace'' as a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces. (42 U.S.C. 6311(11)(A); 10 CFR 431.72) A ''commercial warm air furnace'' is further defined in DOE's regulations as a warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 British thermal units (''Btu'') per hour or more. 10 CFR 431.72.

In the April 2022 NOPD, DOE responded to a comment from NEEA [11] that requested that DOE consider updating the definition for CWAF to account for different operating characteristics, different functions, or use cases in order to reduce uncertainty as to the applicable energy conservation standard and test procedure and to provide more comprehensive coverage. 87 FR 24455, 24459 (April 26, 2022). In response NEEA's comment, DOE stated that the codified definition of ''warm air furnace'' at 10 CFR 431.72 matches EPCA's definition of a ''warm air furnace'' at 42 U.S.C. 6311(11)(A), and that, therefore, the current CWAF definition is appropriately aligned with the definition in EPCA and adequately covers CWAFs. As such, DOE determined that no amendments to the regulatory definitions for ''commercial warm air furnace'' or ''warm air furnace'' are needed. *Id.*

In response to the April 2022 NOPD, NEEA again recommended that DOE update the definition of a CWAF to allow DOE to develop a metric that would include the effects of both the CWAF and the CUAC with which it is packaged. (NEEA, No. 34 at pp. 6–7) NEEA further stated that it does not see a limitation in EPCA's or DOE's definition of a CWAF that prevents DOE from expanding the definition to cover the entire CUAC and suggested that this was the intent of the EPCA definition. Specifically, NEEA noted that the EPCA defines a warm air furnace as ''self-contained,'' ''designed to supply heated air through ducts,'' and ''includes combination warm air furnace/electric air conditioning units,'' which NEEA argued suggests that the intent was to cover CUACs. *Id.*

DOE disagrees with NEEA that the intent of the ''warm air furnace'' definition found in EPCA is to include CUACs under the coverage of the CWAF definitions. As previously noted, EPCA's definition of a ''warm air furnace'' definition clearly states that a warm air furnace ''is a self-contained oil or gas-fired furnace,'' which DOE views as a product that is distinct from a CUAC. DOE notes that EPCA lists warm air furnaces and various types of commercial air conditioners as separate types of covered equipment at 42 U.S.C. 6311(1) and that EPCA defines ''commercial package air conditioning and heating equipment'' (*i.e.,* CUAC) separately from ''warm air furnace.'' (See 42 U.S.C. 6311(8)(A) and (11)(A)) While EPCA states that a warm air furnace ''includes combination warm air furnace/electric air conditioning units,'' DOE has determined that this is referring to the fact that a CWAF may be installed within an CUAC, which is an attempt to clarify that CWAFs can be standalone units or installed as part of packaged systems. This interpretation is consistent with how DOE has historically treated and regulated CWAFs and packaged systems.

NEEA also stated that DOE should consider expanding the coverage of CWAFs to include three-phase furnaces with capacities less than 225,000 Btu/h. (NEEA, No. 34 at p. 6) As discussed in the April 2022 NOPD, DOE tentatively determined not to take such action because: (1) such units make up a very small portion of the market (roughly 2 percent), and (2) all of such units meet or exceed the current CWAF standards and the majority meet or exceed the 2023 standards. 87 FR 24455, 24460 (April 26, 2022). NEEA argued that because these types of CWAFs make up about 2 percent of the total CWAF market, there is still a significant opportunity for energy savings, because the CWAF market is large. (NEEA, No.

[10] See Chapter 7 of the January 2016 Final Rule Technical Support Document (available at: *www.regulations.gov/document/EERE-2013-BT-STD-0021-0050*).

[11] NEEA sent a comment in response to a DOE request for information published in the **Federal Register** on May 12, 2020, for air-cooled commercial package air conditioning and heating equipment and commercial warm air furnaces, in which the Department sought comment regarding whether DOE should consider revising the definition for CWAFs. *See* EERE–2019–BT–STD–0042–0024 at p. 5.

34 at p. 6) Additionally, NEEA stated that because the majority of the market already meets or exceeds the 2023 standards, the additional burden to manufacturers to redesign such units to meet the 2023 standards is likely to be small. Finally, NEEA argued that DOE has energy conservation standards for three-phase VRFs with a capacity less than 65,000 btu/h even though there are currently no shipments of such units, so the commenter asserted that following this precedent, DOE should establish energy conservation standards for three-phase CWAFs with an input capacity less than 225,000 Btu/h, because such products have thousands of shipments. *Id.*

DOE has decided not to consider energy conservation standards for three-phase CWAFs with a capacity less than 225,000 Btu/h in this rulemaking. DOE disagrees with NEEA that there is a significant opportunity for energy savings. While 2 percent of the overall CWAF market can account for a significant amount of energy use, as previously stated, all three-phase furnaces with capacities less than 225,000 btu/h meet or exceed the current CWAF standards, and the majority already meet the 2023 standards. Therefore, significant energy savings for such units (assuming DOE expanded the CWAF definition to include them) would only be achieved if DOE were to increase CWAF standards, which for the reasons explained in section III.D of this document, DOE is declining to do in this rulemaking.

D. Final Determination

After carefully considering the comments on the April 2022 NOPD and the available data and information, DOE has determined that the energy conservation standards for CWAFs do not need to be amended, for the reasons explained in the paragraphs immediately following.

As previously discussed, EPCA specifies that for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), including CWAFs, DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1 only if ''clear and convincing evidence'' shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) The ''clear and convincing'' evidentiary threshold applies both when DOE is triggered by ASHRAE action and when DOE conducts a six-year-lookback rulemaking, with the latter being the basis for the current proceeding. DOE addresses each of these statutory criteria in turn.

1. Significant Conservation of Energy

EPCA mandates that DOE consider whether amended energy conservation standards for CWAFs would result in result in significant additional conservation of energy. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II))

As discussed in the April 2022 NOPD, DOE acknowledges that more-stringent standards for CWAFs have the potential to result in significant additional conservation of energy. 87 FR 24455, 24464 (April 26, 2022). In the January 2016 final rule, DOE estimated that establishing a condensing standard (*i.e.,* 92-percent thermal efficiency) for gas-fired and oil-fired CWAFs would result in 2.1 quads of primary energy savings compared to a no-new-standards case over the lifetime of the CWAF (2019 through 2048). 81 FR 2420, 2508 (Jan. 15. 2016). However, as discussed in section III.D.3 of this document, DOE has determined that it lacks clear and convincing evidence to show that the potential amended standard levels considered would be economically justified.

2. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for CWAFs would be technologically feasible. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) As initially explained in the April 2022 NOPD, there have previously been CWAF models on the market at efficiencies above the current minimum standard levels and above the levels adopted in the January 2016 final rule, and DOE has previously analyzed several of those levels as potential national standard levels. 87 FR 24455, 24465 (April 26, 2022). This indicates that more-stringent energy conservation standards could be technologically feasible. However, DOE also noted in the April 2022 NOPD that it was not aware of any CWAF models on the market that exceeded the minimum standards that were adopted in the January 2016 final rule. *Id.* Currently, DOE is not aware of any gas-fired CWAF models, and is only aware of one oil-fired CWAF model line on the market that exceeds the minimum standards that were adopted in the January 2016 final rule.[12]

3. Economic Justification

In the January 2016 final rule, DOE concluded that energy conservation standards at levels requiring condensing operation (trial standard level (''TSL'') 5) would not be economically justified, due to the economic burden on most consumers, the negative NPV of consumer benefits using a 7-percent discount rate, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. 81 FR 2420, 2522 (Jan. 15, 2016). In examining the current market, DOE has found that market conditions are largely the same as at the time of the January 2016 final rule.

Given the similar market size and in consideration of stakeholder comments, DOE has determined that the manufacturing costs and manufacturer impacts would not be significantly different now than projected in the January 2016 final rule. In addition, DOE has determined that installation costs would be similar to those estimated in the previous analysis, and that energy cost savings would not increase as compared to the previous analysis, as updated Annual Energy Outlook (*AEO*) projections of energy prices show declining prices in comparison to the projections in *AEO 2015,* which were used for the January 2016 final rule. For these reasons, DOE has determined that any analysis of more-stringent thermal efficiency standard levels for CWAFs would not result in a significantly different economic outcome from the January 2016 final rule, and that as such, it lacks clear and convincing evidence that more-stringent standard levels for CWAFs would be economically justified.

DOE notes that the determination that it lacks clear and convincing evidence is specific to this rulemaking. DOE will evaluate its ability to reach clear and convincing evidence on a case-by-case basis.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and

[12] See DOE's Compliance Certification Database for CWAFs (available at: *www.regulations.doe.gov/ccms*) (last accessed Sept. 14, 2022).

Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

OMB has determined that this final determination does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not subject to review under E.O. 12866 by OIRA at OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The equipment covered by this final determination are classified under North American Industry Classification System (''NAICS'') code 333415,[13] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE has conducted a focused inquiry into small business manufacturers of the equipment covered by this rulemaking. The Department used available public information to identify potential small manufacturers. DOE accessed its Compliance Certification Database (''CCD'')[14] to identify a list of companies that manufacture the CWAFs covered by this final determination. Using these sources, DOE identified a total of eight distinct manufacturers of CWAFs. DOE screened out companies that do not meet the definition of a ''small business'' or are foreign-owned and operated. Of these manufacturers, DOE identified one small, domestic manufacturer as a potential small business.

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is not amending standards for CWAFs in this final determination, DOE certifies that this final determination will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA or FRFA for this final determination. DOE has transmitted this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This final determination, which determines that amended energy conservation standards for CWAFs are unneeded under the applicable statutory criteria, imposes no new informational or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this action in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE has determined that this final determination qualifies for categorical exclusion A4 because it is an interpretation or ruling in regard to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this final determination is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final

[13] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (last accessed March 4, 2022).

[14] U.S. Department of Energy Compliance Certification Management System (available at: *www.regulations.doe.gov/ccms*).

determination and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of this final determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) As this final determination would not amend the standards for CWAFs, there is no impact on the policymaking discretion of the States. Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause 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 (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this final determination according to UMRA and its statement of policy and determined that this final determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this final determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, ''Improving Implementation of the Information Quality Act'' (April 24, 2019), DOE published updated guidelines which are available at: *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IAQ%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final determination, which does not amend energy conservation standards for CWAFs, is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA.

Therefore, it is not a significant energy action, and accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a Peer Review report pertaining to the energy conservation standards rulemaking analyses.[15] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences (NAS) to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting December 2021 NAS report.[16]

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final determination prior to its effective date. This report will state that it has been determined that the final determination is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

Signing Authority

This document of the Department of Energy was signed on December 16, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 19, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–27878 Filed 12–22–22; 8:45 am]

BILLING CODE 6450–01–P

[15] ''Energy Conservation Standards Rulemaking Peer Review Report.'' 2007 (available at: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0*).

[16] The December 2021 NAS report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1795]

RIN 7100–AG 49

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AF87

Community Reinvestment Act Regulations Asset-Size Thresholds

AGENCY: Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The Board and the FDIC (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' and ''intermediate small bank.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W).

DATES: Effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT:

Board: Amal S. Patel, Counsel, (202) 912–7879, Division of Consumer and Community Affairs; or Gavin L. Smith, Senior Counsel, (202) 452–3474, or Cody M. Gaffney, Attorney, (202) 452–2674, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For the hearing impaired and users of Telecommunications Device for the Deaf (TDD) and TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859, *psingleton@fdic.gov;* or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, *rischwartz@fdic.gov,* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The Agencies' CRA regulations establish CRA performance standards for small and intermediate small banks. The CRA regulations define small and intermediate small banks by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. 12 CFR 228.12(u)(2) and 345.12(u)(2). This adjustment formula was first adopted for CRA purposes by the Board, the Office of the Comptroller of the Currency (OCC), and the FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). At that time, the Agencies noted that the CPI–W is also used in connection with other Federal laws, such as the Home Mortgage Disclosure Act. *See* 12 U.S.C. 2808; 12 CFR 1003.2. On March 22, 2007, and effective July 1, 2007, the former Office of Thrift Supervision (OTS), the agency then responsible for regulating savings associations, adopted

an annual adjustment formula consistent with that of the other Federal banking agencies in its CRA rule previously set forth at 12 CFR part 563e. 72 FR 13429 (Mar. 22, 2007).

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] effective July 21, 2011, CRA rulemaking authority for Federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR part 195, the CRA regulations applicable to those institutions.[2] In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervisory authority.[3]

The OCC has determined that it will adjust the asset-size criteria for institutions that are subject to OCC-issued CRA regulations, including national banks and Federal and state savings associations, by a means separate from this rulemaking process.

The threshold for small banks was revised most recently in December 2021 and became effective January 1, 2022. 86 FR 71813 (Dec. 20, 2021). The current CRA regulations provide that banks that, as of December 31 of either of the prior two calendar years, had assets of less than $1.384 billion are small banks. Small banks with assets of at least $346 million as of December 31 of both of the prior two calendar years and less than $1.384 billion as of December 31 of either of the prior two calendar years are intermediate small banks. 12 CFR 228.12(u)(1) and 345.12(u)(1). This joint final rule revises these thresholds.

During the 12-month period ending November 2022, the CPI–W increased by 8.60 percent. As a result, the Agencies are revising 12 CFR 228.12(u)(1) and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2023, banks that, as of December 31 of either of the prior two calendar years, had assets of less than $1.503 billion are small banks. Small banks with assets of at least $376 million as of December 31 of both of the prior two calendar years and less than $1.503 billion as of December 31 of either of the prior two calendar years are intermediate small banks. The Agencies also publish current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council at *https://www.ffiec.gov/cra/.*

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks result from the application of a formula established by a provision in the respective CRA regulations that the Agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). As a result, §§ 228.12(u)(1) and 345.12(u)(1) of the Agencies' respective CRA regulations are amended by adjusting the asset-size thresholds as provided for in §§ 228.12(u)(2) and 345.12(u)(2).

Accordingly, the Agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria. For this reason, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2023. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the Agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the Agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on 12-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have determined that this final rule does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

Riegle Community Development and Regulatory Improvement Act of 1994

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) (12 U.S.C. 4802) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), 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.[4] In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must 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.[5]

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply. Nevertheless, the requirements of section 302 of RCDRIA, and the administrative burdens and benefits of the final rule, were considered as part of the overall rulemaking process.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

[3] *See* Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

[4] 12 U.S.C. 4802(a).

[5] 12 U.S.C. 4802(b).

Congressional Review Act

FDIC

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[6] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[7]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[8] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 228

Banks, Banking, Community development, Credit, Federal Reserve System, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. Section 228.12 is amended by revising paragraph (u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.503 billion. *Intermediate small bank* means a small bank with assets of at least $376 million as of December 31 of both of the prior two calendar years and less than $1.503 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 3. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

■ 4. Section 345.12 is amended by revising paragraph (u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.503 billion. *Intermediate small bank* means a small bank with assets of at least $376 million as of December 31 of both of the prior two calendar years and less than $1.503 billion as of December 31 of either of the prior two calendar years.

* * * * *

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

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 15, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–27922 Filed 12–22–22; 8:45 am]

BILLING CODE 6210–01–P; 6714–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA, and Qualified Mortgages)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) is issuing this final rule amending the regulation text and official interpretations for Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau calculates the dollar amounts for several provisions in Regulation Z annually; this final rule revises, as applicable, the dollar amounts for provisions implementing TILA and amendments to TILA, including under the Home Ownership and Equity Protection Act of 1994 (HOEPA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Bureau is adjusting these amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index (CPI) in effect on June 1, 2022.

DATES: This final rule is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Dowell, Senior Counsel, Office of Regulations, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is amending the regulation text and official interpretations for Regulation Z, which implements TILA, to update the dollar amounts of various thresholds that it must adjust annually to reflect the annual percentage change in the CPI as published by the Bureau of Labor Statistics (BLS). Specifically, for open-end consumer credit plans under TILA, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged at $1.00 in 2023. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2023 will be $24,866. The adjusted points-and-fees dollar trigger for high-cost mortgages in 2023 will be $1,243. For qualified mortgages (QMs) under the General QM loan definition in § 1026.43(e)(2), the thresholds for the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) in 2023 will be: 2.25 or more percentage points for a first-lien covered transaction with

[6] 5 U.S.C. 801 *et seq.*

[7] 5 U.S.C. 801(a)(3).

[8] 5 U.S.C. 804(2).

a loan amount greater than or equal to $124,331; 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to $74,599 but less than $124,331; 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than $74,599; 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than $124,331; 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to $74,599; or 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than $74,599. For all categories of QMs, the thresholds for total points and fees in 2023 will be 3 percent of the total loan amount for a loan greater than or equal to $124,331; $3,730 for a loan amount greater than or equal to $74,599 but less than $124,331; 5 percent of the total loan amount for a loan greater than or equal to $24,866 but less than $74,599; $1,243 for a loan amount greater than or equal to $15,541 but less than $24,866; and 8 percent of the total loan amount for a loan amount less than $15,541.[1]

I. Background

A. Credit Card Annual Adjustments

Minimum Interest Charge Disclosure Thresholds

Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) of Regulation Z implement sections 127(a)(3) and 127(c)(1)(A)(ii)(II) of TILA. Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) require creditors to disclose any minimum interest charge exceeding $1.00 that could be imposed during a billing cycle. These provisions also state that, for open-end consumer credit plans, the Bureau shall calculate the minimum interest charge thresholds annually using the CPI that was in effect on the preceding June 1; the Bureau uses the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) for this adjustment.[2] If the cumulative change in the adjusted minimum value derived from applying the annual CPI–W level to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) has risen by a whole dollar, the Bureau will increase the minimum interest charge amounts set forth in the regulation by $1.00. The Bureau bases its 2023 adjustment analysis on the CPI–W index in effect on June 1, 2022, as reported by BLS on May 11, 2022.[3] As a result, the adjustment reflects the percentage change in the CPI–W from April 2021 to April 2022. The adjustment analysis accounts for an 8.9 percent increase in the CPI–W from April 2021 to April 2022. This increase in the CPI–W when applied to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) does not trigger an increase in the minimum interest charge threshold of at least $1.00, and the Bureau, therefore, is not amending §§ 1026.6(b)(2)(iii) and 1026.60(b)(3).

B. HOEPA Annual Threshold Adjustments

Section 1026.32(a)(1)(ii) of Regulation Z implements section 1431 of the Dodd-Frank Act,[4] which amended the HOEPA points-and-fees coverage test. Under § 1026.32(a)(1)(ii)(A) and (B), in assessing whether a transaction is a high-cost mortgage due to points and fees the creditor is charging, the applicable points-and-fees coverage test depends on whether the total loan amount is for $20,000 or more, or for less than $20,000. Section 1026.32(a)(1)(ii) provides that the Bureau recalculate this threshold amount annually using the CPI index in effect on the preceding June 1; the Bureau uses the CPI–U for this adjustment.[5] The Bureau bases the 2023 adjustment on the CPI–U index in effect on June 1, 2022, as reported by BLS on May 11, 2022. As a result, the adjustment reflects the percentage change in the CPI–U from April 2021 to April 2022, which is an increase of 8.3 percent. The adjustment to $24,866 here reflects the 8.3 percent increase in the CPI–U index from April 2021 to April 2022 rounded to the nearest whole dollar amount for ease of compliance.

Under § 1026.32(a)(1)(ii)(B), the HOEPA points-and-fees threshold is the lesser of 8 percent of the total loan amount or $1,000. Section 1026.32(a)(1)(ii)(B) provides that the Bureau will recalculate the dollar amount threshold annually using the CPI index in effect on the preceding June 1; the Bureau uses the CPI–U for this adjustment. The Bureau bases the 2023 adjustment on the CPI–U index in effect on June 1, 2022, as reported by BLS on May 11, 2022. As a result, the adjustment reflects the percentage change in CPI–U from April 2021 to April 2022, which is an increase of 8.3 percent. The adjustment to $1,243 here reflects the 8.3 percent increase in the CPI–U index from April 2021 to April 2022 rounded to the nearest whole dollar amount for ease of compliance.

C. QM Annual Threshold Adjustments

The Bureau's Regulation Z implements sections 1411 and 1412 of the Dodd-Frank Act, which generally require creditors to make a reasonable, good-faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling and establishes certain protections from liability under this requirement for QMs.

On December 10, 2020, the Bureau issued a final rule amending the General QM loan definition in § 1026.43(e)(2).[6] The final rule established pricing thresholds in § 1026.43(e)(2)(vi)(A) through (F) based on the spread of a loan's APR compared to the APOR for a comparable transaction as of the date the interest rate is set. To satisfy the General QM loan definition, a loan's APR must be below the applicable pricing threshold and must satisfy other requirements in § 1026.43(e)(2). Specifically, under § 1026.43(e)(2)(vi), a covered transaction is a QM if the APR does not exceed the APOR for a comparable transaction as of the date the interest rate is set by: 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to $110,260 (indexed for inflation); 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to $66,156 (indexed for inflation) but less than $110,260 (indexed for inflation); 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than $66,156 (indexed for inflation); 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than $110,260 (indexed for inflation); 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to $66,156 (indexed for inflation); or 6.5 or more

[1] The QM categories in Regulation Z appear at 12 CFR 1026.43(e)(2), (e)(4), (e)(5), (e)(6), and (e)(7). Note that 12 CFR 1026.43(e)(6) applies only to covered transactions for which the application was received before April 1, 2016.

[2] The CPI–W is a subset of the Consumer Price Index for All Urban Consumers (CPI–U) index and represents approximately 29 percent of the U.S. population.

[3] BLS publishes Consumer Price Indices monthly, usually in the middle of each calendar month. Thus, the CPI–W reported on May 11, 2022, was the most current as of June 1, 2022.

[4] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[5] The CPI–U is based on all urban consumers and represents approximately 93 percent of the U.S. population.

[6] 85 FR 86308 (Dec. 29, 2020). This final rule was initially effective on March 1, 2021, with a mandatory compliance date of July 1, 2021. On April 27, 2021, the Bureau issued a final rule effective June 30, 2021, which extended the mandatory compliance date of the final rule published on December 29, 2020, at 85 FR 86308, until October 1, 2022. 86 FR 22844 (Apr. 30, 2021).

percentage points for a subordinate-lien covered transaction with a loan amount less than $66,156 (indexed for inflation).[7] The rule states that the Bureau will adjust the loan amounts in § 1026.43(e)(2)(vi) annually on January 1 by the annual percentage change in the CPI–U that was in effect on the preceding June 1.[8]

Regulation Z also contains points and fees limits applicable to all categories of QMs. Under § 1026.43(e)(3)(i), a covered transaction is not a QM if the transaction's total points and fees exceed: 3 percent of the total loan amount for a loan amount greater than or equal to $100,000 (indexed for inflation); $3,000 (indexed for inflation) for a loan amount greater than or equal to $60,000 (indexed for inflation) but less than $100,000 (indexed for inflation); 5 percent of the total loan amount for loans greater than or equal to $20,000 (indexed for inflation) but less than $60,000 (indexed for inflation); $1,000 (indexed for inflation) for a loan amount greater than or equal to $12,500 (indexed for inflation) but less than $20,000 (indexed for inflation); or 8 percent of the total loan amount for loans less than $12,500 (indexed for inflation). Section 1026.43(e)(3)(ii) provides that the Bureau will recalculate the limits and loan amounts in § 1026.43(e)(3)(i) annually for inflation using the CPI–U index in effect on the preceding June 1.

The Bureau bases the 2023 adjustment to the loan amounts applicable to the pricing thresholds for the General QM loan definition and the points and fees limits for all categories of QM on the CPI–U index in effect on June 1, 2022, as reported by BLS on May 11, 2022. As a result, the adjustment reflects the percentage change in CPI–U from April 2021 to April 2022, which is an increase of 8.3 percent. The 2023 adjustment[9] adopted here reflects an 8.3 percent increase in the CPI–U index for this period rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

A. Credit Card Annual Adjustments

Minimum Interest Charge Disclosure Thresholds—§§ 1026.6(b)(2)(iii) and 1026.60(b)(3)

The minimum interest charge amounts for §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) will remain unchanged at $1.00 for the year 2023. Accordingly, the Bureau is not amending these sections of Regulation Z.

B. HOEPA Annual Threshold Adjustment—Comments 32(a)(1)(ii)–1 and –3

Effective January 1, 2023, for purposes of determining under § 1026.32(a)(1)(ii) the points-and-fees coverage test under HOEPA to which a transaction is subject, the total loan amount threshold figure is $24,866, and the adjusted points-and-fees dollar trigger under § 1026.32(a)(1)(ii)(B) is $1,243. If the total loan amount for a transaction is $24,866 or more, and the points-and-fees amount exceeds 5 percent of the total loan amount, the transaction is a high-cost mortgage. If the total loan amount for a transaction is less than $24,866, and the points-and-fees amount exceeds the lesser of the adjusted points-and-fees dollar trigger of $1,243 or 8 percent of the total loan amount, the transaction is a high-cost mortgage. The Bureau is amending comments 32(a)(1)(ii)–1 and –3, which list the adjustments for each year, to reflect for 2023 the new points-and-fees dollar trigger and the new loan amount dollar threshold, respectively.

C. Qualified Mortgages Annual Threshold Adjustments

Effective January 1, 2023, to satisfy § 1026.43(e)(2)(vi) under the General QM loan definition, the annual percentage rate may not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the following amounts: 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to $124,331; 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to $74,599 but less than $124,331; 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than $74,599; 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than $124,331; 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to $74,599; or 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than $74,599. Accordingly, the Bureau is amending comment 43(e)(2)(vi)–3, which lists the adjustments for each year, to reflect the new dollar threshold amounts for § 1026.43(e)(2)(vi)(A) through (F).

Effective January 1, 2023, a covered transaction is not a qualified mortgage if, pursuant to § 1026.43(e)(3), the transaction's total points and fees exceed 3 percent of the total loan amount for a loan amount greater than or equal to $124,331; $3,730 for a loan amount greater than or equal to $74,599 but less than $124,331; 5 percent of the total loan amount for loans greater than or equal to $24,866 but less than $74,599; $1,243 for a loan amount greater than or equal to $15,541 but less than $24,866; or 8 percent of the total loan amount for loans less than $15,541. The Bureau is amending comment 43(e)(3)(ii)–1, which lists the adjustments for each year, to reflect the new dollar threshold amounts for 2023.

III. Procedural Requirements

A. Administrative Procedure Act

The Administrative Procedure Act does not require notice and opportunity for public comment if an agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[10] Pursuant to this final rule, the Bureau adds comments 32(a)(1)(ii)–1.ix, 32(a)(1)(ii)–3.ix, 43(e)(2)(vi)–3.ii, and 43(e)(3)(ii)–1.ix to update the exemption thresholds. The amendments in this final rule are technical and non-discretionary, as they merely apply the method previously established in Regulation Z for determining adjustments to the thresholds. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. The amendments, therefore, are adopted in final form.

[7] The loan amounts in the regulatory text reflect the CPI–U in effect on June 1, 2020.

[8] *See* comment 43(e)(2)(vi)–3.

[9] For 2023, a covered transaction is a qualified mortgage if the APR does not exceed the APOR for a comparable transaction as of the date the interest rate is set by: 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to $124,331; 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to $74,599 but less than $124,331; 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than $74,599; 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than $124,331; 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to $74,599; or 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than $74,599. Additionally, a covered transaction is not a qualified mortgage if the transaction's total points and fees exceed 3 percent of the total loan amount for a loan amount greater than or equal to $124,331; $3,730 for a loan amount greater than or equal to $74,599 but less than $124,331; 5 percent of the total loan amount for loans greater than or equal to $24,866 but less than $74,599; $1,243 for a loan amount greater than or equal to $15,541 but less than $24,866; or 8 percent of the total loan amount for loans less than $15,541.

[10] 5 U.S.C. 553(b)(B).

For the same reasons, the Bureau finds that there is good cause to make this rule effective on January 1, 2023. Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments made by this rule fall under the third exception to section 553(d). As already stated above, the amendments in this final rule are technical and non-discretionary, as they merely apply the method previously established in Regulation Z for determining adjustments to the thresholds.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[11] As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirement relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[12] the Bureau reviewed this final rule. The Bureau has determined that this final rule does not create any new information collections or substantially revise any existing collections.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Signing Authority

Senior Advisor Brian Shearer, having reviewed and approved this document, is delegating the authority to sign this document electronically to Laura Galban, Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. In Supplement I to Part 1026:

■ a. Under *Section 1026.32—Requirements for High-Cost Mortgages,* revise *Paragraph 32(a)(1)(ii);* and

■ b. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling,* revise *Paragraphs 43(e)(2)(vi) and 43(e)(3)(ii).*

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.32—Requirements for High-Cost Mortgages

* * * * *

Paragraph 32(a)(1)(ii).

1. *Annual adjustment of $1,000 amount.* The $1,000 figure in § 1026.32(a)(1)(ii)(B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2015, $1,020, reflecting a 2 percent increase in the CPI–U from June 2013 to June 2014, rounded to the nearest whole dollar.

ii. For 2016, $1,017, reflecting a 0.2 percent decrease in the CPI–U from June 2014 to June 2015, rounded to the nearest whole dollar.

iii. For 2017, $1,029, reflecting a 1.1 percent increase in the CPI–U from June 2015 to June 2016, rounded to the nearest whole dollar.

iv. For 2018, $1,052, reflecting a 2.2 percent increase in the CPI–U from June 2016 to June 2017, rounded to the nearest whole dollar.

v. For 2019, $1,077, reflecting a 2.5 percent increase in the CPI–U from June 2017 to June 2018, rounded to the nearest whole dollar.

vi. For 2020, $1,099, reflecting a 2 percent increase in the CPI–U from June 2018 to June 2019, rounded to the nearest whole dollar.

vii. For 2021, $1,103, reflecting a 0.3 percent increase in the CPI–U from June 2019 to June 2020, rounded to the nearest whole dollar.

viii. For 2022, $1,148, reflecting a 4.2 percent increase in the CPI–U from June 2020 to June 2021, rounded to the nearest whole dollar.

ix. For 2023, $1,243, reflecting an 8.3 percent increase in the CPI–U from June 2021 to June 2022, rounded to the nearest whole dollar.

2. *Historical adjustment of $400 amount.* Prior to January 10, 2014, a mortgage loan was covered by § 1026.32 if the total points and fees payable by the consumer at or before loan consummation exceeded the greater of $400 or 8 percent of the total loan amount. The $400 figure was adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1, as follows:

i. For 1996, $412, reflecting a 3 percent increase in the CPI–U from June 1994 to June 1995, rounded to the nearest whole dollar.

ii. For 1997, $424, reflecting a 2.9 percent increase in the CPI–U from June 1995 to June 1996, rounded to the nearest whole dollar.

iii. For 1998, $435, reflecting a 2.5 percent increase in the CPI–U from June 1996 to June 1997, rounded to the nearest whole dollar.

iv. For 1999, $441, reflecting a 1.4 percent increase in the CPI–U from June 1997 to June 1998, rounded to the nearest whole dollar.

v. For 2000, $451, reflecting a 2.3 percent increase in the CPI–U from June 1998 to June 1999, rounded to the nearest whole dollar.

vi. For 2001, $465, reflecting a 3.1 percent increase in the CPI–U from June 1999 to June 2000, rounded to the nearest whole dollar.

vii. For 2002, $480, reflecting a 3.27 percent increase in the CPI–U from June 2000 to June 2001, rounded to the nearest whole dollar.

viii. For 2003, $488, reflecting a 1.64 percent increase in the CPI–U from June 2001 to June 2002, rounded to the nearest whole dollar.

ix. For 2004, $499, reflecting a 2.22 percent increase in the CPI–U from June 2002 to June 2003, rounded to the nearest whole dollar.

x. For 2005, $510, reflecting a 2.29 percent increase in the CPI–U from June

[11] 5 U.S.C. 603(a), 604(a).

[12] 44 U.S.C. 3506; 5 CFR part 1320.

2003 to June 2004, rounded to the nearest whole dollar.

xi. For 2006, $528, reflecting a 3.51 percent increase in the CPI–U from June 2004 to June 2005, rounded to the nearest whole dollar.

xii. For 2007, $547, reflecting a 3.55 percent increase in the CPI–U from June 2005 to June 2006, rounded to the nearest whole dollar.

xiii. For 2008, $561, reflecting a 2.56 percent increase in the CPI–U from June 2006 to June 2007, rounded to the nearest whole dollar.

xiv. For 2009, $583, reflecting a 3.94 percent increase in the CPI–U from June 2007 to June 2008, rounded to the nearest whole dollar.

xv. For 2010, $579, reflecting a 0.74 percent decrease in the CPI–U from June 2008 to June 2009, rounded to the nearest whole dollar.

xvi. For 2011, $592, reflecting a 2.2 percent increase in the CPI–U from June 2009 to June 2010, rounded to the nearest whole dollar.

xvii. For 2012, $611, reflecting a 3.2 percent increase in the CPI–U from June 2010 to June 2011, rounded to the nearest whole dollar.

xviii. For 2013, $625, reflecting a 2.3 percent increase in the CPI–U from June 2011 to June 2012, rounded to the nearest whole dollar.

xix. For 2014, $632, reflecting a 1.1 percent increase in the CPI–U from June 2012 to June 2013, rounded to the nearest whole dollar.

3. *Applicable threshold.* For purposes of § 1026.32(a)(1)(ii), a creditor must determine the applicable points and fees threshold based on the face amount of the note (or, in the case of an open-end credit plan, the credit limit for the plan when the account is opened). However, the creditor must apply the allowable points and fees percentage to the ''total loan amount,'' as defined in § 1026.32(b)(4). For closed-end credit transactions, the total loan amount may be different than the face amount of the note. The $20,000 amount in § 1026.32(a)(1)(ii)(A) and (B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1.

i. For 2015, $20,391, reflecting a 2 percent increase in the CPI–U from June 2013 to June 2014, rounded to the nearest whole dollar.

ii. For 2016, $20,350, reflecting a .2 percent decrease in the CPI–U from June 2014 to June 2015, rounded to the nearest whole dollar.

iii. For 2017, $20,579, reflecting a 1.1 percent increase in the CPI–U from June 2015 to June 2016, rounded to the nearest whole dollar.

iv. For 2018, $21,032, reflecting a 2.2 percent increase in the CPI–U from June 2016 to June 2017, rounded to the nearest whole dollar.

v. For 2019, $21,549, reflecting a 2.5 percent increase in the CPI–U from June 2017 to June 2018, rounded to the nearest whole dollar.

vi. For 2020, $21,980, reflecting a 2 percent increase in the CPI–U from June 2018 to June 2019, rounded to the nearest whole dollar.

vii. For 2021, $22,052 reflecting a 0.3 percent increase in the CPI–U from June 2019 to June 2020, rounded to the nearest whole dollar.

viii. For 2022, $22,969 reflecting a 4.2 percent increase in the CPI–U from June 2020 to June 2021, rounded to the nearest whole dollar.

ix. For 2023, $24,866 reflecting an 8.3 percent increase in the CPI–U from June 2021 to June 2022, rounded to the nearest whole dollar.

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Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

Paragraph 43(e)(2)(vi).

1. *Determining the average prime offer rate for a comparable transaction as of the date the interest rate is set.* For guidance on determining the average prime offer rate for a comparable transaction as of the date the interest rate is set, see comments 43(b)(4)-1 through –3.

2. *Determination of applicable threshold.* A creditor must determine the applicable threshold by determining which category the loan falls into based on the face amount of the note (the ''loan amount'' as defined in § 1026.43(b)(5)). For example, for a first-lien covered transaction with a loan amount of $75,000, the loan would fall into the tier for loans greater than or equal to $66,156 (indexed for inflation) but less than $110,260 (indexed for inflation), for which the applicable threshold is 3.5 or more percentage points.

3. *Annual adjustment for inflation.* The dollar amounts in § 1026.43(e)(2)(vi) will be adjusted annually on January 1 by the annual percentage change in the CPI–U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2022, reflecting a 4.2 percent increase in the CPI–U that was reported on the preceding June 1, to satisfy § 1026.43(e)(2)(vi), the annual percentage rate may not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the following amounts:

A. For a first-lien covered transaction with a loan amount greater than or equal to $114,847, 2.25 or more percentage points;

B. For a first-lien covered transaction with a loan amount greater than or equal to $68,908 but less than $114,847, 3.5 or more percentage points;

C. For a first-lien covered transaction with a loan amount less than $68,908, 6.5 or more percentage points;

D. For a first-lien covered transaction secured by a manufactured home with a loan amount less than $114,847, 6.5 or more percentage points;

E. For a subordinate-lien covered transaction with a loan amount greater than or equal to $68,908, 3.5 or more percentage points;

F. For a subordinate-lien covered transaction with a loan amount less than $68,908, 6.5 or more percentage points.

ii. For 2023, reflecting an 8.3 percent increase in the CPI–U that was reported on the preceding June 1, to satisfy § 1026.43(e)(2)(vi), the annual percentage rate may not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the following amounts:

A. For a first-lien covered transaction with a loan amount greater than or equal to $124,331, 2.25 or more percentage points;

B. For a first-lien covered transaction with a loan amount greater than or equal to $74,599 but less than $124,331, 3.5 or more percentage points;

C. For a first-lien covered transaction with a loan amount less than $74,599, 6.5 or more percentage points;

D. For a first-lien covered transaction secured by a manufactured home with a loan amount less than $124,331, 6.5 or more percentage points;

E. For a subordinate-lien covered transaction with a loan amount greater than or equal to $74,599, 3.5 or more percentage points;

F. For a subordinate-lien covered transaction with a loan amount less than $74,599, 6.5 or more percentage points.

4. *Determining the annual percentage rate for certain loans for which the interest rate may or will change.*

i. *In general.* The commentary to § 1026.17(c)(1) and other provisions in subpart C address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in § 1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under § 1026.32(a)(1)(i). Section 1026.43(e)(2)(vi) requires, for the purposes of § 1026.43(e)(2)(vi), a

different determination of the annual percentage rate for a qualified mortgage under § 1026.43(e)(2) for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. An identical special rule for determining the annual percentage rate for such a loan also applies for purposes of § 1026.43(b)(4).

ii. *Loans for which the interest rate may or will change.* Section 1026.43(e)(2)(vi) includes a special rule for determining the annual percentage rate for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. This rule applies to adjustable-rate mortgages that have a fixed-rate period of five years or less and to step-rate mortgages for which the interest rate changes within that five-year period.

iii. *Maximum interest rate during the first five years.* For a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, a creditor must treat the maximum interest rate that could apply at any time during that five-year period as the interest rate for the full term of the loan to determine the annual percentage rate for purposes of § 1026.43(e)(2)(vi), regardless of whether the maximum interest rate is reached at the first or subsequent adjustment during the five-year period. For additional instruction on how to determine the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due, see comments 43(e)(2)(iv)–3 and –4.

iv. *Treatment of the maximum interest rate in determining the annual percentage rate.* For a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, the creditor must determine the annual percentage rate for purposes of § 1026.43(e)(2)(vi) by treating the maximum interest rate that may apply within the first five years as the interest rate for the full term of the loan. For example, assume an adjustable-rate mortgage with a loan term of 30 years and an initial discounted rate of 5.0 percent that is fixed for the first three years. Assume that the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 7.0 percent. Pursuant to § 1026.43(e)(2)(vi), the creditor must determine the annual percentage rate based on an interest rate of 7.0 percent applied for the full 30-year loan term.

5. *Meaning of a manufactured home.* For purposes of § 1026.43(e)(2)(vi)(D), manufactured home means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development (HUD) establishing manufactured home construction and safety standards (24 CFR 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of § 1026.43(e)(2)(vi)(D).

6. *Scope of threshold for transactions secured by a manufactured home.* The threshold in § 1026.43(e)(2)(vi)(D) applies to first-lien covered transactions less than $110,260 (indexed for inflation) that are secured by a manufactured home and land, or by a manufactured home only.

* * * * *

Paragraph 43(e)(3)(ii).

1. *Annual adjustment for inflation.* The dollar amounts, including the loan amounts, in § 1026.43(e)(3)(i) will be adjusted annually on January 1 by the annual percentage change in the CPI–U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2015, reflecting a 2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to $101,953: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $61,172 but less than $101,953: $3,059;

C. For a loan amount greater than or equal to $20,391 but less than $61,172: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $12,744 but less than $20,391; $1,020;

E. For a loan amount less than $12,744: 8 percent of the total loan amount.

ii. For 2016, reflecting a 0.2 percent decrease in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to $101,749: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $61,050 but less than $101,749: $3,052;

C. For a loan amount greater than or equal to $20,350 but less than $61,050: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $12,719 but less than $20,350; $1,017;

E. For a loan amount less than $12,719: 8 percent of the total loan amount.

iii. For 2017, reflecting a 1.1 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed:

A. For a loan amount greater than or equal to $102,894: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $61,737 but less than $102,894: $3,087;

C. For a loan amount greater than or equal to $20,579 but less than $61,737: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $12,862 but less than $20,579: $1,029;

E. For a loan amount less than $12,862: 8 percent of the total loan amount.

iv. For 2018, reflecting a 2.2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $105,158: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $63,095 but less than $105,158: $3,155;

C. For a loan amount greater than or equal to $21,032 but less than $63,095: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $13,145 but less than $21,032: $1,052;

E. For a loan amount less than $13,145: 8 percent of the total loan amount.

v. For 2019, reflecting a 2.5 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $107,747: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $64,648 but less than $107,747: $3,232;

C. For a loan amount greater than or equal to $21,549 but less than $64,648: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $13,468 but less than $21,549: $1,077;

E. For a loan amount less than $13,468: 8 percent of the total loan amount.

vi. For 2020, reflecting a 2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $109,898: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $65,939 but less than $109,898: $3,297;

C. For a loan amount greater than or equal to $21,980 but less than $65,939: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $13,737 but less than $21,980: $1,099;

E. For a loan amount less than $13,737: 8 percent of the total loan amount.

vii. For 2021, reflecting a 0.3 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $110,260: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $66,156 but less than $110,260: $3,308;

C. For a loan amount greater than or equal to $22,052 but less than $66,156: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $13,783 but less than $22,052: $1,103;

E. For a loan amount less than $13,783: 8 percent of the total loan amount.

viii. For 2022, reflecting a 4.2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $114,847: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $68,908 but less than $114,847: $3,445;

C. For a loan amount greater than or equal to $22,969 but less than $68,908: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $14,356 but less than $22,969: $1,148;

E. For a loan amount less than $14,356: 8 percent of the total loan amount.

ix. For 2023, reflecting an 8.3 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $124,331: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $74,599 but less than $124,331: $3,730;

C. For a loan amount greater than or equal to $24,866 but less than $74,599: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $15,541 but less than $24,866: $1,243;

E. For a loan amount less than $15,541: 8 percent of the total loan amount.

* * * * *

Laura Galban,

Federal Register Liaison, Consumer Financial Protection Bureau.

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AB21

2023–2024 Multifamily Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is issuing a final rule on the multifamily housing goals for Fannie Mae and Freddie Mac (the Enterprises) for 2023 and 2024. The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Safety and Soundness Act) requires FHFA to establish annual housing goals for mortgages purchased by the Enterprises. Under FHFA's existing housing goals regulation, the multifamily housing goals for the Enterprises include benchmark levels through the end of 2022 based on the total number of affordable units in multifamily properties financed by mortgage loans purchased by the Enterprise each year. This final rule amends the regulation to establish benchmark levels for the multifamily housing goals for 2023 and 2024 based on a new methodology—the percentage of affordable units in multifamily properties financed by mortgages purchased by the Enterprise each year.

DATES: The final rule is effective on February 21, 2023.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Associate Director, Housing & Community Investment, Division of Housing Mission and Goals, (202) 649–3157, *Ted.Wartell@fhfa.gov;* Padmasini Raman, Supervisory Policy Analyst, Housing & Community Investment, Division of Housing Mission and Goals, (202) 649–3633, *Padmasini.Raman@fhfa.gov;* Kevin Sheehan, Associate General Counsel, Office of General Counsel, (202) 649–3086, *Kevin.Sheehan@fhfa.gov.* These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background for the Housing Goals

The Safety and Soundness Act requires FHFA to establish several annual housing goals for both single-family and multifamily mortgages purchased by the Enterprises.[1] The achievement of the annual housing goals is one measure of the extent to which the Enterprises are meeting their public purposes, which include ''an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return.''[2]

Since 2010, FHFA has established annual housing goals for Enterprise purchases of both single-family and multifamily mortgages by rulemaking, consistent with the requirements of the Safety and Soundness Act. FHFA's most recent final rule amending the housing goals regulation was issued in December 2021 and established benchmark levels for the single-family housing goals for 2022 through 2024 and benchmark levels for the multifamily housing goals for 2022 only.[3] On August 18, 2022, FHFA issued a proposed rule that proposed a new methodology and benchmark levels for the multifamily housing goals for 2023 and 2024.[4]

B. Adjusting the Housing Goals

If, after publication of the final rule establishing the multifamily housing goals for 2023 and 2024, FHFA determines that any of the multifamily housing goals or subgoals should be adjusted in light of market conditions to ensure the safety and soundness of the Enterprises, or for any other reason,

[1] *See* 12 U.S.C. 4561(a).

[2] *See* 12 U.S.C. 4501(7).

[3] *See* 86 FR 73641 (December 28, 2021).

[4] *See* 87 FR 50794 (August 18, 2022).

FHFA will take any steps that are necessary and appropriate to adjust the goal(s) such as reducing the benchmark level(s) through the processes in the existing regulation.

FHFA may also take other actions consistent with the Safety and Soundness Act and the Enterprise housing goals regulation based on new information or developments that occur after publication of the final rule. For example, under the Safety and Soundness Act and the Enterprise housing goals regulation, FHFA may reduce the benchmark levels in response to an Enterprise petition for any of the single-family or multifamily housing goals or subgoals in a particular year based on a determination by FHFA that: (1) market and economic conditions or the financial condition of the Enterprise require a reduction; or (2) efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Enterprises' charter acts.[5]

The Safety and Soundness Act and the Enterprise housing goals regulation also take into consideration the possibility that achievement of a particular housing goal or subgoal may or may not have been feasible for an Enterprise to achieve. If FHFA determines that a housing goal or subgoal was not feasible for an Enterprise to achieve, then the statute and regulation provide for no further enforcement of that housing goal or subgoal for that year.[6] If FHFA determines that an Enterprise failed to meet a housing goal or subgoal and that achievement of the housing goal or subgoal was feasible, then the statute and regulation provide FHFA with discretionary authority to require the Enterprise to submit a housing plan describing the specific actions the Enterprise will take to improve its housing goals or subgoals performance.

The actions described in this section provide FHFA some flexibility to respond to new information or developments that occur after publication of the final rule. As proposed, the new methodology for establishing the benchmarks in the final rule sets the levels as a percentage of goal-eligible units backing mortgages acquired by each Enterprise,[7] which could reduce the likelihood that FHFA will be required to modify the benchmark levels in response to unexpected market developments after publication of the final rule.

C. Housing Goals Under Conservatorship

On September 6, 2008, FHFA placed each Enterprise into conservatorship. Although the Enterprises remain in conservatorship at this time, they continue to have the mission of supporting a stable and liquid national market for residential mortgage financing. FHFA has continued to establish annual housing goals for the Enterprises and to assess their performance under the housing goals each year during conservatorship.

II. Discussion of Proposed Rule and Public Comments

FHFA published a Notice of Proposed Rulemaking (NPRM or proposed rule) in the **Federal Register** on August 18, 2022, that proposed a new methodology for measuring the Enterprise multifamily housing goals. Rather than measuring the multifamily housing goals based on an absolute number of affordable units in multifamily properties financed by mortgages purchased by the Enterprises, FHFA proposed using percentages of affordable units in multifamily properties financed by mortgages purchased by the Enterprises. The NPRM also proposed specific benchmark levels for each of the multifamily housing goals. The public comment period for the proposed rule ended on October 17, 2022.

Overview. FHFA received 77 comment letters from organizations and members of the public in response to the proposed rule. Comment letters were submitted by both Fannie Mae and Freddie Mac, as well as nonprofit organizations, policy advocacy organizations, and trade associations representing lenders, homebuilders, and other mortgage market participants. FHFA received one joint letter from two policy organizations focused on renters and one letter signed by 35 housing and community development organizations. FHFA also received 64 comment letters from members of the public and organizations which were part of a letter-writing campaign concerned about the high cost of rent and the lack of tenant protections.

FHFA has reviewed and considered all of the comment letters received in response to the NPRM. A number of those letters raised issues that are unrelated to the housing goals or are beyond the scope of the proposed rule. As a result, those issues are not addressed in this final rule. Specific provisions of the proposal and comments received in response to those provisions are discussed below.

Change in methodology for measuring the multifamily goals. Although not all of the comment letters received in response to the NPRM addressed the proposed change in methodology, those that did supported the proposed change. The Enterprises, trade organizations, policy advocacy organizations, and one member of the supported the proposed methodology change, stating that it would be more responsive to market conditions, offer flexibility for the Enterprises, and enable the Enterprises to maintain a focus on affordability while facilitating their ability to provide necessary liquidity.

Although not opposed to the proposed change, a trade association representing homebuilders stressed the importance of preserving the Enterprises' countercyclical role and expressed concern that the proposed methodology could potentially result in a decline in the absolute number of affordable units acquired by each Enterprise.

The Safety and Soundness Act provides that the Director shall, by regulation, establish a single annual goal, by either unit or dollar volume, of purchases by each Enterprise of mortgages on multifamily housing that finance dwelling units affordable to low-income families.[8] FHFA has established the multifamily housing goals based on a specific number of units each year since 2010. However, the volume of Enterprise multifamily purchases has varied considerably from year to year due to a variety of market and economic conditions. Changing to a percentage-based methodology will better reflect the market and economic conditions the Enterprises encounter in acquiring mortgages. Percentage-based multifamily goals will require that the Enterprises continue to support the affordable segment of the market in years where their multifamily mortgage acquisitions increase, while ensuring

[5] *See* 12 CFR 1282.14(d).

[6] *See* 12 CFR 1282.21(a); 12 U.S.C. 4566(b).

[7] In this final rule, ''goal-eligible units'' is used as a synonym for ''denominator,'' to refer to all dwelling units that are financed by mortgage purchases that could be counted for purposes of the multifamily housing goals and subgoals. The counting rules in 12 CFR 1282.16(b) exclude certain types of mortgages from eligibility for housing goals credit, such as multifamily mortgages with Federal guarantees and subordinate lien multifamily mortgages. Such loans are not included in the denominator. ''Goal-qualifying units'' is used as a synonym for ''numerator,'' to refer to the goal-eligible units that meet the respective affordability requirements of each multifamily goal. For example, low-income units are affordable to families with incomes less than or equal to 80 percent of area median income (AMI) and very low-income units are affordable to families with incomes less than or equal to 50 percent of AMI.

[8] *See* 12 U.S.C. 4563(a).

that the goals remain feasible in years where the Enterprise multifamily mortgage acquisitions are lower.

FHFA notes that setting the multifamily goal benchmark levels as the percentage share of all goal-eligible units backing mortgages acquired by the Enterprise that are affordable units is consistent with the statutory requirement that the multifamily housing goal be based on unit or dollar volume. While the Safety and Soundness Act defines the single-family housing goals and multifamily housing goals using different terms, the difference is focused on the single-family housing goals being based on mortgages and the multifamily housing goals being based on units or dollar volume. FHFA does not interpret the difference between the single-family and multifamily housing goals to prohibit using percentages for the multifamily housing goals. Setting the multifamily housing goals as a minimum percentage also aligns the multifamily goals more closely with the statutory factors that FHFA is required to consider in setting the multifamily housing goals. Those factors include consideration of national multifamily mortgage credit needs and the size of the multifamily mortgage market for housing affordable to low-income and very low-income families. Because market conditions can change significantly each year, it is difficult to identify in advance a specific number of units for the multifamily housing goals that would be ambitious yet feasible for the Enterprises. Percentage-based multifamily housing goals address this difficulty and are intended to ensure the Enterprises appropriately support the housing finance market while fulfilling their affordable housing mission requirements each year.

Therefore, FHFA is adopting as final the percentage-based methodology for measuring the multifamily goals as set forth in the proposed rule. The new methodology will not affect FHFA's ability to track, report, and verify data on multifamily units backing mortgages purchased by the Enterprises, including data on affordable units by income level. FHFA will continue to closely monitor Enterprise performance on the multifamily housing goals and trends in the multifamily market in general.

Multifamily benchmark levels. Both Enterprises and groups representing bankers, mortgage bankers, and lenders expressed support for the proposed benchmark levels for all three of the multifamily housing goals. However, a trade association representing homebuilders, a policy advocacy organization representing housing finance agencies, and 35 housing and community development nonprofits urged FHFA to raise the proposed benchmark levels to be in line with, or higher than, the Enterprises' recent performance. A policy advocacy organization maintained that the proposed benchmark levels should be higher given the tremendous demand for affordable housing and the need to ensure that the Enterprises fulfill their countercyclical role during economic downturns. This commenter further argued that higher benchmark levels would better align with FHFA's recent focus on increasing Enterprise support for affordable housing. One comment letter, endorsed by 35 housing and community development organizations, supported the change in methodology but recommended setting the benchmark levels above recent Enterprise performance. Section IV below provides additional detail on the benchmark levels set in this final rule.

Conservatorship Scorecard Cap. Comment letters from Fannie Mae, a trade organization representing mortgage bankers, and two policy advocacy organizations representing renters discussed the interaction between the multifamily benchmark levels and the Conservatorship Scorecard Cap. Although some comments were beyond the scope of the proposed rule, FHFA took the comments into consideration in finalizing the Conservatorship Scorecard Cap for 2023.[9] FHFA notes that the methodology adopted in the final rule for measuring the multifamily housing goals sets the goals as percentages rather than number of units and was designed to better harmonize the requirements of the housing goals and the Conservatorship Scorecard Cap, which is one of the objectives discussed by these organizations.

Multifamily data. Two policy advocacy organizations representing renters requested that FHFA study and publish findings on various issues related to the multifamily market. FHFA notes that both the Enterprises and the Agency regularly publish performance data on the Enterprises' multifamily acquisitions, including in the Annual Housing Activities Reports and Annual Mortgage Reports produced by the Enterprises in March each year, the Annual Housing Report published by FHFA in October each year, and in FHFA's preliminary and final determination letters on the Enterprises' annual housing goals performance, all of which are posted to the FHFA website. However, FHFA plans to continue to identify ways to improve and enhance its ability to share multifamily research and analysis with the public.

Other issues. A number of commenters raised concerns that went beyond the scope of the proposed rule. For example, FHFA received numerous comments focused on a variety of renter issues and concerns. One comment letter signed by 35 housing and community development organizations urged FHFA to consider ways to address issues such as displacement and substandard living conditions for low-income tenants and tenants of color. The comment letter provided recommendations for underwriting, tracking, and evaluating the affordability of rental units, as well as holding landlords accountable for the needs of their tenants. FHFA notes in regard to this comment that the Safety and Soundness Act requires FHFA to determine affordability for purposes of the housing goals based on whether the rent level is at or below 30 percent of the maximum income level for the relevant category, adjusted for unit size.[10] FHFA also received 64 comment letters from members of the public and organizations concerned about the high cost of rent and the lack of tenant protections for renters. The comment letters were submitted as part of a letter-writing campaign organized by an advocacy group. The commenters cited the tenant protections that were offered during the COVID–19 pandemic as part of the Enterprise forbearance programs as positive actions taken by FHFA. These letters specifically urged FHFA to regulate rents for all federally-backed mortgages in order to support sustainable, affordable housing. FHFA recognizes the significant issues that families face in finding affordable rental housing and in remaining secure in the face of economic uncertainty. Section IV below includes additional discussion of these affordability challenges. FHFA also has met with stakeholders to discuss these issues and will continue working to identify ways that FHFA and the Enterprises can support renters across the country.

III. Summary of the Final Rule

The Safety and Soundness Act requires FHFA to establish annual multifamily housing goals for purchases by each Enterprise of mortgages on multifamily housing that finance dwelling units affordable to low-income and very low-income families. In accordance with the Safety and

[9] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/2023-Multifamily-Caps-for-Fannie-Mae-and-Freddie-Mac.aspx.*

[10] *See* 12 U.S.C. 4563(c).

Soundness Act, the final rule establishes the multifamily housing goals for 2023 and 2024 based on the percentage of affordable units in multifamily properties financed by mortgages purchased by the Enterprise.

The final rule establishes the benchmark levels for the multifamily goal and subgoals for 2023 and 2024 as follows:

Goal	Criteria	Final benchmark level for 2023 and 2024 (%)
Low-Income Goal	Percent of all goal-eligible units in multifamily properties financed by mortgages purchased by the Enterprises in that year that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of area median income (AMI).	61
Very Low-Income Subgoal.	Percent of all goal-eligible units in multifamily properties financed by mortgages purchased by the Enterprises in that year that are affordable to very low-income families, defined as families with incomes less than or equal to 50 percent of AMI.	12
Small Multifamily Low-Income Subgoal.	Percent of all goal-eligible units in all multifamily properties financed by mortgages purchased by the Enterprises in that year that are units in small multifamily properties affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI.	2.5

The final rule does not make any changes to the requirements for determining which multifamily mortgage purchases are counted, or not counted, as those requirements continue to be defined in the existing housing goals regulation. The Enterprises will continue to report on the number of multifamily units acquired each year, including data on units that are affordable to low-income households, very low-income households, and low-income households in small multifamily properties. The Enterprise housing goals regulation defines a small multifamily property as a property with 5 to 50 units. In order to meet each of the multifamily goals, each Enterprise will be required to ensure that the percentage of units that are affordable meets or exceeds the applicable benchmark level.

While the final rule does not change the requirements for determining which multifamily mortgages are eligible to be counted towards the goals, the final rule makes technical revisions to § 1282.15 to reflect the new methodology. As in the proposed rule, the final rule revises § 1282.15(c) to express the percentage of affordable units in multifamily properties financed by mortgages purchased by the Enterprises in terms of a defined numerator and denominator. As revised, § 1282.15(c) mirrors the description of the single-family housing goals that currently exists in § 1282.15(a), which already measures the single-family housing goals as percentages. FHFA did not receive comments on these specific revisions in the proposed rule.

In addition, as in the proposed rule, the final rule amends § 1282.15(e)(3) to clarify the treatment of rental units with missing affordability information. Under the existing regulation, an Enterprise is permitted to estimate the affordability of such units, up to a maximum of 5 percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. Rental units with missing affordability information are not counted for purposes of the multifamily housing goals to the extent that the number of such units exceeds the nationwide maximum of 5 percent. Rental units also are excluded if it is not possible to estimate the affordability of such units. The final rule clarifies that under the new methodology, any units with missing affordability information in excess of the 5 percent nationwide maximum will be excluded from the numerator of the multifamily goals but will be included in the denominator. This treatment is consistent with the objective to encourage the Enterprises to obtain affordability information whenever possible. The final rule excludes rental units with missing affordability information from both the numerator and the denominator if it is not possible to estimate the affordability of such units. This treatment reflects the fact that the availability of information needed to estimate affordability is outside the Enterprises' control.

IV. Multifamily Housing Goals

A. Factors Considered for the Final Multifamily Housing Goals Benchmark Levels

In establishing benchmark levels for the multifamily housing goals for 2023 and 2024, FHFA has considered the statutory factors set forth in section 1333(a)(4) of the Safety and Soundness Act. The statutory factors are:

1. National multifamily mortgage credit needs and the ability of the Enterprises to provide additional liquidity and stability for the multifamily mortgage market;
2. The performance and effort of the Enterprises in making mortgage credit available for multifamily housing in previous years;
3. The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;
4. The ability of the Enterprises to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;
5. The availability of public subsidies; and
6. The need to maintain the sound financial condition of the Enterprises.[11]

FHFA considered each of these required statutory factors in setting the benchmark levels for the multifamily housing goals. The analysis below describes trends in the overall multifamily mortgage market as they apply to setting the final benchmark levels. Additional analyses of the trends in the overall multifamily mortgage market can be found in the proposed rule.[12]

Overall economic outlook. Many factors impact the affordable housing market as a whole, and changes to any one of them could significantly affect the ability of the Enterprises to meet the housing goals. FHFA will continue to monitor the affordable housing market and take these factors into account when considering the feasibility of the goals.

On November 2, 2022, the Federal Reserve noted that despite recent strong job gains and a low unemployment rate,

[11] *See* 12 U.S.C. 4563(a)(4).

[12] *See* 87 FR 50794 (August 18, 2022).

inflation remains elevated.[13] The Federal Reserve noted that the invasion of Ukraine by Russia and related events are causing additional upward pressure on inflation and affecting global economic activity. In an effort to achieve maximum employment and inflation of 2 percent in the long run, the Federal Open Market Committee (FOMC) raised its target range for the federal funds rate to 3.75 percent to 4 percent, with plans to increase the target range further as appropriate until its goals are achieved.[14]

Interest rates are very important determinants of mortgage market trajectory. Moody's November 2022 consensus forecast projects that 30-year fixed-rate mortgage interest rates will rise from an annual average rate of 3.0 percent in 2021 to 5.4 percent in 2022, then rise even further to 6.4 percent in 2023, before declining to 5.4 percent in 2024.[15] As of December 1, 2022, the weekly average rate for a 30-year fixed-rate mortgage was 6.49 percent.[16] Moody's forecast also projects that the unemployment rate will rise from 3.7 percent in 2022 to 4.3 percent in 2023, and to 4.5 percent in 2024. In addition, Moody's projects a slight decline in per capita disposable nominal income from $56,100 in 2021 to $55,800 in 2022, before rising to $61,300 by 2024. Furthermore, Moody's forecast estimates that the annual average inflation rate will decline from a projected 40-year high of 8.1 percent in 2022 to 2.5 percent in 2024. The year-over-year inflation rate for October 2022 was 7.7 percent.[17]

TABLE 1—HISTORICAL AND PROJECTED TRENDS OF KEY MACROECONOMIC VARIABLES

	Household trends						Projected trends		
	2016	2017	2018	2019	2020	2021	2022	2023	2024
Real GDP Growth Rate	1.7	2.2	2.9	2.3	−2.8	5.9	1.8	0.4	1.4
Unemployment Rate	4.9	4.4	3.9	3.7	8.1	5.4	3.7	4.3	4.5
Labor Force Participation Rate	62.8	62.8	62.9	63.1	61.8	61.7	62.3	62.6	62.7
Inflation Rate (Change in CPI)	1.3	2.1	2.4	1.8	1.2	4.7	8.1	3.9	2.5
Consumer Confidence Index	99.8	120.3	130.2	128.3	101.0	112.7	104.2	107.7	112.9
30-Year Mortgage Fixed Rate	3.6	4.0	4.5	3.9	3.1	3.0	5.4	6.4	5.4
Per Capital Disposable Income (1,000s $)	$43.6	$45.3	$47.5	$49.6	$53.0	$56.1	$55.8	$58.9	$61.3

Note: Historical values and projected trends are provided by Moody's Analytics.

Multifamily mortgage market. FHFA's consideration of the multifamily mortgage market addresses the size of and competition within the market, as well as the subset of the market that is affordable to low-income and very low-income renters. In October 2022, the Mortgage Bankers Association (MBA) forecast that multifamily mortgage originations would decline by 7 percent from the 2021 record of $487 billion to $455 billion in 2022, then to $451 billion in 2023.[18] However, the MBA also noted that while this forecast is based on their baseline economic forecast, the outlook is currently uncertain and further declines in multifamily mortgage originations could not be ruled out.[19]

Affordability in the multifamily mortgage market. In October 2022, the Urban Institute stated that the affordable housing market had changed dramatically in the past year, with both rents and home prices rising more than 13 percent and interest rates more than doubling relative to a year earlier.[20] The Joint Center for Housing Studies of Harvard University's (JCHS) *State of the Nation's Housing Report 2022* found that year-over-year rent growth in the professionally managed segment of the apartment market surged to a record 11.6 percent at the end of 2021, and stayed high at the beginning of 2022.[21] In comparison, the average annual rent increase in the pre-pandemic years of 2015–2019 was 3.2 percent.[22]

The Safety and Soundness Act requires FHFA to determine affordability for purposes of the Enterprise housing goals based on a family's rent and utility expenses not exceeding 30 percent of AMI.[23] The JCHS Report describes the growing presence of cost-burdened renters, particularly among low-income and very low-income households.[24] A household is considered cost-burdened if they are spending more than 30 percent of their income on housing, or severely cost-burdened if they are spending more than 50 percent of their income on housing. The Report shows that the share of cost-burdened renters across all income segments rose from 43.6 percent in 2019 to 46.2 percent in 2020.[25] The Report also shows that 82.6 percent of renters earning less than $15,000 and 77.9 percent of renters earning between $15,000 and $29,999 were cost-burdened in 2020. The share of cost-burdened renters earning between $30,000 and $44,999 increased the most, rising approximately 9.0 percent—from 49.2 percent in 2019 to 58.3 percent in 2020.[26]

The JCHS Report also notes the significant rise in new rental supply. The Report notes that in 2021, multifamily starts reached 474,000 units, the highest since the mid-1980s,

[13] *See https://www.federalreserve.gov/newsevents/pressreleases/monetary20221102a.htm.*

[14] Ibid.

[15] The macroeconomic outlook described herein is based on Moody's consensus forecast as of November 2022.

[16] *See https://www.freddiemac.com/pmms/docs/historicalweeklydata.xls.*

[17] *See https://data.bls.gov/timeseries/CUUR0000SA0&output_view=pct_12mths.*

[18] *See https://www.mba.org/news-and-research/newsroom/news/2022/10/03/commercial-multifamily-lending-expected-to-fall-in-2022-due-to-ongoing-economic-uncertainty.*

[19] Ibid.

[20] *See* ''Mom-and-Pop Landlords Are Raising Rents, Albeit Less Than Market Rates, Leaving Renters with Few Places to Turn,'' Urban Institute, October 2022, p.1, available at *https://www.urban.org/urban-wire/mom-and-pop-landlords-are-raising-rents-albeit-less-market-rates-leaving-renters-few.*

[21] *See* ''The State of the Nation's Housing 2022,'' Joint Center for Housing Studies of Harvard University, June 2022, p.30, available at *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf.*

[22] Ibid.

[23] *See* 12 U.S.C. 4563(c).

[24] *See* ''The State of the Nation's Housing 2022,'' Joint Center for Housing Studies of Harvard University, June 2022, p.8, available at *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf.*

[25] *See* ''The State of the Nation's Housing 2022: Appendix and Web Tables,'' Joint Center for Housing Studies of Harvard University, June 2022, Table W–2, available at *https://www.jchs.harvard.edu/sites/default/files/interactive-item/files/Harvard_JCHS_State_Nations_Housing_2022_Appendix_Tables_0.xlsx.*

[26] Ibid.

94 percent of which were intended for the rental market.[27] The first quarter of 2022 saw starts totaling 124,000 units, the highest first quarter since 1986, with 91 percent of those units intended for the rental market.[28]

While the addition of these units is expected to temper rent growth, the JCHS Report notes that these units are primarily targeted at the upper end of the market, with rents unaffordable to low-income households.[29] The Report states that the median asking rent for newly completed units in 2021 was $1,740, a 24 percent increase from 2015.[30] In addition, the share of newly completed units renting for less than $1,250 declined from 39 percent in 2015 to 15 percent in 2021, and for units renting for less than $850, from 9 percent to 2 percent for the same time period.[31]

Role of the Enterprises. In establishing the multifamily housing goal benchmark levels for 2023 and 2024, FHFA has considered the ability of the Enterprises to lead the market in making multifamily mortgage credit available. The share of the overall multifamily mortgage origination market that is purchased by the Enterprises increased in the years immediately following the financial crisis, but their share has declined more recently in response to growing private sector participation. The Enterprises' share of the multifamily mortgage origination market was over 70 percent in 2008 and 2009, compared to 36 percent in 2015.[32] The total share was at 40 percent or higher from 2016 to 2020. However, in 2021, a record multifamily volume year, the combined Enterprise share was estimated to have been around 28 percent.[33] Fannie Mae estimates that through the second quarter of 2022, Enterprise share was around 26 percent.[34] With interest rates expected to continue to rise in 2023 and 2024 and fewer multifamily originations expected (consistent with the MBA's forecast for 2023 and 2024), much uncertainty remains around the number and types of multifamily loans that may be originated in the next two years.

FHFA recognizes there are numerous Enterprise activities that impact how the Enterprises contribute to and participate in the multifamily market, including through their Duty to Serve Underserved Markets Plans, their Equitable Housing Finance Plans, and the mission-driven elements of the Conservatorship Scorecard. Together with the housing goals, these programmatic activities provide support to renter households, including lower-income families spending more than 30 percent of their income on housing. FHFA will continue to monitor the aforementioned initiatives and priorities to ensure appropriate focus by the Enterprises and compliance with the Enterprises' charter acts and safety and soundness considerations.

FHFA expects the Enterprises to continue demonstrating leadership in multifamily affordable housing lending by providing liquidity and supporting housing for tenants at different income levels in various geographic markets and in various market segments. This support should continue throughout the economic cycle, with the Enterprises providing support even as the overall volume of the multifamily mortgage market fluctuates.

Maintaining the sound financial condition of the Enterprises. In establishing multifamily housing goals benchmark levels for 2023 and 2024, FHFA must balance the role that the Enterprises play in providing liquidity and supporting various multifamily mortgage market segments with the need to maintain the Enterprises' sound and solvent financial condition. The Enterprises have served as a stabilizing force in the multifamily mortgage market. The Enterprises' portfolios of loans on multifamily affordable housing properties have experienced low levels of delinquency and default, similar to the performance of multifamily loans on market-rate properties.

FHFA continues to monitor the activities of the Enterprises in its capacity as safety and soundness regulator and as conservator. As discussed above, FHFA may take any steps it determines necessary and appropriate to address the multifamily housing goals benchmark levels to ensure the Enterprises' continued safety and soundness.

B. Final Multifamily Housing Goals Benchmark Levels

This section describes FHFA's analysis for establishing the final benchmark levels based on its consideration of the statutory factors described above and the performance of the Enterprises.

Goal	Criteria	Proposed benchmark level for 2023 and 2024 (%)	Final benchmark level for 2023 and 2024 (%)
Low-Income Goal	Percent of all goal-eligible units in multifamily properties financed by mortgages purchased by the Enterprises in that year that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI.	61	61
Very Low-Income Subgoal.	Percent of all goal-eligible units in multifamily properties financed by mortgages purchased by the Enterprises in that year that are affordable to very low-income families, defined as families with incomes less than or equal to 50 percent of AMI.	12	12
Small Multifamily Low-Income Subgoal.	Percent of all goal-eligible units in all multifamily properties financed by mortgages purchased by the Enterprises in that year that are units in small multifamily properties affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI.	2.0	2.5

[27] *See* ''The State of the Nation's Housing 2022,'' Joint Center for Housing Studies of Harvard University, June 2022, p.33, available at *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf.*

[28] Ibid.

[29] Ibid, p.34.

[30] Ibid.

[31] Ibid.

[32] *See* Fannie Mae, ''Multifamily Business Information Presentation,'' November 2022, p.3: *https://multifamily.fanniemae.com/media/9131/display.*

[33] Ibid.

[34] Ibid.

1. Multifamily Low-Income Housing Goal

The multifamily low-income housing goal is based on the percentage of rental units in multifamily properties financed by mortgages purchased by the Enterprises in that year that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI. The final rule sets the annual benchmark level for this goal for both 2023 and 2024 at 61 percent of goal-eligible units acquired. This is consistent with FHFA's analysis of the current and expected multifamily market, with fewer affordable units to support, rising price per unit, and uncertain market conditions.

Recent performance. Table 2 below shows the number of goal-qualifying low-income multifamily units in properties backing mortgages acquired by each Enterprise, as well as the goal-qualifying multifamily low-income units as a percentage of the total goal-eligible units in properties backing mortgages that were acquired in each year. Although there were numeric benchmarks historically in place for low-income multifamily units, the Enterprise performance reflected below has been well above the numeric benchmarks. FHFA notes that the Enterprises' performance in 2021 is at or below the 2020 performance, which corresponded to the onset of the COVID–19 pandemic.

TABLE 2—MULTIFAMILY LOW-INCOME HOUSING GOAL

	Performance									
Year	2015	2016	2017	2018	2019	2020	2021	2022	2023 (%)	2024 (%)
Low-Income Multifamily Benchmark	300,000	300,000	300,000	315,000	315,000	315,000	315,000	415,000	61	61
Fannie Mae Performance										
Low-Income Multifamily Units	307,510	352,368	401,145	421,813	385,763	441,773	384,488			
Total Multifamily Units*	468,798	552,785	630,868	628,230	596,137	637,696	557,152			
Low-Income % Total	65.6%	63.7%	63.6%	67.1%	64.7%	69.3%	69.0%			
Freddie Mac Performance										
Low-Income Multifamily Units	379,042	406,958	408,096	474,062	455,451	473,338	373,225			
Total Multifamily Units*	514,275	597,399	630,037	695,587	661,417	667,451	543,077			
Low-Income % of Total Units	73.7%	68.1%	64.8%	68.2%	68.9%	70.9%	68.7%			

** Refers to the total multifamily units that are eligible for housing goals.*

Proposed rule and comments. FHFA proposed setting the benchmark level for the multifamily low-income goal at 61 percent. The Enterprises and three trade associations representing bankers, mortgage bankers, and mortgage lenders expressed support for this proposed benchmark level, describing it as appropriate, realistic, attainable, and representing a strong commitment to affordability. A trade association representing home builders, two policy advocacy organizations, and a comment letter signed by 35 housing and community development organizations urged FHFA to set the benchmark level at a level closer to or higher than recent Enterprise performance. No commenters recommended lowering the proposed benchmark level.

FHFA determination. FHFA has considered the statutory factors for the multifamily housing goals, including current market conditions, the Enterprises' performance, and their role in the market. FHFA has also considered the comments received in response to the proposed multifamily low-income benchmark level. Rising interest rates are contributing to the increasing costs of acquiring low-income multifamily units, and expected continued declines in affordable originations and higher rents are also causing fewer units to qualify as affordable for low-income families, with affordability defined based on rents being less than or equal to 30 percent of the maximum income level that would qualify as low-income for the area, adjusted for unit size.[35] These challenges are expected to continue in 2023 and 2024 as more low-income families are having to pay greater than 30 percent of their incomes for rent.[36] In light of all these factors, FHFA has determined that the benchmark level for this goal should be set at 61 percent for both Enterprises for 2023 and 2024, consistent with the proposed rule.

2. Multifamily Very Low-Income Housing Subgoal

The multifamily very low-income housing subgoal is based on the percentage of rental units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to very low-income families, defined as families with incomes less than or equal to 50 percent of AMI. The final rule sets the annual benchmark level for this subgoal for 2023 and 2024 at 12 percent of goal-eligible units acquired. FHFA believes that this benchmark level is appropriate to ensure that the Enterprises continue to adequately serve very low-income families while accounting for the challenges associated with increasing interest rates, decreasing affordability in the multifamily market, and uncertain economic conditions.

Recent performance. Table 3 below shows the number of goal-qualifying very low-income multifamily units in properties backing mortgages acquired by each Enterprise, as well as goal-qualifying very low-income multifamily units as a percentage of the total goal-eligible units in properties backing mortgages that were acquired in each year. As noted in the NPRM, the recent performance of the Enterprises on the multifamily very low-income subgoal indicates that the number of goal-qualifying units in properties backing mortgages purchased by the Enterprises varies more widely from year-to-year than the percentage of goal-qualifying units. Since 2015, one Enterprise has performed at levels close to the benchmark level of 12 percent that will apply for 2023 and 2024, especially in the years prior to the pandemic. Both Enterprises have exceeded the numeric benchmark levels that were in place. However, the number of very low-income units in properties backing

[35] *See* 12 U.S.C. 4563(c).

[36] *See* ''The State of the Nation's Housing 2022,'' Joint Center for Housing Studies of Harvard University, June 2022, p.6, *available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf.*

mortgages acquired by both Enterprises was lower in 2021 compared to 2020, reflecting changing market conditions.

TABLE 3—MULTIFAMILY VERY LOW-INCOME SUBGOAL

	Performance									
Year	2015	2016	2017	2018	2019	2020	2021	2022	2023 (%)	2024 (%)
Very Low-Income Multifamily Benchmark	60,000	60,000	60,000	60,000	60,000	60,000	60,000	88,000	12	12
Fannie Mae Performance										
Very Low-Income Multifamily Units	69,078	65,910	82,674	80,891	79,649	95,416	83,459			
Total Multifamily Units*	468,798	552,785	630,868	628,230	596,137	637,696	557,152			
Very Low-Income % of Total Units	14.7%	11.9%	13.1%	12.9%	13.4%	15.0%	15.0%			
Freddie Mac Performance										
Very Low-Income Multifamily Units	76,935	73,030	92,274	105,612	112,773	107,105	87,854			
Total Multifamily Units*	514,275	597,399	630,037	695,587	661,417	667,451	543,077			
Very Low-Income % of Total Units	15.0%	12.2%	14.6%	15.2%	17.1%	16.0%	16.2%			

** Refers to the total multifamily units that are eligible for housing goals.*

Proposed rule and comments. FHFA proposed setting the benchmark level for the multifamily very low-income subgoal at 12 percent. Similar to the comments received in response to the proposed low-income goal, the Enterprises and three trade associations representing mortgage bankers, bankers, and mortgage lenders expressed support for setting the multifamily very low-income subgoal benchmark level at 12 percent, describing it as appropriate, realistic, attainable, and representing a strong commitment to affordability. A comment letter signed by 35 housing and community development organizations, a trade association representing home builders, and another policy advocacy organization urged FHFA to set the benchmark level at a level closer to or higher than recent Enterprise performance. No commenters recommended lowering the proposed benchmark level.

FHFA determination. FHFA has considered the statutory factors for the multifamily housing goals, including current market conditions and the Enterprises' role in the market. FHFA has also considered the comments received in response to the proposed multifamily very low-income benchmark level. Very low-income renters face similar challenges as low-income renters. Rising interest rates are contributing to the increasing costs of acquiring very low-income multifamily units, and expected continued declines in affordable originations and higher rents are causing fewer units to qualify as affordable for very low-income families, with affordability defined based on rents being less than or equal to 30 percent of the maximum income level that would qualify as low-income for the area, adjusted for unit size.[37] These challenges are expected to continue into 2023 as more very low-income families are having to pay greater than 30 percent of their incomes for rent.[38] In light of all these factors, FHFA has determined that the multifamily very low-income benchmark level should be set at 12 percent for both Enterprises for 2023 and 2024, consistent with the proposed rule.

3. Small Multifamily Low-Income Housing Subgoal

The small multifamily low-income housing subgoal is based on the percentage of rental units in all multifamily properties financed by mortgages purchased by the Enterprises that are units in small multifamily properties affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI. The Enterprise housing goals regulation defines a small multifamily property as a property with 5 to 50 units. This subgoal was created in conjunction with the 2015–2017 housing goals rulemaking to position the Enterprises to be able to respond quickly to potential need in this segment. In light of the current small multifamily market conditions discussed below, FHFA is interested in ensuring that the Enterprises remain positioned to support this market when needed without crowding out other sources of financing for small multifamily properties.

The final rule sets the annual benchmark level for affordable units in small multifamily properties for 2023 and 2024 at 2.5 percent of the goal-eligible units in all multifamily properties securing mortgages acquired by an Enterprise each year, rather than as the affordable percentage of small multifamily properties only, consistent with the objectives FHFA has previously expressed for this subgoal. The final benchmark level is slightly higher than the proposed 2 percent benchmark level, as FHFA has determined that the 2.5 percent benchmark level would better ensure that the Enterprises maintain an appropriate level of support for this market, given expected uncertainty in market and economic conditions, the comments received in response to the proposed benchmark level, and other factors described in this final rule.

As discussed in the preamble to the proposed rule, the small low-income multifamily housing market historically has been challenging to size and monitor. FHFA is aware that following the pandemic-related slowdown in 2020, private sector financing returned to this sector more robustly.[39] However, this private sector participation is expected to be highly sensitive to interest rates and other market conditions. FHFA believes that the final benchmark level for the small

[37] *See* 12 U.S.C. 4563(c).

[38] *See* ''The State of the Nation's Housing 2022,'' Joint Center for Housing Studies of Harvard University, June 2022, p.6, *available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf.*

[39] *See https://www.walkerdunlop.com/insights/2021/07/19/small-balance-multifamily-sizable-and-resilient/.* FHFA defines small multifamily properties as properties with 5 to 50 units, while this article defines small multifamily properties to include properties with 5 to 99 units and multifamily properties with a principal loan balance at origination between $1 and $10 million.

multifamily low-income housing subgoal will ensure that the Enterprises maintain a limited but appropriate level of engagement in the small multifamily segment of the market that could be scaled up in the future should the need arise.

Recent performance. Table 4 below shows Enterprise performance on this subgoal both in terms of the actual numeric benchmark levels applicable through 2022, as well as the proposed subgoal metric that would be based on percentages. As noted in the NPRM and as reflected by the different numeric benchmark levels set for each Enterprise in the 2021 final rule, FHFA recognizes that the Enterprises have different multifamily business approaches to this segment and that each Enterprise sets its own credit risk tolerance for multifamily products. As a result, each Enterprise has performed very differently on this subgoal. For example, Fannie Mae's performance was below the new benchmark level of 2.5 percent from 2015 through 2018, while Freddie Mac's performance has generally exceeded this level.

TABLE 4—SMALL MULTIFAMILY LOW-INCOME SUBGOAL

	Performance									
Year	2015	2016	2017	2018	2019	2020	2021	2022	2023 (%)	2024 (%)
Fannie Mae Benchmark	6,000	8,000	10,000	10,000	10,000	10,000	10,000	17,000	2.5	2.5
Freddie Mac Benchmark	6,000	8,000	10,000	10,000	10,000	10,000	10,000	23,000	2.5	2.5
Fannie Mae Performance:										
Small Low-Income Multifamily Units	6,731	9,312	12,043	11,890	17,832	21,797	14,409			
Total Small Multifamily Units	11,198	15,211	20,375	17,894	25,565	36,880	25,416			
Total Multifamily Units*	468,798	552,785	630,868	628,230	596,137	637,696	557,152			
Small Low-Income % of Total Small Multifamily Units	60.1%	61.2%	59.1%	66.4%	69.8%	59.1%	56.7%			
Small Low-Income % of Total Units	1.4%	1.7%	1.9%	1.9%	3.0%	3.4%	2.6%			
Freddie Mac Performance:										
Small Low-Income Multifamily Units	12,801	22,101	39,473	39,353	34,847	28,142	31,913			
Total Small Multifamily Units	21,246	33,984	55,116	53,893	46,879	41,275	41,874			
Total Multifamily Units*	514,375	597,339	630,037	695,587	661,417	667,451	543,077			
Small Low-Income % of Total Small Multifamily Units	60.3%	65.0%	71.6%	73.0%	74.3%	68.2%	76.2%			
Small Low-Income % of Total Units	2.5%	3.7%	6.3%	5.7%	5.3%	4.2%	5.9%			

** Refers to the total multifamily units that are eligible for housing goals.*

Proposed rule and comments. Three comment letters, including those from Fannie Mae, a group of mortgage lenders, and a trade organization representing mortgage bankers, expressed support for the proposed benchmark level of 2 percent, noting that this market is already well-served by other sources of private capital. However, a trade organization representing home builders questioned the proposed benchmark level given the possibility of a recession in 2023, pointing out that many lenders in this market retreat from less lucrative business lines during economic downturns. A comment letter signed by 35 housing and community development organizations and a policy advocacy organization representing housing finance agencies urged FHFA to set the benchmark level at a level closer to or higher than recent Enterprise performance. No commenters recommended lowering the proposed benchmark level.

FHFA determination. The final rule sets the benchmark level for the small multifamily low-income subgoal at 2.5 percent, which is slightly higher than the proposed benchmark level of 2 percent.[40] While this market is currently being served by other sources of private capital such as small and/or regional banks, the final benchmark level will ensure that the Enterprises maintain a presence in this specialized market. FHFA's determination is based on its consideration of the statutory factors for the multifamily housing goals, the purpose of this goal, and the comments received on the proposed benchmark level.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The final rule contains no such collection of information requiring OMB approval under the PRA. Therefore, no information has been submitted to OMB for review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the regulation only applies to Fannie Mae and Freddie Mac, which are

[40] FHFA notes that all previous percentage-based housing goals were established using whole numbers for the benchmark levels. However, the relatively low percentage for the small multifamily low-income subgoal necessitates using a small increment to ensure the benchmark level is appropriate. FHFA has an established practice of rounding Enterprise performance to the first decimal when evaluating Enterprise performance on previous percentage-based housing goals; that same practice will be followed for the percentage-based multifamily housing goals.

not small entities for purposes of the Regulatory Flexibility Act.

IX. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with OMB.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the Preamble, under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA amends part 1282 of Title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561 – 4566.

■ 2. Amend § 1282.13 by revising paragraphs (b) through (d) to read as follows:

§ 1282.13 Multifamily special affordable housing goal and subgoals.

* * * * *

(b) *Multifamily low-income housing goal.* The percentage share of dwelling units in multifamily residential housing financed by mortgages purchased by each Enterprise that consists of dwelling units affordable to low-income families shall meet or exceed 61 percent of the total number of dwelling units in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2023 and 2024.

(c) *Multifamily very low-income housing subgoal.* The percentage share of dwelling units in multifamily residential housing financed by mortgages purchased by each Enterprise that consists of dwelling units affordable to very low-income families shall meet or exceed 12 percent of the total number of dwelling units in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2023 and 2024.

(d) *Small multifamily low-income housing subgoal.* The percentage share of dwelling units in small multifamily properties financed by mortgages purchased by each Enterprise that consists of dwelling units affordable to low-income families shall meet or exceed 2.5 percent of the total number of dwelling units in all multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2023 and 2024.

■ 3. Amend § 1282.15 by revising paragraphs (c) and (e)(3) to read as follows:

§ 1282.15 General counting requirements.

* * * * *

(c) *Calculating the numerator and denominator for multifamily housing goals.* Performance under the multifamily housing goal and subgoals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Enterprise transactions or activities that are not mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1282.16(b).

(1) *The numerator.* The numerator of each fraction is the number of dwelling units that count toward achievement of a particular multifamily housing goal or subgoal in properties financed by mortgages purchased by an Enterprise in a particular year.

(2) *The denominator.* The denominator of each fraction is the total number of dwelling units in properties financed by mortgages purchased by an Enterprise in a particular year.

* * * * *

(e) * * *

(3) The estimation methodology in paragraph (e)(2) of this section may be used up to a nationwide maximum of 5 percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. Multifamily rental units with missing affordability information in excess of this maximum shall be included in the denominator for the multifamily housing goal and subgoals, but such rental units shall not be counted in the numerator of any multifamily housing goal or subgoal. Multifamily rental units with missing affordability information for which estimation information is not available shall be excluded from both the numerator and the denominator for purposes of the multifamily housing goal and subgoals.

* * * * *

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2022–27467 Filed 12–22–22; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1234; Project Identifier MCAI–2022–00289–E; Amendment 39–22280; AD 2022–26–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2013–05–13 for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–710 series turbofan engines. AD 2013–05–13 required replacing the affected fuel pump splined couplings. Since the FAA issued AD 2013–05–13, the manufacturer has revised the time limits manual (TLM), introducing new and more restrictive instructions, including the replacement of the fuel pump splined coupling. This AD is prompted by service experience that demonstrated premature wear of the splined coupling on the fuel pump and subsequent manufacturer revision of the TLM to incorporate revised life limits and updated mandatory inspection intervals, including replacement of the fuel pump splined coupling. This AD expands the applicability by adding a model turbofan engine and also requires revisions to the airworthiness limitations section (ALS) of the operator's existing approved aircraft maintenance program (AMP), as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1234; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for

Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–1234.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–05–13, Amendment 39–17385 (78 FR 17080, March 20, 2013) (AD 2013–05–13). AD 2013–05–13 applied to certain RRD BR700–710 series turbofan engines. AD 2013–05–13 required replacing the affected fuel pump splined couplings. The FAA issued AD 2013–05–13 to prevent failure of the engine and loss of the airplane.

The NPRM published in the **Federal Register** on September 26, 2022 (87 FR 58289). The NPRM was prompted by EASA AD 2022–0033, dated March 03, 2022 (EASA AD 2022–0033) (referred to after this as ''the MCAI''), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA AD 2022–0033 states that since the certification of the BR700–710 engines, several changes have been made to the TLM by the manufacturer, introducing new and more restrictive instructions, including the replacement of the fuel pump splined coupling. EASA AD 2022–0033 expands the applicability to include BR700–710D5–21 model turbofan engines and specifies accomplishing the actions in the TLM.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1234.

In the NPRM, the FAA proposed to expand the applicability to include BR700–710D5–21 model turbofan engines. In the NPRM, the FAA also proposed to require accomplishing the actions specified in EASA AD 2022–0033, described previously, except for any difference or exceptions identified in the NPRM. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from an anonymous commenter that supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0033, which describes actions for operators to revise the ALS of their existing approved AMP in accordance with the manufacturer's revised TLM, as applicable to each engine model. EASA AD 2022–0033 also describes actions for performing inspections, replacing life limited parts, and performing corrective actions for any finding of discrepancy as referenced in the TLM.

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

Other Related Service Information

The FAA also reviewed RRD Non-Modification Service Bulletin (NMSB) BR700–72–A900509, Revision 5, dated March 07, 2022. This service information revises previous versions of this NMSB because the specified procedures have been incorporated into the applicable TLM.

The FAA also reviewed Rolls-Royce TLM T–710–1BR, Revision 70, for engine model BR700–710A1–10; TLM T–710–2BR, Revision 67, for engine model BR700–710A2–20; TLM T–710–4BR, Revision 40, for engine model BR700–710C4–11 (each dated October 13, 2021); and TLM T–710–8BR, Revision 18, for engine model BR700–710D5–21 (undated). This service information specifies thresholds for certain standard equipment; critical, sensitive, and unclassified parts; and life limited parts. This service information also specifies the replacement threshold for the fuel pump vespel coupling (fuel pump splined coupling).

Costs of Compliance

The FAA estimates that this AD affects 2,050 engines installed on airplanes of U.S. Registry. The FAA estimates that 1,350 engines installed on airplanes of U.S. Registry have already performed the initial replacement of the fuel pump splined coupling.

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
Initial Replacement of the fuel pump splined coupling.	6 work-hours × $85.00 per hour = $510	$2,273	$2,783	$1,948,100
Revise the ALS and the operator's existing approved AMP.	2 work-hours × $85.00 per hour = $170	0	170	348,500

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 has determined that 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:

■ a. Removing Airworthiness Directive 2013–05–13, Amendment 39–17385 (78 FR 17080, March 20, 2013); and

■ b. Adding the following new airworthiness directive:

2022–26–02 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–22280; Docket No. FAA–2022–1234; Project Identifier MCAI–2022–00289–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2023.

(b) Affected ADs

This AD replaces AD 2013–05–13, Amendment 39–17385 (78 FR 17080, March 20, 2013).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG BR700–710A1–10, BR700–710A2–20, BR700–710C4–11, and BR700–710D5–21 model turbofan engines as identified in European Union Aviation Safety Agency (EASA) AD 2022–0033, dated March 03, 2022 (EASA AD 2022–0033).

(d) Subject

Joint Aircraft Service Component (JASC) Code 8300, Accessory Gearboxes.

(e) Unsafe Condition

This AD was prompted by service experience that demonstrated premature wear of the splined coupling on the fuel pump and subsequent manufacturer revision of the time limits manual (TLM) to incorporate revised life limits and updated mandatory inspection intervals, including replacement of the fuel pump splined coupling. The FAA is issuing this AD to prevent premature wear of the splined coupling on the fuel pump. The unsafe condition, if not addressed, could result in failure of the engine and loss of the airplane.

(f) Compliance

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

(g) Required Action

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, EASA AD 2022–0033.

(h) Exceptions to EASA AD 2022–0033

(1) Where EASA AD 2022–0033 defines the AMP as the approved Aircraft Maintenance Programme on the basis of which the operator or the owner ensures the continuing airworthiness of each operated engine, this AD defines the AMP as the Aircraft Maintenance Program on the basis of which the operator or the owner ensures the continuing airworthiness of each operated airplane.

(2) Where EASA AD 2022–0033 refers to the effective date of EASA AD 2022–0033, this AD requires using the effective date of this AD.

(3) This AD does not require compliance with paragraph (1.2) of EASA AD 2022–0033.

(4) This AD does not require compliance with paragraph (2) of EASA AD 2022–0033.

(5) Where paragraph (3) of EASA AD 2022–0033 specifies revising the approved AMP within 12 months after its effective date, this AD requires incorporating the actions and associated thresholds and intervals, including life limits and maintenance tasks, into the existing approved maintenance or inspection program, as applicable, within 30 days of the initial replacement of the fuel pump splined coupling or within 90 days after the effective date of this AD, whichever comes later.

(6) This AD does not require compliance with paragraph (4) of EASA AD 2022–0033.

(7) This AD does not require compliance with paragraph (5) of EASA AD 2022–0033.

(8) This AD does not adopt the Remarks paragraph of EASA AD 2022–0033.

(i) Provisions for Alternative Actions, Thresholds, and Intervals, Including Life Limits

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0033.

(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 paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0033, dated March 03, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0033, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on December 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–27925 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1472; Airspace Docket No. 22–AWA–8]

RIN 2120–AA66

Amendment of Class C Airspace; Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule published in the **Federal Register** on December 6, 2022, that amended the Manchester, NH Class C airspace description to update the Manchester Airport name and airport reference point (ARP) geographic coordinates. In the description of the Class C airspace area, the final rule contained an error in the longitude coordinate of the ARP. This action makes an editorial correction to insert the correct longitude coordinate in references to the ARP.

DATES: Effective date 0901 UTC, February 23, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule for Docket No. FAA–2022–1472 in the **Federal Register** (87 FR 74505; December 6, 2022), to update the ARP for the Manchester, NH airport. Subsequent to publication, the FAA determined that the ARP longitude geographic coordinate was in error. This rule corrects that error by changing the references from ''long. 71°45′39″ W'' to ''long. 71°26′09″ W''. This is an editorial change only to match the FAA's National Airspace System Resource database information.

Class C airspace areas are published in paragraph 4000 of FAA Order 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class C airspace listed in this document will be published subsequently in FAA Order JO 7400.11.

Correction to Final Rule

The reference to the Manchester ARP longitude coordinate published in the **Federal Register** of December 6, 2022 (87 FR 74505), FR Doc. 2022–26458, is corrected as follows:

1. On page 74506, in column 2, under the heading ''The Rule'' revise ''The ''Manchester Airport'' name is changed to ''Manchester Boston Regional Airport'', to match the Airport Master Record database, and the ARP geographic coordinates are updated from ''lat. 42°56′00″ N, long. 71°26′16″ W'' to ''at. 42°55′58″ N, long. 71°45′39″ W'' to read ''The ''Manchester Airport'' name is changed to ''Manchester Boston Regional Airport'', to match the Airport Master Record database, and the ARP geographic coordinates are updated from ''lat. 42°56′00″ N, long. 71°26′16″ W'' to ''lat. 42°55′58″ N, long. 71°26′09″ W.''

2. On page 74506, in column 3, under the heading ''ANE NH C Manchester, NH [Amended]'' revise ''Manchester Boston Regional Airport, NH (Lat. 42°55′58″ N, long. 71°45′39″ W)'' to read ''Manchester Boston Regional Airport, NH (Lat. 42°55′58″ N, long. 71°26′09″ W)''.

Issued in Washington, DC, on December 19, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–27928 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No: FAA–2011–1279]

Airborne Wind Energy Systems (AWES) Policy Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement.

SUMMARY: FAA is finalizing its policy on the applicability of regulations concerning the safe, efficient use and preservation of the navigable airspace to all airborne wind energy systems (AWES).

DATES: This policy is effective December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Brian Konie, Airspace Rules and Regulations Team, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783; email: *brian.konie@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Congress, pursuant to 49 U.S.C. 44718, mandated that the Secretary of Transportation require the public to provide notice to FAA of ''the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill when the notice will promote (1) safety in air commerce; (2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports; or (3) the interests of national security, as determined by the Secretary of Defense.'' Moreover, under that section, the Secretary is required to conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment if the Secretary decides that constructing or altering a structure may result in an obstruction of the navigable airspace, an interference with air or space navigation facilities and equipment or the navigable airspace, or, after consultation with the Secretary of Defense, an adverse impact on military operations and readiness. FAA codified these requirements in Title 14 of the Code of Federal Regulations (14 CFR) part 77 and identified the form and manner in which a person must submit notice.

II. Background

In 2011, FAA published a notice of policy and request for information (Notice) stating its policy on the application of 14 CFR part 77 to temporary AWES.[1] The Notice also contained a request for information from AWES developers and the public on these systems so that FAA can

[1] Notification for Airborne Wind Energy Systems (AWES), Docket No. FAA–2011–1279 (76 FR 76333, Dec. 7, 2011) (Notice).

comprehensively analyze AWES and evaluate the potential impacts of their long-term integration into the National Airspace System (NAS).

The Notice stated that the Obstruction Evaluation process under part 77 applies to any new forms of wind gathering devices, including temporary AWES proposals.[2] This allowed the FAA to gather data about these devices while the technology continued to develop.[3] The notice explained that anyone proposing to conduct temporary airborne testing of AWES for data collection purposes must comply with part 77, including the requirement in section 77.13(a)(1) that requires notice of any construction or alternation of more than 200 feet above ground level (AGL).

Airborne wind energy (AWE) is the conversion of wind energy into electricity using tethered flying devices.[4] An Airborne Wind Energy System (AWES) is a temporary or permanent structure, which consists of a self-supported airborne system tethered to a ground station, with an airborne or ground-mounted drivetrain used to convert kinetic energy in the wind to mechanical power for purpose of generating electricity. The tethered aspect of AWE provides the opportunity to harvest stronger and more consistent wind found at higher altitudes.[5]

While many AWES are similar in concept (designed to harvest kinetic wind and create consumable power), the technology and individual components, specifically the aloft portion, differ dramatically. Regardless of entity-specific design and potential resemblance between designs, each AWES possesses different attributes. Due to different attributes and impacts on NAS, FAA concluded that it must study each proposed AWES deployment on a case-by-case basis to analyze the surrounding aviation environment and ensure aviation safety.

III. Request for Information

In the Notice, FAA identified concerns regarding AWES operations in the NAS, (*e.g.,* conspicuity to aircraft via marking and lighting), desired operational airspace volumes, potential impact on various NAS facilities (*e.g.,* communication, navigation, and surveillance), and overall safety. These concerns remain relevant to FAA's management of a safe and efficient NAS for all users.

In addition to operational concerns, FAA also recognized the various design concepts AWES developers use for individual AWES components. These varying concepts include the components that keep the system aloft, the power-generating equipment, the energy-transferring equipment, the maneuvering controls, and the physical and operational dimensions. Given the variation in potential AWES design, operations, and technologies, FAA requested information from the industry in the Notice. Examples of information requested included design concepts and safety mechanisms; the type, material composition, and physical dimensions of mechanical devices employed to keep the system aloft; and long-term plans for this system. FAA also requested information to determine if proponents could comply with existing marking and lighting requirements and to discern how an AWES will be conspicuous to the flying public.

IV. Summary of Comments

In response to the Notice, FAA received 20 comments during the comment period. Eight comments came from individuals and 10 comments came from major organizations or industry stakeholders. Six of the ten major organization or industry stakeholder commenters were from companies developing various types of AWES (Altaeros Energies, Inc., EnerKite GmbH, Highest Wind, LLC, Makani Power Inc., SkySails GmbH, and Windlift, LLC); two were from organizations or associations representing the wind energy industry (Airborne Wind Energy Consortium (AWEC) and Airborne Wind Energy Industry Association (AWEIA)); and, two were from associations representing the aviation industry (Experimental Aircraft Association (EAA) and National Agricultural Aviation Association (NAAA)). Of the 18 comments, 11 supported FAA's AWES policy and 7 opposed the policy. Of the seven comments that either wholly opposed AWES operations or supported change to enable safe AWES operations, four supported traditional marking and lighting per FAA Advisory Circular (AC) 70/7460–1, *Obstruction Marking and Lighting,*[6] and two expressed support for part 77 notice and analysis. Additionally, 13 of the 20 comments received provided additional recommendations.

FAA summarizes and addresses those comments responsive to the Notice.[7]

1. Proposed system designs. While specific designs vary, based on comments received from industry, FAA finds general consistency in a three-part design with an aloft portion attached to a ground station via a mooring cable, tether, or similar device. Altaeros Energies' aloft portion is an inflatable shell filled with helium; EnerKite and SkySails' is similar to a textile kite; Highest Wind's concept resembles an autogyro; and Makani and Windlift plan for a wing made from lightweight rigid or flexible fabric wings, respectively.

The material used for the tether or similar device varies across system designs, *e.g.,* carbon fiber, interwoven copper cable, or polyethylene (Dyneema™) fibers. These designs incorporate control of the aloft portion to maximize wind energy capture from either the ground station or from a segment of the aloft system, *e.g.,* a module suspended below the canopy. The aloft portion of some proposed (called fly-gen) systems are generally static, generating electricity aloft and transferring it to the ground station, while other proposed (called ground-gen) systems use a winching system to generate electricity within the ground station. The size of the aloft portion varies within models from singular companies and across companies, with Highest Wind's test article a smaller size than their planned operational model. Additionally, some ground stations incorporate a mobile design to enable ease of transport and portable use.

2. Airspace, operational, and safety considerations. Many industry comments provided conceptual discussions of their systems and indicated that the companies remain in the testing phase. Based on the nature of the aloft portion's need to move (while tethered to a fixed ground station) for electricity generation and the stated desired altitudes for harvesting wind energy, the systems have different desired operational airspace volumes.

While comments focused on operational altitude, four commenters submitted diagrams that also considered the lateral airspace aspect, *e.g.,* operations to 2,000 feet AGL at a 30-degree altitude requires a lateral distance of 3,500 feet. Some commenters integrated safety or buffer zones into their proposed airspace plan

[2] *Id.* at 76334.

[3] FAA also stated in the Notice that it may address permanent and operational AWES under part 77 in the future after further evaluation and risk assessments.

[4] *www.energy.gov/eere/wind/articles/new-report-discusses-opportunities-and-challenges-airborne-wind-energy.*

[5] *Id.*

[6] Available at *https://www.faa.gov/regulations_policies.*

[7] The FAA does not address comments that are not responsive to the request for information in the Notice.

to depict the area needed to mitigate the safety risk to other airspace users and persons and property on the ground.

Altaeros completed testing below 200 feet AGL and all industry commenters expressed interest in either testing or sustained operations below 2,500 feet AGL. Five commenters expressed their desire to conduct uninterrupted testing during the day and at night over a period of days or months to replicate a realistic operational environment. As of 2011, SkySails tested aboard vessels at sea.

EAA believed that the deployment of AWES systems above 500 feet AGL will have an adverse effect on recreational and general aviation flight safety operations. EAA and other commenters suggested conducting initial tests or data collection in established prohibited and/or restricted areas before allowing AWES access to the rest of the NAS. One non-AWES industry commenter remarked that creating more special use airspace is invasive to an already crowded NAS. Another commenter expressed concern about potential conflict between AWES and other aircraft and suggested AWES deployments at the same altitude as existing terrain.

Companies planned to test and operate in either single configurations or in small (*e.g.,* 3–5 units) or large (*e.g.,* 300 units) farms on land or offshore. Highest Wind asserted that they can find willing private landowners underlying Class G airspace, where there is virtually zero air traffic below 3,000 feet AGL, to host testing. Additionally, Highest Wind requested that FAA ''designate a specific number of no-fly zones up to 2,000 feet AGL over private lands'' for testing and development purposes to reduce any burden of marking and lighting. NAAA stated that AWES deployments could render blocks of farmland untreatable by air, as aerial crop protection pilots would avoid the entire AWES ''cone of flight'' considering the shifting location and angle of an AWES due to wind variations. An aerial application (part 137) flying service commenter opposed AWES and believes they are a safety risk to agricultural and general aviation. The commenter stated that the amount of affected airspace would severely disrupt aviation.

A pilot expressed safety concerns about the ability of an AWES' aloft portion to remain attached to the ground station in adverse weather and the length of time it takes to return the aloft portion to the surface. Industry commenters provided numerous proposed safety methods specific to their system design and its capabilities. Altaeros commented that they rely on established aerostat practices and that their device has a valve to quickly and safely lower the device during an emergency, *e.g.,* tether failure. EnerKite stated that its system has weak links, a pyrotechnical cutter, and soft wings to minimize any safety risk. Highest Wind commented that their system's ''anti-collision lights and on-board alarm'' comprise their safety considerations. Makani commented that their system is unique from other obstructions and its aloft portion can transition to a stationary hover and land within minutes in case of an emergency or, in case of a tether failure, land the aloft portion at a pre-determined point. SkySails commented that it intends to mark and light its system and, if the aloft system escapes its mooring, the aloft portion will sink to the ground. Additionally, SkySails' system has internal systems to monitor performance and recover the aloft portion as needed due to an emergency and suggested charting AWES to enhance safety. Windlift commented that their system can either quickly retrieve the aloft portion (reel in at 10 meters per second) or fly the aloft portion toward the ground (30 meters per second) to bring the aloft device below 500 feet AGL in less than 6 seconds.

3. Marking and lighting compliance. Sixteen comments mentioned the risk to aviation safety and 13 comments mentioned either marking or lighting—the primary methods that enhance an obstacle's conspicuity for a pilot to see and avoid. Comments ranged from providing full support of FAA's marking and lighting schemes to suggestions of alternative means based on the inability to comply with traditional marking and lighting due to system design.

EAA supported adequate marking and lighting controls for AWES equal to that required for other obstacles. NAAA expressed safety concerns with AWES, specifically the ability of pilots operating at low levels to see and avoid the tether. NAAA explained that a thin AWES tether may prove indistinguishable from the background depending on the time of day and weather conditions and recommended a strobe light on each individual structure and lighting on the tether. To NAAA, properly marked and visible obstructions are a life or death issue for low-level operators. An experienced general aviation pilot expressed AWES safety concerns based on low-level accidents involving MET towers and the difficulty pilots may have seeing an AWES during the day and at night. A part 137 commenter added that aircraft commonly operate safely at altitudes less than a proposed AWES operation and a pilot could mistake the aloft portion of an AWES as another aircraft disregarding the possibility of a tether and inviting disaster. This commenter also stated that the airfoil of AWES would need to be painted and lit and that the tether would need high-visibility strobes positioned at regular intervals to achieve a visual effect.

AWEC proposed a high-intensity light on the airborne portion of the system, flashing at regular intervals at a fixed altitude or flashing at the top and bottom of the (circular) flight path. AWEC proposed to not mark or light the tether, claiming tether drag will prevent an AWES system from achieving desired levels of performance.

Altaeros proposed lighting the structure using a high-intensity blinking light on top of the aloft portion, glow lighting or illumination of the aloft portion from the inside, or one or more spotlights aimed from the ground. Altaeros supported lighting the aerostat and not the tether.

EnerKite's proposed system has brightly colored wings that can have red markings to increase conspicuity. EnerKite commented that decreased weight and movement of the system are substantial factors in system efficiency, thus rendering large obstacle marking infeasible. Additionally, EnerKite stated that flags generate considerable drag and complicate the dynamic extension and retraction of the system. EnerKite stated their system's movement at variable tether lengths also increases conspicuity and proposed the construction of a nearby obstacle with traditional marking and lighting for further enhancement. EnerKite indicated their ability to illuminate the wing from the ground or the nearby obstacle.

Highest Wind commented that current marking requirements in AC 70/7460–1 are overly burdensome and existing lighting requirements would make their system commercially and technically infeasible. Highest Wind asserted that AWES needs the development of new lights with half the weight, size, and energy requirements of those available when FAA published the Notice. Highest Wind also stated they planned to provide an anti-collision light on the flying vehicle to make it conspicuous to pilots in all weather conditions and expressed that marking the tether would be very difficult to achieve. From a testing perspective, Highest Wind desired to test in areas free of aviation then re-visit the marking and lighting requirement.

Makani commented they intended to paint the wing white, in a manner similar to wind turbine blades, and

proposed an option of adding light-emitting diode (LED) lights to the wing tips similar to those used on light aircraft. Makani explained that tether marking encumbers the tether and endangers the system during launching and landing. Therefore, Makani proposed to not mark or light the tether and instead mark the wing and ground station. Makani commented their prototype, at the time FAA published in its Notice, could not comply with current part 77 lighting requirements due to the mass and drag of the lights. However, Makani anticipated the utilization of lighting onboard the aloft portion that flashes at the top and bottom of each loop, emulating the appearance of a stationary radio tower and making the obstacle conspicuous to pilots. In an AWES farm setting, Makani proposed to light the wings in the manner of a traditional wind farm, with lights on the wings at the perimeter of the farm and on wings that are high spots.

SkySails said they could partly comply with marking and lighting requirements but did not provide any specific information. SkySails stated their system will be conspicuous to the flying public with the canopy made of yellow-colored fabric illuminated between sunset and sunrise at the center and wingtips by a spotlight situated on top of the control pod (suspended below the canopy). SkySails commented that if the illumination of the kites and registration in air traffic charts is not sufficient, wind farm arrays could be marked by tethered balloons placed on the outlines of the array. Balloons and mooring lines of the balloons will be marked and lighted according to existing requirements. SkySails did not comment on the policy, other than to provide specifics on their system.

Windlift commented they are fully committed to working with FAA and NAS users to ensure aviation safety during the development of their systems but did not specifically comment on the policy. Windlift commented that their fabric wings can have bright colors embedded with reflective elements to maximize visibility. During night operations, Windlift's proposed system planned to use a conductive cable strung with the tether or a battery to power lights. Windlift commented that tether marking is a challenge to system performance due to increased drag and placing multiple flags within 75 feet of the aloft portion could provide a visual signal of the tether for pilots. Windlift proposed the use of LED lights instead of lights with more weight.

V. Additional Discussion

A 2021 Department of Energy (DOE) report discusses U.S. locations where there is an increase in average wind speed with altitude up to approximately 300 meters (985 feet), above which the wind speed profile becomes mostly flat up to 500 meters (1640 feet).[8] DOE finds that most AWES will operate below 500 meters. Aloft portions of an AWES, including the tether or similar device connecting it to a ground station, above 499 feet AGL would be in airspace available to general aviation and must be readily identifiable so a pilot can see and avoid it. As part of FAA's aeronautical study conducted under part 77 and the process defined in FAA Order JO 7400.2, FAA may include marking and lighting recommendations in its determination.

Advisory Circular 70/7460–1 describes the FAA's standards for marking and lighting structures to promote aviation safety. Based on individual AWES characteristics, FAA may require marking and lighting applicable to specific systems to ensure visibility during varying weather conditions or night operations. FAA continues to research and test alternative marking and lighting for use by all components of an AWES (to include the aloft portion and the tether or similar device). Once the FAA identifies an acceptable standard, it may include it in AC 70/7460–1. Additionally, FAA must evaluate each AWES and issue a technical note approving the system's marking and lighting prior to a proposed AWES deployment and part 77 analysis.

As part of the part 77 evaluation, FAA will coordinate the proposal with potentially impacted air traffic control (ATC) facilities for local analysis, as required. If FAA determines the need for local coordination, each affected facility performs an operational safety analysis of the potential effects or risks of AWES operations to local air traffic. This analysis may also include AWES-specific considerations, *e.g.,* the aloft portion separating from the ground station or the duration required to recover the aloft portion to the ground station. If the local ATC facility discovers additional safety hazards, FAA may convene a local Safety Risk Management (SRM) panel to complete a safety analysis and document its findings in an SRM document. The SRM panel's findings could affect FAA's final determination. Additionally, FAA-issued final determinations for AWES proposals may include conditions for marking and lighting to ensure the structure is visible to aircraft operating in proximity to an AWES.

VI. Final Policy

Based on feedback received in response to the Notice, the FAA concludes that AWES may affect navigable airspace. As of the effective date of this policy statement, the FAA amends the policy set forth in the Notice and will consider part 77 applications for all AWES, including permanent and operational systems. Those entities proposing construction of an AWES that exceeds the parameters in section 77.9 (*e.g.,* an AWES constructed at more than 200 feet AGL at its site) must file advance notice with FAA.

FAA receipt of part 77 notices of proposed construction from all AWES will enable the continued development of this emerging technology while allowing FAA to study the potential impacts of each individually proposed AWES on the safety and integrity of the NAS. Further, this action ensures inclusion of AWES information in the FAA's publicly searchable obstruction database.[9]

Issued in Washington, DC, on December 20, 2022.

Michael R. Beckles,

Director (A), Policy, AJV–P.

[FR Doc. 2022–27993 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

[8] *www.energy.gov/sites/default/files/2021-12/report-to-congress-challenges-opportunities-airborne-wind-energy-united-states.pdf.*

[9] *https://oeaaa.faa.gov/.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31460; Amdt. No. 4037]

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 December 23, 2022. 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 December 23, 2022.

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

For Examination

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

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., 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 November 25, 2022.

Thomas J. Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 29 December 2022

Chandler, AZ, P19, RNAV (GPS) RWY 35, Orig
Chandler, AZ, P19, VOR–A, Amdt 1D, CANCELED
Bedford, IN, KBFR, VOR RWY 13, Amdt 10D
Dodge Center, MN, KTOB, VOR–A, Amdt 5
Kansas City, MO, KMCI, ILS OR LOC RWY 1L, Amdt 18
Kansas City, MO, KMCI, ILS OR LOC RWY 9, Amdt 16
Kansas City, MO, KMCI, ILS OR LOC RWY 19L, Amdt 4
Kansas City, MO, KMCI, ILS OR LOC RWY 19R, ILS RWY 19R (SA CAT I), ILS RWY 19R (CAT II), ILS RWY 19R (CAT III), Amdt 14
Kansas City, MO, KMCI, ILS OR LOC RWY 27, Amdt 6
Kansas City, MO, KMCI, RNAV (GPS) Y RWY 1L, Amdt 4
Kansas City, MO, KMCI, RNAV (GPS) Y RWY 1R, Amdt 4
Kansas City, MO, KMCI, RNAV (GPS) Y RWY 9, Amdt 4
Kansas City, MO, KMCI, RNAV (GPS) Y RWY 19L, Amdt 4
Kansas City, MO, KMCI, RNAV (GPS) Y RWY 19R, Amdt 4
Kansas City, MO, KMCI, RNAV (GPS) Y RWY 27, Amdt 4
West Milford, NJ, 4N1, RNAV (GPS) RWY 6, Amdt 1D
Hobbs, NM, KHOB, RNAV (GPS) RWY 21, Amdt 2
Hobbs, NM, KHOB, VOR OR TACAN RWY 21, Amdt 9E
Spokane, WA, KSFF, RNAV (GPS) RWY 4L, Amdt 1D
Minocqua-Woodruff, WI, KARV, LOC RWY 36, Amdt 2, CANCELED
Oshkosh, WI, KOSH, Takeoff Minimums and Obstacle DP, Amdt 1A

[FR Doc. 2022–27976 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31461; Amdt. No. 4038]

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 December 23, 2022. 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 December 23, 2022.

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

For Examination

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

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

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., 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 November 25, 2022.

Thomas J. Nichols,

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 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
29–Dec–22	MO	Branson	Branson	2/3091	11/10/22	ILS OR LOC RWY 32, Orig-A
29–Dec–22	MS	Pascagoula	Trent Lott Intl	2/5391	11/15/22	RNAV (GPS) RWY 17, Amdt 2
29–Dec–22	MS	Pascagoula	Trent Lott Intl	2/5392	11/15/22	ILS OR LOC RWY 17, Amdt 3
29–Dec–22	AZ	Phoenix	Phoenix Sky Harbor Intl.	2/5533	11/9/22	ILS OR LOC RWY 7R, Amdt 2C
29–Dec–22	GA	Augusta	Augusta Rgnl At Bush Fld.	2/6964	11/15/22	ILS OR LOC RWY 35, Amdt 28D
29–Dec–22	AZ	Phoenix	Phoenix Sky Harbor Intl.	2/8448	11/9/22	RNAV (GPS) Y RWY 7L, Amdt 1B
29–Dec–22	AZ	Phoenix	Phoenix Sky Harbor Intl.	2/8449	11/9/22	RNAV (GPS) Y RWY 7R, Amdt 1B
29–Dec–22	CA	Arcata/Eureka	California Redwood Coast-Humboldt County.	2/9043	11/15/22	RNAV (GPS) RWY 1, Amdt 2
29–Dec–22	IA	Iowa City	Iowa City Muni	2/9143	11/16/22	VOR–A, Orig-C
29–Dec–22	IA	Iowa City	Iowa City Muni	2/9149	11/16/22	RNAV (GPS) RWY 30, Amdt 1
29–Dec–22	GA	Augusta	Augusta Rgnl At Bush Fld.	2/9685	11/15/22	RNAV (GPS) Y RWY 8, Amdt 1B
29–Dec–22	GA	Augusta	Augusta Rgnl At Bush Fld.	2/9687	11/15/22	RNAV (GPS) RWY 35, Amdt 2D
29–Dec–22	GA	Augusta	Augusta Rgnl At Bush Fld.	2/9688	11/15/22	RNAV (GPS) RWY 26, Amdt 1B
29–Dec–22	GA	Augusta	Augusta Rgnl At Bush Fld.	2/9690	11/15/22	RNAV (GPS) RWY 17, Amdt 3
29–Dec–22	GA	Augusta	Augusta Rgnl At Bush Fld.	2/9702	11/15/22	RNAV (GPS) Z RWY 8, Amdt 1
29–Dec–22	CO	Wray	Wray Muni	2/9704	11/15/22	RNAV (GPS) RWY 17, Amdt 2
29–Dec–22	GA	Augusta	Augusta Rgnl At Bush Fld.	2/9707	11/15/22	ILS OR LOC RWY 17, Amdt 10

[FR Doc. 2022–27977 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 221220–0279]

RIN 0694–AJ05

Modification to the Entity List

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

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security is amending the Export Administration Regulations (EAR) by modifying one entity on the Entity List. This final rule modifies one entity on the Entity List under the destination of Russia.

DATES: This rule is effective December 21, 2022.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement No. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) where a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Modification to the Entity List

The agencies represented on the ERC determined to modify Private Military Company 'Wagner' on the Entity List, under the destination of Russia. This entry is modified by adding one address, two additional aliases, and a footnote 3 designation. A footnote 3 designation means that an entity has been determined to be a Russian or Belarusian 'military end user.' This entity was originally added to the Entity List on June 22, 2017, for having been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States under § 744.11. (82 FR 28405) This entry is being modified because the entity was determined to be a Russian military end user under § 744.21 of the EAR. Licenses for this entity will now be reviewed under a policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. The license requirements under this entry also extend to any export, reexport and transfer (in-country) to the entity wherever located worldwide.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on December 21, 2022, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Supplement No. 4 to part 744 is amended under RUSSIA by revising the entry for ''Private Military Company 'Wagner' '' to read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
RUSSIA	*	*	*	*
	Private Military Company 'Wagner', a.k.a., the following five aliases: —Chastnaya Voennaya Kompaniya 'Vagner'; —Chvk Vagner; —PMC Wagner; —Wagner Group; *and* —Vagner Group. 15 Zolnaya Street, Saint Petersburg, 195213, Russia	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR). The license requirements under this entry also extend to any export, reexport and transfer (in-country) to the entity wherever located worldwide	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	82 FR 28408, 6/22/17. 87 FR [INSERT FR PAGE NUMBER] 12/23/22.
	*	*	*	*
*	*	*	*	*

* * * * *

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–28033 Filed 12–21–22; 4:15 pm]

BILLING CODE 3510–JT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 130 and 131

[Docket No. FDA–2000–P–0126 (formerly Docket No. 2000P–0658)]

RIN 0910–AI40

International Dairy Foods Association and Chobani, Inc.: Response to the Objections and Requests for a Public Hearing on the Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and denial of public hearing requests; removal of administrative stay; correction.

SUMMARY: The Food and Drug Administration is correcting a final rule entitled ''International Dairy Foods Association and Chobani, Inc.: Response to the Objections and Requests for a Public Hearing on the Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt'' that appeared in the **Federal Register** of December 15, 2022. The final rule revoked the standards of identity for lowfat yogurt and nonfat yogurt and amended the standard of identity for yogurt in numerous respects. The document was published with an errant reference to its effective date in the preamble discussion. This document corrects that error.

DATES: This correction is effective January 17, 2023, and applicable December 15, 2022.

FOR FURTHER INFORMATION CONTACT: Andrea Krause, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371, or Joan Rothenberg, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Wednesday, December 15, 2022 (87 FR 765590), appearing on page 76567, in FR Doc. 2022–27040, the following correction is made:

1. On page 76567, in the third column, in the fifth sentence of the third paragraph under IV. Summary and Conclusions, ''[DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]'' is corrected to read ''January 17, 2023''.

Dated: December 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27816 Filed 12–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–945]

Schedules of Controlled Substances: Removal of Fenfluramine From Control

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration removes fenfluramine (chemical name: *N*-ethyl-α-methyl-3-(trifluoromethyl)phenethylamine), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts is possible, from the schedules of the Controlled Substances Act. Prior to the effective date of this rule, fenfluramine was a

schedule IV controlled substance. This action removes the regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances, including those specific to schedule IV controlled substances, on persons who handle (manufacture, distribute, reverse distribute, dispense, engage in research, import, export, conduct instructional activities or chemical analysis with, or possess) or propose to handle fenfluramine.

DATES: Effective December 23, 2022.

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

SUPPLEMENTARY INFORMATION:

Legal Authority

Under the Controlled Substances Act (CSA), each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause.[1] The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c) and the current list of scheduled substances is published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(2), the Attorney General may, by rule, ''remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule.'' The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (DEA).[2]

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General on the petition of any interested party.[3] This action was initiated by a petition to remove fenfluramine from the list of scheduled controlled substances of the CSA, and is supported by, *inter alia,* a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (HHS) and an evaluation of all relevant data by DEA. This action removes the regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances, including those specific to schedule IV controlled substances, on persons who handle or propose to handle fenfluramine.

Background

Fenfluramine (chemical name: *N*-ethyl-α-methyl-3-(trifluoromethyl)phenethylamine), including its salts, isomers, and salts of such isomers, has been controlled under 21 CFR 1308.14(d) as a schedule IV substance of the CSA since June 15, 1973.[4] On September 25, 2019, Zogenix, Inc. (Zogenix; the Sponsor) submitted to the Food and Drug Administration (FDA) a New Drug Application (NDA) for Fintepla (fenfluramine), for the treatment of seizures associated with Dravet syndrome (DS) in patients two years of age and older. FDA approved the NDA on June 25, 2020, with the labelling listing fenfluramine as a schedule IV controlled substance.

On October 18, 2018, Zogenix submitted to DEA a petition requesting that fenfluramine be removed from schedule IV of the CSA. The petition complied with the requirements of 21 CFR 1308.43(b) and DEA accepted the petition for filing on November 13, 2018.

Notice of Proposed Rulemaking To Decontrol Fenfluramine

On July 19, 2022, DEA published a notice of proposed rulemaking (NPRM) to remove fenfluramine from the schedules of the CSA.[5] The NPRM provided an opportunity for interested persons to file a request for a hearing in accordance with DEA regulations by August 18, 2022. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on the proposal on or before August 18, 2022.

Comment Received

DEA received one comment on the NPRM to remove fenfluramine from control.

Opposition to rulemaking: One commenter opposed decontrol of fenfluramine, however the comment was at times ambiguous. The commenter seemed to be concerned about children using fenfluramine illicitly and the potential harm related to the combined use with a stimulant, specifically noting the fenfluramine-phentermine (''fen-phen'') combination and noting ''Stimulants+Psychedelics=Psychosis.''

DEA Response: DEA acknowledges the commenter's concerns about relative harm, especially related to children. DEA notes FDA approved Fintepla (fenfluramine) on June 25, 2020, for the treatment of DS in patients two years of age and older. Currently Fintepla is the only FDA-approved drug product with fenfluramine. HHS considered the harms the fenfluramine-phentermine combination produced in their April 2021 scientific and medical evaluation, which was provided to DEA as part of this rulemaking process, pursuant to 21 U.S.C. 811(b).

DEA notes that the combination historically produced serious cardiac effects, not psychological effects. The FDA-approved labeling for Fintepla indicates that patients must be enrolled in the Fintepla risk evaluation and mitigation strategy (REMS) program and undergo cardiac monitoring before, during, and after treatment with Fintepla to monitor for serious heart valve changes or high blood pressure in the arteries of the lungs. The FDA-required REMS program for Fintepla, including ongoing cardiac monitoring, would still be applicable under the FDA rules even after fenfluramine is decontrolled by DEA.

Based on FDA's scientific and medical review of the eight factors and findings related to the substance's abuse potential, legitimate medical use, and dependence liability, HHS recommended that fenfluramine and its salts be removed from all schedules of the CSA. Pursuant to 21 U.S.C. 811(b), the recommendations of HHS shall be binding on DEA as to such scientific and medical matters and if the Secretary recommends that a drug or other substance not be controlled, DEA shall not control the drug or other substances. As stated in the NPRM, after careful review of all relevant data including HHS' scientific and medical evaluation and scheduling recommendation, DEA is therefore promulgating this final rule to remove fenfluramine, including its salts, isomers, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible, from control under the CSA.

Determination To Decontrol Fenfluramine

Based on consideration of the comment, and the rationale set forth in the NPRM, the Administrator finds that fenfluramine does not meet the requirements for inclusion in any schedule. As such, DEA is removing fenfluramine, including its salts, isomers, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible, from control under the CSA.

[1] 21 U.S.C. 812.

[2] 28 CFR 0.100.

[3] 21 U.S.C. 811(a).

[4] 38 FR 15719, May 9, 1973.

[5] 87 FR 42979.

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 scheduling action is subject to formal rulemaking procedures done ''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 criteria for removing a drug or other substance from the list of controlled substances. Such actions are exempt from review by the Office of Management and Budget pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This 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. This rule does not have substantial direct effects on the States, on the relationship between the Federal 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. This rule 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 Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this rule is to remove fenfluramine from the list of schedules of the CSA. This action will remove regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances for handlers and proposed handlers of fenfluramine. Accordingly, it has the potential for some economic impact in the form of cost savings.

Fenfluramine as a pharmaceutical product (Fintepla) is currently available and marketed in the U.S. Because fenfluramine is currently a schedule IV drug, all legal handling of fenfluramine is currently done under appropriate DEA license. In such instances, DEA's knowledge of its registrant population forms the basis for estimating the number of affected entities and small entities that are affected by this rulemaking. There are currently 40 unique registrations authorized to handle fenfluramine specifically, as well as a number of registered analytical labs that are authorized to handle schedule IV controlled substances generally. From review of entity names, DEA estimates these 40 registrations represent 27 entities. Some of these entities are likely to be small entities. However, since DEA does not have information of registrant size and the majority of DEA registrants are small entities or are employed by small entities, DEA estimates a maximum of 27 entities are small entities. Therefore, DEA conservatively estimates as many as 27 small entities are affected by this final rule. However, because this rule would remove fenfluramine from regulatory controls of the CSA, it is likely to result in some cost savings. Any person planning to handle fenfluramine will realize cost savings in the form of saved DEA registration fees, and the elimination of physical security, recordkeeping, and reporting requirements. Because of these factors, DEA projects that this rule will not result in a significant economic impact on a substantial number of small entities.

Administrative Procedure Act

The Administrative Procedure Act requires the publication of a substantive rule to be made not less than 30 days before its effective date.[6] However, this requirement need not apply for ''a substantive rule which . . . relieves a restriction.''[7] Therefore, DEA makes this rule effective immediately upon publication.

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 that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

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

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 to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

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

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

§ 1308.14 [Amended]

■ 2. In § 1308.14, remove and reserve paragraph (d).

Signing Authority

This document of the Drug Enforcement Administration was signed on December 12, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–27400 Filed 12–22–22; 8:45 am]

BILLING CODE 4410–09–P

[6] 5 U.S.C. 553(d).

[7] 5 U.S.C. 553(d)(1).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 138

[Docket No. USCG–2022–0252]

RIN 1625–AC84

Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels, Deepwater Ports and Onshore Facilities

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing this final rule to adjust the limits of liability for vessels, deepwater ports, and onshore facilities under the Oil Pollution Act of 1990 (OPA 90), as amended, to reflect the increase in the Consumer Price Index since they were last adjusted in 2019. These regulatory inflation increases to the limits of liability are required by OPA 90 and are necessary to preserve the deterrent effect and ''polluter pays'' principle embodied in the Act. This update promotes the Coast Guard's missions of maritime safety and stewardship.

DATES: This final rule is effective on March 23, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type ''USCG–2022–0252'' in the search box and click ''Search.'' Next in the Document Type Column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Benjamin White, Coast Guard; telephone 202–795–6066, email *Benjamin.H.White@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
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I. Abbreviations

BLS Bureau of Labor Statistics
BOEM Bureau of Ocean Energy Management
CPI Consumer Price Index
CPI–U Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84=100
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
OPA 90 Oil Pollution Act of 1990
U.S.C. United States Code
§ Section

II. Basis and Purpose, and Regulatory History

Under the Oil Pollution Act of 1990 (OPA 90) (33 U.S.C. 2701, *et seq.*), the responsible parties for any vessel (other than a public vessel) or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States are strictly liable, jointly and severally, under 33 U.S.C. 2702 (a) and (b), for the removal costs and damages that result from such incident.[1] Under 33 U.S.C. 2704 (a), the responsible parties' liability with respect to OPA 90 and any one incident is limited, subject to certain exceptions specified in 33 U.S.C. 2704 (c).

In the instances when a limit of liability applies, the Oil Spill Liability Trust Fund (''the Fund'') is available to compensate the OPA 90 removal costs and damages incurred by the responsible parties and third-party claimants in excess of the applicable limit of liability. The statutory limits of liability for vessels and three types of facilities are set forth in OPA 90: (1) Onshore facilities, (2) deepwater ports, and (3) offshore facilities other than deepwater ports. In addition, to prevent the real value of the OPA 90 statutory limits of liability from depreciating over time as a result of inflation, and to preserve the ''polluter pays'' principle, OPA 90 requires that the limits of liability be adjusted ''not less than every 3 years'' to reflect significant increases in the Consumer Price Index (CPI).[2]

The Coast Guard is responsible for adjusting the limits of liability for vessels, deepwater ports, and onshore facilities. The Department of the Interior's Bureau of Ocean Energy Management (BOEM) is responsible for adjusting the limits of liability for offshore facilities. Regarding vessels and deepwater ports, the Coast Guard adjusted the limits of liability in 2009 (74 FR 31357),[3], in 2015 (80 FR 72342), and in 2019 (84 FR 39970). Regarding onshore facilities, the Coast Guard adjusted the limits of liability twice, in 2015 (80 FR 72342) and in 2019 (84 FR 39970), after the President issued Executive Order 13638, which restated and simplified the delegations in Executive Order 12777, section 4, and vested the authority to make CPI adjustments to the onshore facility statutory limit of liability in ''the Secretary of the Department in which the Coast Guard is operating.'' The Secretary of the Department of Homeland Security (DHS) delegated that authority to the Coast Guard. Regarding offshore facilities, BOEM published a final rule and adjusted the limits of liability for offshore facilities in 2018 (83 FR 2540) from $133,650,000 to $137,659,500.

III. Background and Justification for Final Rule

The Coast Guard is promulgating this rule pursuant to the provisions of Title I of OPA 90, Executive Order 12777, as amended, and Coast Guard regulations in Title 33 of the Code of Federal Regulations (CFR) part 138, subpart B—OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities). Under 5 U.S.C. 553(b)(B), the Coast Guard has good cause for issuing this final rule without notice or comment. Generally, Section 553 ''gives affected parties an opportunity to participate in agency decision making early in the process, when the agency is more likely to consider alternative ideas.''[4] However, prior notice and comment is unnecessary ''where a minor or merely technical amendment in which the public is not particularly interested'' arises.[5] Prior notice and comment is also unnecessary when the good cause inquiry is ''confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.''[6] Courts have further held that notice and comment procedures are unnecessary where Congress requires an

[1] OPA 90 defines ''liable'' and ''liability'' as ''the standard of liability which obtains under section 1321 of this title [Section 311 of the Federal Water Pollution Control Act].'' 33 U.S.C. 2701(17). Liability under Section 311, in turn, ''has been determined repeatedly to be strict, joint and several.'' H.R.Rep. No. 101–653, at 780 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780, 1990 WL132747.

[2] 33 U.S.C. 2704(d)(4).

[3] The 2009 interim rule was adopted without change as a final rule in 2010 (75 FR 750).

[4] *Northern Arapahoe Tribe* v. *Hodel,* 808 F.2d 741, 751 (10th Cir. 1987).

[5] *Id.*

[6] *Mack Trucks, Inc.* v. *E.P.A.,* 682 F.3d 87, 94, (D.C. Cir. 2012).

agency to perform a nondiscretionary ministerial act.[7] In this instance, a proposed rule is unnecessary because the adjustment in the limit of liability is a routine determination mandated by statute, and is therefore nondiscretionary for the Coast Guard. The calculation of the liability limits is ministerial in nature. Furthermore, the methodology for determining the amount is defined in the Coast Guard's regulations, and the regulations in 33 CFR 138.240(a) provide that inflation adjustments to the limits of liability for vessels, deepwater ports, and onshore facilities will be implemented through final rulemaking.[8] The preambles of the NPRM and the final rule for the 2015 inflation adjustment (at 79 FR 49205 and 80 FR 72342) together provide the full legislative and regulatory history for the OPA 90 limit of liability inflation adjustments.

IV. Calculation for the Adjustment

The Coast Guard is issuing this final rule to update the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities, as set forth in 33 CFR part 138, subpart B, to reflect significant increases in the CPI since the limits were last adjusted. OPA 90 requires adjustments to the limits of liability not less than every 3 years to reflect significant increases in the CPI. The method for calculating these adjustments is set forth in 33 CFR 138.240.

This final rule provides these periodic inflation adjustments to the limits of liability to reflect changes in the CPI since the limits were last adjusted for inflation in 2019 (84 FR 39970). As provided in 33 CFR 138.240, we calculate limit of liability adjustments, using the Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84=100 (CPI–U) values published by the Bureau of Labor Statistics (BLS), as follows—

1. *Formula to calculate the percent change in the Annual CPI–U:*

Percent change in the Annual CPI–U = [(Annual CPI–U for current period − Annual CPI–U for previous period) ÷ Annual CPI–U for previous period] × 100, then rounded to one decimal place.

2. *Formula to derive the new limit of liability, applying the percent change in the Annual CPI–U:*

New Limit of Liability = Previous Limit of Liability + (Previous Limit of Liability × Percent Change in CPI), then rounded to the closest $100.

For this update, we used the 2021 Annual CPI–U value of 270.970 as the ''current period'' value, which is the most recent Annual CPI–U published by the BLS.[9] The Coast Guard used the 2018 Annual CPI–U value of 251.107 as the ''previous period'' value, which was the Annual CPI–U used as the ''current period'' value when the limits of liability were last adjusted in 2019. Applying the formula in Item 1 above, we have determined that there was a 7.91 percent increase in the Annual CPI–U since the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities were last adjusted. Table 1 below shows the previous and new limits of liability derived by applying the percent increase using the formula in Item 2 above.

TABLE 1—CPI-ADJUSTED LIMITS OF LIABILITY

Source category	Previous limit of liability	Percent increase in the annual CPI–U	New CPI-adjusted limit of liability
§ 138.230(a) Vessels			
(1) The OPA 90 limits of liability for tank vessels, other than edible oil tank vessels and oil spill response vessels, are—			
(i) For a single-hull tank vessel greater than 3,000 gross tons[10].	The greater of $3,700 per gross ton or $27,422,200	7.91	The greater of $4,000 per gross ton or $29,591,300.
(ii) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel.	The greater of $2,300 per gross ton or $19,943,400	7.91	The greater of $2,500 per gross ton or $21,521,000.
(iii) For a single-hull tank vessel less than or equal to 3,000 gross tons.	The greater of $3,700 per gross ton or $7,478,800	7.91	The greater of $4,000 per gross ton or $8,070,400.
(iv) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel.	The greater of $2,300 per gross ton or $4,985,900	7.91	The greater of $2,500 per gross ton or $5,380,300.

[7] *Metzenbaum* v. *FERC,* 675 F.2d 1282, 1291 (D.C. Cir. 1982).

[8] In the NPRM for the 2015 adjustment, titled Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability-Vessels, Deepwater Ports and Onshore Facilities, the Coast Guard proposed a simplified regulatory procedure for making future inflation updates to the OPA 90 limits of liability. Under that procedure in 33 CFR 138.240(a), the Director of the National Pollution Funds Center (NPFC) publishes the inflation-adjusted limits of liability in the **Federal Register** as final rule amendments to 33 CFR 138.230. Further, the preamble of that NPRM stated that '' [b]ecause the adjustment methodology was established by the CPI–1 Rule, and the simplified [regulatory] procedure will be established by this rulemaking, publication of an NPRM would not be necessary for these future mandated inflation adjustments.'' 79 FR 49205 at 49211; August 19, 2014.

[9] *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202207.pdf.*

[10] As of January 1, 2015, tank vessels not equipped with a double hull can no longer operate on waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone, carrying oil in bulk as cargo or cargo residue; and there are no waivers or extensions of the deadline. However, OPA 90 continues to specify limits of liability for single-hull tank vessels. The Coast Guard, therefore, continues to adjust those limits of liability for inflation.

TABLE 1—CPI-ADJUSTED LIMITS OF LIABILITY—Continued

Source category	Previous limit of liability	Percent increase in the annual CPI–U	New CPI-adjusted limit of liability
(2) The OPA 90 limits of liability for any vessel other than a vessel listed in paragraph (a)(1) of § 138.230, including for any edible oil tank vessel and any oil spill response vessel, are—.	The greater of $1,200 per gross ton or $997,100	7.91	The greater of $1,300 per gross ton or $1,076,000.
§ 138.230(b) Deepwater ports			
(1) The OPA 90 limit of liability for any deepwater port, including for any component pipelines, other than a deepwater port listed in paragraph (b)(2) of § 138.230, is—.	$672,514,900	7.91	$725,710,800.
(2) The OPA 90 limits of liability for deepwater ports with limits of liability established by regulation under OPA 90 (33 U.S.C. 2704(d)(2)), including for any component pipelines, are—			
(i) For the Louisiana Offshore Oil Port (LOOP).	$102,245,000	7.91	$110,332,600.
(ii) [Reserved]	Not Applicable (N.A.)	N.A.	N.A.
§ 138.230(c) Onshore facilities			
The OPA 90 limit of liability for onshore facilities, including, but not limited to, motor vehicles, rolling stock and onshore pipeline, is—.	$672,514,900	7.91	$725,710,800.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (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, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. A regulatory analysis (RA) follows.

This final rule is an update to the limit of liability for vessels, deepwater ports, and onshore facilities under OPA 90. This rule does not increase the regulatory burden on regulated entities when measured in constant or real dollars. This final rule simply maintains the value of the limit of liability set by OPA 90 by updating the limit of liability for inflation, as required by OPA 90 in 33 U.S.C. 2704(d)(4).

Regulatory Cost

This final rule increases the limits of liability under OPA 90 for vessels, deepwater ports, and onshore facilities by 7.91 percent. The Coast Guard does not expect Certificate of Financial Responsibility guarantor insurance premiums for vessels to increase as a result of this rule. This final rule will only affect vessels, deepwater ports, and onshore facilities that have an OPA 90 incident that exceeds their existing limit of liability. The Coast Guard estimates that this final rule will affect, at most, three vessels per year. We estimate that the rule could also affect one deepwater port and one onshore facility over a 10-year period. In such a case, the maximum amount of additional liability will represent a maintenance of the value of the limits of liability set by OPA 90.

Regulatory Benefit

This rulemaking ensures that the OPA 90 limits of liability keep pace with inflation as required by OPA 90 (33 U.S.C. 2704(d)(4)). This final rule requires responsible parties to internalize inflation, thereby benefitting the public, because the appropriate amount of removal costs and damages are borne by the responsible party. The liability risk will not shift from the responsible party to the public and the Fund. This helps preserve the ''polluter pays'' principle as intended by Congress and preserves the Fund for its other authorized uses. Absent CPI adjustments, a responsible party gains an advantage not intended by OPA 90. Without inflation incorporated into the determination of the applicable limit of liability, the responsible party ultimately pays a reduced percentage of the total incident costs. Hence, this final rule ensures that the limits of liability

are adjusted according to inflation and remain constant over time.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule will have a significant economic impact on a substantial number of small entities. 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 Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required. This rule is not preceded by a notice of proposed rulemaking (NPRM). Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Furthermore, this rulemaking is statutorily mandated. Pursuant to established procedure in 33 CFR 138.240(a), an NPRM is unnecessary. Therefore, the Coast Guard has determined that a Regulatory Flexibility Analysis does not apply to this rulemaking.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

D. Collection of Information

This rule calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

This final rule makes necessary adjustments to the OPA 90 limits of liability to reflect significant increases in the CPI. Nothing in this final rule affects the preservation of State authorities under 33 U.S.C. 2718, including the authority of any State to impose additional liability or financial responsibility requirements with respect to discharges of oil within such State. Therefore, this final rule has no implications for federalism.

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. The Coast Guard invites anyone who believes this rule has implications for federalism under Executive Order 13132 to contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. 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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management 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 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. 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. This rule is categorically excluded under paragraph L53 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L53 pertains to congressionally mandated regulations designed to improve or protect the environment. This rule adjusts the limits of liability for vessels, deepwater ports, and onshore facilities to reflect significant increases in the CPI using the methodology established in 33 CFR 138.40(a) and mandated by statute.

List of Subjects in 33 CFR Part 138

Hazardous materials transportation, Insurance, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Vessels, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 138 as follows:

PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS, DEEPWATER PORTS AND ONSHORE FACILITIES)

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

Authority: 6 U.S.C. 552(d); 33 U.S.C. 2704, 2716, 2716a; 42 U.S.C. 9608, 9609; E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 193; E.O. 12777, Secs. 4 and 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166, and by E.O. 13638, Sec. 1, 3 CFR, 2014 Comp., p. 227; Department of Homeland Security Delegation Nos. 00170.1, Revision 01.2, and 5110, Revision 01. Section 138.40 also issued under the authority of 46 U.S.C. 2103 and 14302.

Subpart B—OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities)

§ 138.230 [Amended]

■ 2. Amend § 138.230 as follows:

■ a. In paragraph (a)(1)(i), remove the text ''$3,700 per gross ton or $27,422,200'' and add, in its place, the text ''$4,000 per gross ton or $29,591,300'';

■ b. In paragraph (a)(1)(ii), remove the text ''$2,300 per gross ton or $19,943,400'' and add, in its place, the text ''$2,500 per gross ton or $21,521,000'';

■ c. In paragraph (a)(1)(iii), remove the text ''$3,700 per gross ton or $7,478,800'' and add, in its place, the text ''$4,000 per gross ton or $8,070,400'';

■ d. In paragraph (a)(1)(iv), remove the text ''$2,300 per gross ton or $4,985,900'' and add, in its place, the text ''$2,500 per gross ton or $5,380,300'';

■ e. In paragraph (a)(2), remove the text ''$1,200 per gross ton or $997,100'' and add, in its place, the text ''$1,300 per gross ton or $1,076,000'';

■ f. In paragraph (b)(1) remove the text ''$672,514,900'' and add, in its place, the text ''$725,710,800'';

■ g. In paragraph (b)(2)(i), remove the text ''$102,245,000'' and add, in its place, the text ''$110,332,600''; and

■ h. In paragraph (c), remove the text ''$672,514,900'' and add, in its place, the text ''$725,710,800''.

Dated: December 9, 2022.

Jo-Ann F. Burdian,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Response Policy.

[FR Doc. 2022–27750 Filed 12–22–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0806]

RIN 1625–AA00

Safety Zones in Reentry Sites; Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee, Florida

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is re-establishing five temporary safety zones for the safe splashdown and recovery of reentry vehicles launched by Space Exploration Technologies Corporation (SpaceX) in support of National Aeronautics and Space Administration (NASA) and privately chartered missions. The temporary safety zones are located within the Seventh Coast Guard District area of responsibility (AOR) offshore of Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee, Florida. This action is necessary to protect vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations in the U.S. Exclusive Economic Zone (EEZ). It is also necessary to provide for the safe recovery of reentry vehicles, and any personnel involved in reentry services, after the splashdown. This rule prohibits U.S.-flagged vessels from entering any of the temporary safety zones unless authorized by the District Commander of the Seventh Coast Guard District, the relevant Captain of the Port, or a designated representative.

DATES: This rule is effective from January 1, 2023, through February 4, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0806 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Lieutenant Ryan Gilbert, District 7 Waterways Division (dpw), U.S. Coast Guard; telephone (305) 415–6748, email *Ryan.A.Gilbert@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AOR Area of Responsibility
AIS Automatic Identification System
BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FAA Federal Aviation Administration
FL Florida
FR Federal Register
GA Georgia
MSIB Marine Safety Information Bulletin
NASA National Aeronautics and Space Administration
NMFS National Marine Fisheries Service
NOAA National Oceanic and Atmospheric Administration
NM Nautical Mile
NPRM Notice of Proposed Rulemaking
§ Section
SpaceX Space Exploration Technologies Corporation
U.S. United States
U.S.C. United States Code
USFWS U.S. Fish and Wildlife Service

II. Background Information and Regulatory History

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) (Authorization Act) was enacted. Section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a two-year pilot program to establish and implement a process to establish safety zones to address special activities in the U.S. Exclusive

Economic Zone (EEZ).[1] These special activities include space activities[2] carried out by United States (U.S.) citizens. Terms used to describe space activities, including *launch, reentry site, and reentry vehicle,* are defined in 51 U.S.C. 50902, and in this document.

The Coast Guard has long monitored space activities impacting the maritime domain and taken actions to ensure the safety of vessels and the public as needed during space launch[3] operations. In conducting this activity, the Coast Guard engages with other government agencies, including the Federal Aviation Administration (FAA) and National Aeronautics and Space Administration (NASA), and private space operators, including Space Exploration Technologies Corporation (SpaceX). This engagement is necessary to ensure statutory and regulatory obligations are met to ensure the safety of launch operations and waterway users.

During this engagement, the Coast Guard was informed of space reentry vehicles and recovery operations in the U.S. EEZ. Section 50902 of 51 U.S.C. defines ''reentry vehicle'' as a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact. SpaceX, a U.S. company, identified five reentry sites[4] within the U.S. EEZ of the Coast Guard District Seven area of responsibility (AOR) expected to be used for the splashdown and recovery of reentry vehicles. All these sites are off the coast of Florida (FL) and Georgia (GA)—three are located in the Atlantic Ocean and two are located in the Gulf of Mexico.

On August 4, 2022, the Coast Guard published a temporary final rule (TFR)[5] in the **Federal Register** establishing five temporary safety zones for the safe splashdown and recovery of reentry vehicles launched by SpaceX in support of NASA missions. See 33 CFR 165.T07–0289. These temporary regulations expire on December 31, 2022.

On October 21, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled, ''Safety Zones in Reentry Sites; Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee, Florida.''[6] In the NPRM, we stated the purpose of the rulemaking was to create five temporary safety zones off the coast of FL and GA that would ensure the protection of vessels and waterway users in the U.S. Exclusive Economic Zone (EEZ)[7] from the potential hazards created by reentry vehicle splashdowns[8] and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services.[9] The NPRM invited comments on the proposed rule. During the comment period that ended November 21, 2022, we received four comment submissions.

With this TFR, the Coast Guard is ensuring the five temporary safety zones created by this TFR are in place for the safe reentry vehicle splashdown and recovery of reentry vehicles missions launched by SpaceX in support of NASA missions, and privately chartered missions during the remaining period of the pilot program, from January 1, 2023, through February 4, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under section 8343 of the Authorization Act. The Seventh District Commander has determined there are potential hazards in the U.S. EEZ created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services. The purpose of this rule is to ensure safety of vessels, reentry vehicles, personnel involved in reentry services and the navigable waters in the safety zone, whenever a splashdown occurs.

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** because this rule is needed to ensure there is no lapse in coverage when the existing regulations in § 165.T07–0289 expire on December 31, 2022. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the Cargo Resupply Mission 26 (CRS–26) is scheduled to splashdown in early January 2023, and the rule needs to be effective before the splashdown occurs. Delaying the enforcement of this rule to allow a 30-day effective period would inhibit the Coast Guard's ability to fulfill its mission to ensure the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received four comment submissions on our NPRM that published in the **Federal Register** on October 21, 2022. The commenters expressed concerns regarding commercial fisheries and related economic impacts, potential environmental impacts, and the Coast Guard's notification process. These issues are discussed below.

Several commenters asked whether the Coast Guard had engaged with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS); inquired whether the reentry vehicle splashdown and recovery operations complied with the National Environmental Policy Act (NEPA); requested further analyses on the potential releases of hazardous substances by reentry vehicles; and inquired about the potential impacts to the marine environment and commercial fisheries stocks.

While the Coast Guard did not engage NOAA NMFS, the Coast Guard prepared a preliminary Record of Environmental Consideration (REC) at the NPRM stage and a final REC for this rulemaking stage (see section F. Environment in this document). These reviews aided the Coast Guard in determining that fisheries stocks would not be impacted. Furthermore, this rulemaking involves the creation of temporary safety zones that will only be activated periodically for relatively short time periods. In most cases the safety zones will be activated for four hours or less, therefore any impact on fisheries stocks would be insignificant.

As discussed in the environmental section of our NPRM and in this document, the Coast Guard determined this rulemaking is categorically

[1] The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

[2] *Space Activities* means space activities, including launch and reentry, as such terms are defined in section 50902 of Title 51, United States Code, carried out by United States citizens.

[3] The term *launch* is defined in 51 U.S.C. 50902.

[4] *Reentry site* means the location on Earth to which a reentry vehicle is intended to return (as defined in a license the FAA Administrator issues or transfers under this chapter).

[5] See Coast Guard temporary final rule titled, ''Safety Zones in Reentry Sites; Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee, Florida'' (87 FR 47626).

[6] 87 FR 63981.

[7] The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

[8] *Splashdown* refers to the landing of a reentry vehicle into a body of water.

[9] *Reentry Services* means (1) activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and (2) the conduct of a reentry.

excluded (CATEX) [10] under NEPA from undergoing a detailed environmental analysis in an Environmental Assessment or Environmental Impact Statement because the activities have been determined to normally not have the potential, individually or cumulatively, to have a significant effect on the human environment. Reentry vehicle splashdown activities are licensed by the FAA. During the FAA licensing process, and in various rulemakings and related environmental reviews promulgated by the FAA, many of the issues related to fishery and environmental concerns were addressed. Most notably, the FAA completed an extensive Environmental Assessment (FAA EA) in July of 2020.[11] In that EA, the FAA consulted with the U.S. Fish and Wildlife Service (USFWS) and the NMFS. The Coast Guard is establishing these temporary safety zones to ensure the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services.

Three commenters expressed concerns about the economic impact on commercial vessels of various sizes and types, the economic impact on small fishing businesses, along with other impacts on recreational vessels due to closures for reentry or recovery operations. This rulemaking will not have a significant impact on any type of commercial or recreational fishing vessel activity because all vessels would be able to transit around the activated temporary safety zone, during the recovery, and the recovery would be relatively short in duration. The activated temporary safety zone will typically be enforced for approximately four hours, and no more than eight hours in extremely extenuating circumstances. The Coast Guard is taking significant actions to minimize, to the extent possible, the impact on commercial and recreational waterway use. Ultimately the Coast Guard deems the benefits and needs for the creation of the five temporary safety zones, to provide protection to vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations while providing for the safe recovery of reentry vehicles, and any personnel involved in reentry services, to exceed the indirect impacts on the entities the commenters noted.

Several commenters expressed concerns about public notification. While it is not necessary to modify the rule's regulatory text, additional explanation of the intended notification methods is merited. Four commenters suggested expanding the means to notify fisherman beyond the proposed Broadcast Notice to Mariners (BNM) on VHF–FM 16, and/or Marine Safety Information Bulletins (MSIB) to optimize notification to commercial and recreational fishing vessels. The Coast Guard will continue to provide proper notification to all marine transportation system users through available platforms to maintain timely and current information with regards to space launch and recovery operations. If waterway users are concerned, they will not be able to get this information in a timely manner, or they will not see the notices or broadcasts the Coast Guard distributes and publishes, they have the ability sign up for email updates on the Coast Guard's Navigation Center's website.[12]

Three commenters requested that reentry safety zones be clearly identified on digital navigation or Automatic Identification System (AIS) charts for all waterway users to have access to, to reduce the need to input coordinates each time a notification is issued. The Coast Guard is evaluating different options to provide mariners with an efficient way including, plotting the temporary safety zones in the NOAA charts and AIS broadcasts.

Two commenters inquired about how they would be notified when the temporary safety zones are enforced. Upon notification of a reentry vehicle's reentry, the Coast Guard would activate all five temporary safety zones to serve as a cautionary warning that a reentry vehicle could splashdown in one of the five temporary safety zones during the specified time period. However, only one of the five temporary safety zones will be enforced for the window of time of the reentry vehicle splashdown and recovery. Once the Coast Guard receives confirmation from NASA or SpaceX, where the reentry vehicle will splashdown, usually within 24 hours of the reentry vehicle splashdown, the public will be notified that only one of the five temporary safety zones will be enforced, all other temporary safety zones will be deactivated. The notification of enforcement that the Coast Guard publishes in the **Federal Register** will set out the specific times that the one temporary safety zone will be closed (enforced), and it will typically be no more than six hours. This will allow the Coast Guard to ensure the activated temporary safety zone is cleared prior to the reentry vehicle's reentry. After the Coast Guard receives notification that the reentry vehicle's recovery operation is complete, the temporary safety zone enforcement will be deactivated, and mariners will be notified of the deactivation via VHF–FM Channel 16.

The Coast Guard identified in an internal review that the Jacksonville reentry site, as provided by NASA and SpaceX, straddles the border of the Jacksonville COTP zone and the Savannah COTP zone. The coordinates of the Jacksonville reentry site safety zone itself has not changed. Moving forward, the COTP Savannah will follow the same notification procedures as the COTP Jacksonville, and the COTP St. Petersburg, at least as it pertains to the portion of the safety zone that falls under the Savannah COTP zone. The only change in regulatory text to this rule, from the proposed rule in the NPRM, is the addition of the Captain of the Port of Savannah to the definition of Captain of the Port.

When discussing all these issues it is important to reiterate that all these safety zones are part of a pilot program, and this is a newly established authority for the Coast Guard. This means, all these processes are new, and part of a larger Coast Guard initiative to establish how to best regulate these types of issues. With every recovery operation, the Coast Guard seeks to further streamline the process, and make it more efficient for the public, and those operating reentry vehicles because at the end of the pilot program the Coast Guard is required to brief the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.[13]

With this TFR, the Coast Guard is ensuring that the five temporary safety zones created by this TFR are in place for the safe reentry vehicle splashdown and recovery of reentry vehicles launched by SpaceX in support of NASA and privately chartered missions from January 1, 2023, through February 4, 2024.

The temporary safety zones are in the U.S. EEZ within the Coast Guard District Seven AOR offshore of Jacksonville, Daytona, and Cape Canaveral, FL, in the Atlantic Ocean, and Tampa and Tallahassee, FL, in the Gulf of Mexico. The rule prohibits U.S.-

[10] This rule is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev.1.

[11] *https://www.faa.gov/space/environmental/nepa_docs.*

[12] *https://www.navcen.uscg.gov/broadcast-notice-to-mariners.*

[13] Section 8343 of the Authorization Act.

flagged vessels from entering any of the safety zones unless authorized by the District Commander, a Coast COTP, or a designated representative. Because the safety zones are within the U.S. EEZ, only U.S.-flagged vessels will be subject to enforcement. However, all foreign-flagged vessels are encouraged to remain outside the safety zones.

Three of the five temporary safety zones are located off the coast of FL and GA in the Atlantic Ocean in the following areas: (1) Approximately 65 nautical miles (NM) northeast from Jacksonville; (2) 29 NM northeast from Daytona; and (3) 17 NM east from Port Canaveral. The remaining two temporary safety zones are located off the coast of FL in the Gulf of Mexico in the following areas: (1) Approximately 58 NM northwest from Tampa Bay; and (2) 43 NM south from Tallahassee. The Jacksonville, Daytona, Cape Canaveral, and Tampa safety zones have an approximate area of 256 square miles, and are diamond shaped with the top point of the diamond pointing to the North. The Tallahassee safety zone is approximately 59 square miles in size and is triangular in shape. The Tallahassee safety zone, as provided by NASA and SpaceX, is the same size and shape as the other four safety zones; however, only a portion of the safety zone is within the jurisdiction of the Seventh Coast Guard District, so only the 59 square miles is included in this rule. The remaining portion of the safety zone falls within the Coast Guard District Eight AOR.

The coordinates for the safety zones are based on the furthest north, east, south, and west points of the reentry vehicles splashdown and are determined from data and modeling by SpaceX and NASA. The coordinates take into account the trajectories of the reentry vehicles coming out of orbit, the potential risk to the public, and the proximity to medical facilities that meet NASA requirements. The specific coordinates for the five temporary safety zones are presented in the regulatory text at the end of this document.

To the extent feasible, the District Commander, COTP, [14] or designated representative will inform the public of the activation of the five temporary safety zones by Notice of Enforcement (NOE) published in the **Federal Register** at least two days before the reentry vehicle splashdown. The NOE will identify the approximate date(s) during which a reentry vehicle splashdown and recovery operations will occur. The District Commander, or the COTP Savannah, and COTP Jacksonville will issue the NOEs for the safety zone located in Jacksonville. The District Commander, or COTP Jacksonville will issue the NOEs for the safety zone located in Daytona, and Cape Canaveral, FL. The District Commander or COTP St. Petersburg will issue the NOEs for the safety zones located Tampa and Tallahassee, FL.

To the extent possible, twenty-four hours before a reentry vehicle splashdown and recovery operations, the District Commander, COTP, or designated representative will inform the public whether one of the five safety zones will remain activated (subject to enforcement) until announced by BNM on VHF–FM channel 16, and/or MSIB (as appropriate) that the safety zone is no longer subject to enforcement. The specific temporary safety zone to be enforced will be based on varying mission and environmental factors, including atmospheric conditions, sea state, weather, and orbital calculations.

The MSIB will include the geographic coordinates of the activated safety zone, a map identifying the location of the activated safety zone, and information related to potential hazards associated with a reentry vehicle splashdown and recovery operations associated with space activities, including marine environmental and public health hazards, such the release of hydrazine and other potential oil or hazardous substances.

When the safety zone is activated, the District Commander, COTP, or designated representative will be able to restrict U.S.-flagged vessel movement including but not limited to transiting, anchoring, or mooring within the safety zone to protect vessels from hazards associated with space activities. The activated safety zone will ensure the protection of vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations. This includes protection during the recovery of a reentry vehicle, and the protection of personnel involved in reentry services and space support vessels.[15]

After a reentry vehicle splashdown, the District Commander, COTP, or designated representative will grant general permission to come no closer than 3 NM within the activated safety zone from any reentry vehicle or space support vessel engaged in the recovery operations. The recovery operations are expected to last approximately one hour. That should allow for sufficient time to let any potential toxic materials clear the reentry vehicle, recovery of the reentry vehicle by the space support vessel, and address any potential medical evacuations for any personnel involved in reentry services that were onboard the reentry vehicle.

Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the District Commander, COTP, or designated representative would issue a BNM on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement. A photograph of a reentry vehicle and space support vessel expected to use the reentry sites are available in the docket.

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, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and scope of the temporary safety zones. The temporary safety zones are limited in size and location to only those areas where reentry vehicles splashdown and recovery operations occur. The safety zones are limited in scope, as vessel traffic would be able to safely transit around the activated safety zone which will only impact a small part of the U.S. EEZ within the Atlantic Ocean and Gulf of Mexico. This rule involves the establishment of five temporary safety zones which will be activated two days before a reentry vehicle splashdown and recovery operations. Twenty-four hours before a reentry vehicle splashdown, the Coast Guard will inform the public whether any of the five temporary safety zones will remain activated. If one of the safety zones remains activated, the safety zone will be enforced for

[14] The Daytona, and Cape Canaveral, FL zones in the COTP Jacksonville AOR, along with a portion of the Jacksonville zone. The remaining portion of the Jacksonville zone is in the COTP Savannah AOR. The zones in the COTP St. Petersburg AOR are Tampa and Tallahassee, FL.

[15] *Space Support Vessel* means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

approximately four hours prior to a reentry vehicle splashdown and remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) that the safety zone is no longer subject to enforcement. After the reentry vehicle splashdown, general permission will be granted to come no closer than 3 NM within the activated safety zone. There is a danger associated with fumes from the reentry vehicle after it has splashed down. Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the activated safety zone will no longer be subject to enforcement. The activated safety zone will ensure the protection of vessels and waterway users from the potential hazards created by a reentry vehicle splashdown and recovery operations and the recovery of a reentry vehicle, personnel involved in reentry services, and space support vessel.

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 would not have a significant economic impact on a substantial number of small entities.

The safety zones are only expected to last a few hours from reentry vehicle splashdown to recovery. Vessels will be able to transit around the activated safety zone location during these recoveries. We do not anticipate any significant economic impact resulting from activation of the safety zones.

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 (Public Law 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. 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 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 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 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 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 rule would not result in such an expenditure, we do discuss the potential 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 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 rule involves the establishment of five temporary safety zones which would be activated two days before a reentry vehicle splashdown and recovery operations. Twenty-four hours before a reentry vehicle splashdown, one of the five temporary safety zones would remain activated. If one of the safety zones remains activated, the safety zone will be enforced for approximately four hours prior to a reentry vehicle splashdown and remain activated until announced by BNM on VHF–FM channel 16, and/or MSIB (as appropriate) that the safety zone is no longer subject to enforcement. After a reentry vehicle splashdown, general permission would be granted to come no closer than 3 NM within the activated safety zone. Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the activated safety zone would no longer be subject to enforcement. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A 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 amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0806 to read as follows:

§ 165.T07–0806 Safety Zones in Reentry Sites; Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee, Florida.

(a) *Location.* The coordinates used in this paragraph are based on the World Geodetic System (WGS) 1984. The following areas are safety zones:

(1) *Jacksonville site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, thence to Point 4, and then back to Point 1.

TABLE 1 TO PARAGRAPH (a)(1)

Point 1	31°06′28″ N	080°15′00″ W
Point 2	30°55′01″ N	080°01′40″ W
Point 3	30°43′30″ N	080°15′00″ W
Point 4	30°55′01″ N	080°28′19″ W

(2) *Daytona site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, thence to Point 4, and then back to Point 1.

TABLE 2 TO PARAGRAPH (a)(2)

Point 1	29°59′27″ N	080°40′01″ W
Point 2	29°48′00″ N	080°26′52″ W
Point 3	29°36′32″ N	080°40′01″ W
Point 4	29°48′00″ N	080°53′09″ W

(3) *Cape Canaveral site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, thence to Point 4, and then back to Point 1.

TABLE 3 TO PARAGRAPH (a)(3)

Point 1	29°02′27″ N	080°13′48″ W
Point 2	28°51′00″ N	080°00′46″ W
Point 3	28°39′32″ N	080°13′48″ W
Point 4	28°51′00″ N	080°26′49″ W

(4) *Tampa site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, thence to Point 4, and then back to Point 1.

TABLE 4 TO PARAGRAPH (a)(4)

Point 1	28°17′27″ N	083°54′00″ W
Point 2	28°06′00″ N	083°41′02″ W
Point 3	27°54′32″ N	083°54′00″ W
Point 4	28°06′00″ N	084°06′57″ W

(5) *Tallahassee site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, and then back to Point 1.

TABLE 5 TO PARAGRAPH (a)(5)

Point 1	29°22′38″ N	084°05′20″ W
Point 2	29°16′58″ N	083°58′55″ W
Point 3	29°06′20″ N	084°11′12″ W

(b) *Definitions.* As used in this section—

District Commander means Commander of the Seventh Coast Guard District.

Captain of the Port means the Captain of the Port of Jacksonville, the Captain of the Port of Savannah, or the Captain of the Port of St. Petersburg.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel; Coast Guard Representatives in the Merrill Operations Center; and other officers designated by the District Commander of the Seventh Coast Guard District or cognizant COTP.

Reentry Services means activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and the conduct of a reentry.

Reentry vehicle means a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact.

Space Support Vessel means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

Splashdown means the landing of a reentry vehicle into a body of water.

(c) *Regulations.* (1) Because the safety zones described in paragraph (a) of this section are within the U.S. Exclusive Economic Zone, only U.S.-flagged vessels are subject to enforcement. All foreign-flagged vessels are encouraged to remain outside the safety zones.

(2) In accordance with the general regulations in 33 CFR part 165, subpart C, no U.S.-flagged vessel may enter the safety zones described in paragraph (a) of this section unless authorized by the District Commander, COTP, or designated representative, except as provided in paragraph (d)(3) of this section.

(d) *Notification of enforcement.* (1) To the extent feasible, the District Commander, COTP, or designated representative will inform the public of the activation of the five safety zones described in paragraph (a) of this section by Notice of Enforcement published in the **Federal Register** at least two days before the splashdown.

(2) To the extent possible, twenty-four hours before a reentry vehicle splashdown, the District Commander, COTP, or designated representative will inform the public if one of the five safety zones described in paragraph (a) will remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) that the safety zone is no longer subject to enforcement.

(3) After a reentry vehicle splashdown, the District Commander, COTP, or designated representative will grant general permission to come no closer than 3 nautical miles of any reentry vehicle or space support vessel engaged in the recovery operations, within the activated safety zone described in paragraph (a) of this section.

(4) Once a reentry vehicle, and any personnel involved in reentry service, are removed from the water and secured onboard a space support vessel, the District Commander, COTP, or designated representative will issue a Broadcast Notice to Mariners on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement.

(e) *Effective period.* This section is effective from January 1, 2023, through February 4, 2024.

Dated: December 16, 2022.

Brendan C. McPherson,

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

[FR Doc. 2022–27730 Filed 12–22–22; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0217]

RIN 1625–AA00

Safety Zone; Fireworks Display, Sea Otter Point, Port of Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters from the surface to seabed, within a 150 yard radius of the fireworks launching point located at Sea

Otter Point in position 61°07′22″ North and 146°21′13″ West in the vicinity of the mouth of the Small Boat Harbor, Port of Valdez, Alaska, to limit access for the duration of the New Year's fireworks display. The safety zone is needed to protect mariners and vessels from potential hazards during the fireworks display.

DATES: This rule is effective from 9:50 p.m. through 10:45 p.m. on December 31, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0217 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Christian R. Heming, Waterways Management Division, U.S. Coast Guard; 907–835–7229, email *Christian.R.Heming@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Prince William Sound
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 publishing an NPRM would be impracticable and contrary to the public interest since immediate action is needed to minimize potential danger to the public during the event. Any delay in the effective date of this rule could prevent this community event from occurring or present a safety risk to people and vessels in the vicinity of the fireworks display. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the zone and on-scene Coast Guard assets will provide notice to mariners.

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 could prevent this community event from occurring or present a safety risk to people and vessels in the vicinity of the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Prince William Sound (COTP) has determined that potential hazards associated with the New Year's fireworks display will be a safety concern for anyone within a 150-yard radius of the fireworks launch site at Sea Otter Point. The safety zone is necessary to provide notice of the hazards presented by the fireworks display in order to achieve the goal of enhancing the safety of people and vessels attending the event in the navigable waters in the vicinity of the fireworks launching site.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:50 p.m. through 10:45 p.m. on December 31, 2022. The safety zone will cover all navigable waters within 150 yards of the locations where the fireworks will be launched at Sea Otter Point. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone would impact a small designated area of Port Valdez for a duration less than 1 hour. Vessel traffic is rare and normally low for this time of year at the Port of Valdez. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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 one hour that will prohibit entry within 150 yards of the launching site at Sea Otter Point, located near the entrance of the Small Boat Harbor in Port of Valdez, AK. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T17–0217 to read as follows:

§ 165.T17–0217 Safety Zone; Fireworks Display, Sea Otter Point, Port of Valdez, AK.

(a) *Location.* The following area is a safety zone: All navigable waters, from the surface to the seabed, of Port Valdez within a 150-yard radius from a position of 61°07′22″ N and 146°21′13″ W. This includes the entrance to the Port Valdez small boat harbor.

(b) *Definitions.* The following definition applies to this section: ''Designated representative'' means any commissioned, warrant, and petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port Prince William Sound.

(c) *Regulations.* (1) Under the general regulations contained in subpart C of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Prince William Sound or his designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the Coast Guard Captain of the Port Prince William Sound or his designated representative.

(3) Upon being hailed by a U.S. Coast Guard vessel or designated representative by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(4) Persons desiring to enter the safety zone may request permission from the Captain of the Port Prince William Sound via VHF Channel 13 or via telephone at (907) 835–7205.

(5) The Coast Guard will issue a broadcast notice to mariners to advise mariners of the temporary safety zone and on-scene Coast Guard representatives will provide notice to mariners during the event.

(d) *Enforcement period.* This rule will be enforced from 9:50 p.m. to 10:45 p.m. on December 31, 2022.

Dated: December 12, 2022.

P.A. Drayer,

Commander, U.S. Coast Guard, Captain of the Port Prince William Sound.

[FR Doc. 2022–27801 Filed 12–22–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R09–OAR–2022–0623; FRL–10031–02–R9]

Clean Air Act Operating Permit Program; California; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule, the Environmental Protection Agency (EPA) is promulgating approval of revisions to the Clean Air Act Operating Permit Program (title V) of the San Diego County Air Pollution Control District (SDCAPCD or District) in California. The EPA is taking this final action in accordance with Federal regulations and the Clean Air Act (CAA or ''Act'').

DATES: Effective February 21, 2023. Comments must be received on or before January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0623 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* 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 Weeda Ward, Permits Office (Air–3–1), U.S. Environmental Protection Agency, Region IX, (213) 244–1812, *ward.laweeda@epa.gov.*

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

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I. Why is the EPA using a direct final rule?

The EPA is publishing this final rule approving the SDCAPCD's proposed title V program revisions without prior proposal because we consider it to be a noncontroversial action and anticipate no adverse comments. However, elsewhere in this issue of the **Federal Register** publication, the EPA is simultaneously publishing a proposal that will also serve as a public notice of San Diego's proposed title V program revisions pursuant to title 40 of the Code of Federal Regulations (CFR), section 70.4(i).

II. Background

The CAA Amendments of 1990 include title V, which requires states to develop an operating permits program that meets the Federal criteria codified in 40 CFR part 70. The title V program requires certain sources of air pollution to obtain Federal operating permits from their respective states. These Federal operating permits improve enforcement and compliance by consolidating all applicable Federal requirements into one federally enforceable document. Before states can issue title V permits, the EPA must approve their programs as amendments to appendix A of part 70. States may submit revisions to their approved programs for EPA approval.

Title V of the CAA applies to ''major stationary sources'' as defined in title I, part D of the Act. 40 CFR 70.2 and 40 CFR 51.165(a)(1)(iv)(A) base the definition of ''major stationary source'' on the nonattainment classification of the area where the source is located. Table 1 shows the attainment/non-attainment/unclassifiable status for the applicable national ambient air quality standards (NAAQS) within the District's jurisdictional boundary. As shown in Table 1, SDCAPCD's jurisdiction is classified as Severe-15 nonattainment for the 2008 and 2015 8-hour ozone NAAQS.[1] The area is designated attainment/unclassifiable for all other NAAQS. See 40 CFR 81.305.

TABLE 1—AIR QUALITY ATTAINMENT STATUS

NAAQS pollutant/standards	San Diego County (NA = Non-attainment/Classification, A = Attainment, M = Maintenance, U = Unclassified)
Ozone 2008 8-Hour	NA, Severe-15.
Ozone 2015 8-Hour	NA, Severe-15.
Nitrogen dioxide (NO_2)	A/U.
$PM_{2.5}$ 2012 24-Hour	A/U.
PM_{10} 1987 24-Hour	A/U.
Sulfur dioxide (SO_2) 2010 Standards	A/U.
Carbon monoxide 1971 Standards	A/U.
Lead (pb) 2008 Standards	A/U.

The emission thresholds above which a title V operating permit is required pursuant to 40 CFR 70.3(a) and 40 CFR 51.165(a)(1)(iv)(A)(1) and (2) are shown in Table 2.

TABLE 2—TITLE V EMISSIONS THRESHOLDS [a]

Non-attainment designation/classification	VOC or NO_X (tpy)	CO (tpy)	PM_{10} (tpy)
Marginal	100	100	100
Moderate	100	100	100
Serious	50	50	70
Ozone transport region (other than Severe or Extreme)	50		
Severe	25		

[1] The EPA reclassified the San Diego region to a Severe ozone nonattainment area, effective July 2, 2021. This reclassification to Severe means that a major stationary source is now defined as a source emitting 25 tons or more per year of either oxides of nitrogen or volatile organic compounds. 86 FR 29522 (June 2, 2021).

TABLE 2—TITLE V EMISSIONS THRESHOLDS [a]—Continued

Non-attainment designation/classification	VOC or NO_X (tpy)	CO (tpy)	PM_{10} (tpy)
Extreme	10		

[a] 40 CFR 51.165(a)(1)(iv)(A).

III. What are the requirements for approval of revisions to Title V programs?

Pursuant to 40 CFR 70.4(i), either the EPA or the state may initiate a title V program revision ''when the relevant Federal or State statutes or regulations are modified or supplemented.'' It is the responsibility of the state to keep the EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures. Revision of a state program shall be accomplished as follows:

(a) The state submits a modified program description, Attorney General's statement (if necessary for expanded or additional authority), or other documents as the EPA determines to be necessary. 40 CFR 70.4(i)(2)(i).

(b) After the EPA receives a proposed program revision, it will publish a notice of the proposed change in the **Federal Register** and provide for a public comment period of at least 30 days. 40 CFR 70.4(i)(2)(ii).

(c) The Administrator shall approve or disapprove program revisions based on the requirements of 40 CFR part 70 and the Act. 40 CFR 70.4(i)(2)(iii).

(d) The EPA must publish a notice of approval in the **Federal Register** for any substantial program revisions. 40 CFR 70.4(i)(2)(iv).

(e) Approval of nonsubstantial revisions may be given by a letter from the Administrator to the Governor or a designee. 40 CFR 70.4(i)(2)(iv).

(f) A program revision shall become effective upon the approval of the Administrator. 40 CFR 70.4(i)(2)(iv).

IV. What is the State's proposed Title V program revision?

Table 3 lists the rules submitted as part of the SDCAPCD's title V program revisions and the dates they were adopted by the District and submitted by the California Air Resources Board (CARB), which is the governor's designee for California rule submittals.[2]

TABLE 3—SUBMITTED RULES

Rule No.	Rule title	Amended date	Submitted date [a]
1401	Title V Operating Permits—General Provisions	10/14/2021	1/24/2022

[a] CARB transmitted the submittal to the EPA by a letter dated January 20, 2022.

SDCAPCD revised the definition of ''complete application'' in Rule 1401 to incorporate Rule 1418,[3] ''Action on Applications,'' Section (a): Completeness Determination, by reference.

Additionally, SDCAPCD revised the definition of a major stationary source in Rule 1401, Section (c)(26), to incorporate Rule 20.1,[4] ''New Source Review—General Provisions,'' Section (c)(30), ''Federal Major Stationary Source'' by reference. Rule 20.1 contains the definition of a ''Federal Major Stationary Source'' pursuant to 40 CFR 70.2, Definitions, ''Major source.''

V. EPA Evaluation of Title V Program Revision

The EPA finds that the revised definition of a ''complete application'' aligns with the applicable 40 CFR part 70 elements. The referenced portion of Rule 1418 outlines the components needed to deem an application complete in accordance with the requirements listed in 40 CFR 70.7(a).

The EPA also finds that the revised definition of a ''Major Stationary Source'' in SDCAPCD Rule 1401, Section (c)(26), is in accordance with the definition listed in 40 CFR part 70.2. As explained in Section II of this Notice, SDCAPCD's jurisdiction is classified as Severe nonattainment for ozone and designated attainment or unclassifiable for all the other NAAQS. Under the definition of ''major stationary source'' in 40 CFR 70.2, sources with emission rates equal to or greater than 25 tons of NO_X or VOC per year that are located in Severe ozone nonattainment areas constitute major sources. Since Table 20.1—5b of SDCAPCD's Rule 20.1 lists these emission rate values in its definition of ''Federal Major Stationary Source,'' revised Rule 1401 references the appropriate emissions rates for the San Diego Air Basin based on the EPA's ozone nonattainment classifications.

All of the other revisions to Rule 1401 involve clarifying specific citations to rules that were already incorporated by reference in the previous version of the rule that was adopted on August 13, 2003.

VI. Final Action

As authorized in 40 CFR 70.4(i), the EPA is fully approving the submitted revisions because we find the proposed changes to Rule 1401 align with 40 CFR part 70 program elements. Rule 1401 refers to the correct VOC and NO_X emission thresholds appropriate for a Severe ozone nonattainment area. Therefore, the proposed changes are approvable as title V program revisions. We do not anticipate adverse comments, so we are finalizing this action without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments on the proposed revisions by

[2] Rule 1401 was amended to revise the definitions of ''complete application'' and ''major stationary source.'' A detailed explanation of the EPA's evaluation of these proposed revisions as well as a change copy of the revised rule can be found in the Technical Support Document (TSD) and docket.

[3] All references to SDCAPCD Rule 1418 refer to the current EPA-approved version of this rule. 68 FR 74871 (December 29, 2003). Any future changes to Rule 1418 that amend Section (a) of this rule will necessitate a conforming amendment to Rule 1401 and a subsequent title V program revision.

[4] All references to SDCAPCD Rule 20.1 refer to the current SIP-approved version of this rule. 87 FR 58729 (September 28, 2022). A correction to this final rule was published on October 27, 2022 (87 FR 65015). Any future changes to Rule 20.1 that amend Table 20.1–5b of this rule will necessitate a conforming amendment to Rule 1401 and a subsequent title V program revision.

January 23, 2023, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect. The EPA would then address all public comments in a subsequent final rule based on the proposed action. If we do not receive timely adverse comments, this direct final approval will be effective without further notice on December 23, 2022. Pursuant to section 307(b)(1) of the Act, judicial review of this final agency action may be sought by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of publication in the **Federal Register**. We do not plan to open a second comment period on this action, so any parties interested in commenting should do so at this time.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator may approve a state title V program submittal that complies with the provisions of the Act and applicable Federal regulations; 40 CFR 70.4(i). Thus, in reviewing title V program submittals, the EPA's role is to approve state choices, provided they meet the criteria of the CAA and the criteria, standards, and procedures defined in 40 CFR part 70.

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
- The state did not evaluate environmental justice considerations as part of its title V program revision submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994).

In addition, this action is not approved to apply in Indian country, as defined at 18 U.S.C. 1151, or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Therefore, 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 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 February 21, 2023. 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 70

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 14, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Appendix A to part 70 is amended under ''California'' by adding paragraph (x)(6) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * * * *

(x) * * *

(6) The District adopted revisions on October 14, 2021. The California Air Resources Board submitted revisions to the EPA on January 24, 2022. Approval is effective on December 23, 2022.

[FR Doc. 2022–27725 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–30

[Notice-MA–2022–09; Docket No. 2022–0002; Sequence No. 21]

Federal Travel Regulation (FTR); Emergency Travel

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of GSA Bulletin FTR 23–04, Emergency Travel.

SUMMARY: GSA Bulletin FTR 23–04 clarifies, highlights, and reminds agencies that they have the authority under the Federal Travel Regulation (FTR) to reimburse emergency travel expenses for employees on temporary duty travel (TDY) and en route relocation travel who are either incapacitated by illness or injury not due to their own misconduct.

DATES: *Applicable:* December 23, 2022.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Jill Denning, Office of Government-wide Policy, Office of Asset and

Transportation Management, at *travelpolicy@gsa.gov*. Please cite Notice of GSA Bulletin FTR 23–04.

SUPPLEMENTARY INFORMATION: Statutory authority at 5 U.S.C. 5702(b), as implemented at FTR § 301–30 and §§ 301–70.500 through 509, provide the requirements for emergency travel expense reimbursement, including under what conditions an employee may receive reimbursement for travel expenses in emergency situations, what travel expenses are allowed, and what the limitations are for payment of travel expenses. FTR Bulletin 23–04 reminds agencies that they may determine, consistent with case law, that events related to childbirth that occur while on TDY and en route relocation travel may be considered an ''incapacitating illness or injury'' for the purposes of emergency travel expense reimbursement. As with any situation involving interruption of travel due to illness or injury, each situation should be evaluated by the agency involved based upon the information available and agency policy to determine eligibility for reimbursement of emergency travel expenses enumerated at FTR § 301–30.4.

GSA Bulletin FTR 23–04 can be viewed in its entirety at *https://www.gsa.gov/ftrbulletins.*

Saul Japsen,

Acting Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2022–27729 Filed 12–22–22; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02; RTID 0648–XC590]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2022–2023 Commercial Quota Reduction for King Mackerel in the Run-Around Gillnet Fishery of the Gulf of Mexico

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

ACTION: Temporary rule; commercial quota reduction.

SUMMARY: NMFS implements an accountability measure (AM) through this temporary rule for commercial harvest of king mackerel in the southern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that landings of king mackerel harvested by run-around gillnet gear in the Gulf southern zone exceeded the commercial annual catch limit (ACL) in the 2021–2022 fishing year. Therefore, NMFS reduces the southern zone commercial ACL for king mackerel fishing using run-around gillnet gear in the Gulf EEZ during the 2022–2023 fishing year. This commercial ACL reduction is necessary to protect the Gulf king mackerel resource.

DATES: The temporary rule is effective from 6 a.m. local time on January 17, 2023, through June 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish in the Gulf includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

All weights for the Gulf migratory group of king mackerel (Gulf king mackerel) described in this temporary rule apply as either round or gutted weight.

The commercial ACL, which is equivalent to the commercial quota, for Gulf king mackerel is divided into separate ACLs (quotas) for hook-and-line and run-around gillnet gear. The use of run-around gillnets for king mackerel is restricted to the Gulf southern zone. The Gulf southern zone includes the EEZ off Collier and Monroe Counties in south Florida. The Gulf southern zone encompasses an area of the EEZ south of a line extending due west from the boundary of Lee and Collier Counties on the southwest coast of Florida, and south of a line extending due east from the boundary of Monroe and Miami-Dade Counties on the southeast coast of Florida (50 CFR 622.369(a)(1)(iii)).

For the 2021–2022 fishing season, the commercial gillnet quota for Gulf king mackerel was 575,400 lb (260,997 kg). Regulations at 50 CFR 622.8(b) and 622.388(a)(1)(i) require NMFS to close any component of the king mackerel commercial sector when its respective quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. On March 2, 2022, NMFS determined that the 2021–2022 commercial gillnet quota had been reached, and closed the commercial gillnet component for the remainder of the 2021–2022 fishing year (87 FR 11596, March 2, 2022).

NMFS' most recent landings data for the 2021–2022 fishing year indicate that the commercial gillnet component exceeded its 575,400-lb (260,997-kg) quota by 18,962 lb (8,601 kg). The AM specified in 50 CFR 622.388(a)(1)(iii) states if commercial landings of king mackerel caught by run-around gillnet gear exceed the commercial gillnet ACL, then NMFS will reduce the commercial gillnet ACL in the following fishing year by the amount of the ACL overage.

The fishing season for run-around gillnet gear is currently closed from July 1, 2022, through January 16, 2023, and will open at 6 a.m. local time on January 17, 2023. The 2022–2023 fishing year continues through June 30, 2023. On December 7, 2022, NMFS published a final rule implementing Framework Amendment 11 under the FMP (87 FR 74989). The final rule increased the catch limits for Gulf king mackerel, including the commercial quota for harvest by gillnet gear. Effective January 6, 2023, the king mackerel commercial gillnet component quota for the 2022–2023 fishing year will be 671,328 lb (304,509 kg).

Consistent with the AM, NMFS reduces the 2022–2023 commercial gillnet quota by the amount of the 2021–2022 commercial gillnet ACL overage to 634,222 lb (287,678 kg). If king mackerel commercial gillnet landings do not exceed the ACL in the 2022–2023 fishing year, then in the 2023–2024 fishing year, the component's commercial quota will be 671,328 lb (304,509 kg) as specified in 50 CFR 622.384(b)(1)(iii)(B).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.388(a)(1)(iii), which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, because prior notice and opportunity for public comment on this temporary rule is unnecessary. Such procedure is unnecessary because the rule that implemented the commercial ACL and the associated AM for the

commercial ACL reduction has already been subject to public notice and comment, and all that remains is to notify the public of the commercial ACL reduction.

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

Dated: December 19, 2022.

Kelly Denit,

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

[FR Doc. 2022–27915 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 211217–0262; RTID 0648–XC624]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From NC to VA

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2022 commercial summer flounder quota to the Commonwealth of Virginia. This adjustment to the 2022 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2022 commercial quotas for North Carolina and Virginia.

DATES: Effective December 20, 2022 through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2022 allocations were published on December 23, 2021 (86 FR 72859).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (FMP), as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: The transfer or combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

North Carolina is transferring 19,458 lb (8,826 kg) to Virginia through mutual agreement of the States. This transfer was requested to repay landings made by an out-of-state permitted vessel under a safe harbor agreement. The revised summer flounder quotas for 2022 are: North Carolina, 3,314,881 lb (1,503,605 kg) and Virginia, 2,805,674 lb (1,272,632 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: December 19, 2022.

Kelly Denit,

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

[FR Doc. 2022–27914 Filed 12–20–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 220318–0074]

RIN 0648–BK90

Pacific Island Fisheries; 2022–2025 Annual Catch Limits and Accountability Measures for Main Hawaiian Islands Uku (Gray Jobfish)

Correction

In rule document 2022–06285, appearing on pages 17195 through 17196 in the issue of Monday, March 28, 2022, make the following correction:

§ 665.211 Annual Catch Limits (ACL) and Annual Catch Targets (ACT) [Corrected]

■ 1. On page 17196, in the table at the top-center of the page, in the eighth line and fourteenth lines, the column headings containing the acronym for Annual Catch Target (''ACT'') are corrected to read ''ACL'', the acronym for Annual Catch Limit. The table is corrected to print as set forth below:

Fishery	2021-22 ACL (lb)	2022-23 ACL (lb)	2023-24 ACL (lb)
Deep 7 bottomfish	492,000	492,000	492,000

Fishery	2022 ACL (lb)	2023 ACL (lb)	2024 ACL (lb)	2025 ACL (lb)
Uku	295,419	295,419	295,419	295,419
Fishery	**2022 ACT (lb)**	**2023 ACT (lb)**	**2024 ACT (lb)**	**2025 ACT (lb)**
Uku	291,010	291,010	291,010	291,010

[FR Doc. C1–2022–06285 Filed 12–22–22; 8:45 am]
BILLING CODE 0099–10–D

Proposed Rules

Federal Register
Vol. 87, No. 246
Friday, December 23, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1651; Project Identifier MCAI–2022–00893–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–04–02, which applies to certain Dassault Aviation Model FALCON 2000EX airplanes. AD 2021–04–02 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2021–04–02, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2021–04–02 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 6, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1651; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2022–1651.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1651; Project Identifier MCAI–2022–00893–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–04–02, Amendment 39–21423 (86 FR 10738, February 23, 2021) (AD 2021–04–02), for certain Dassault Aviation Model FALCON 2000EX airplanes. AD 2021–04–02 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2020–0114, dated May 20, 2020 (EASA 2020–0114) (which corresponds to FAA AD 2021–04–02), to correct an unsafe condition.

AD 2021–04–02 requires revising the existing maintenance or inspection program, as applicable, to incorporate

new or more restrictive airworthiness limitations. The FAA issued AD 2021–04–02 to address reduced structural integrity of the airplane. AD 2021–04–02 specifies that accomplishing the revision required by paragraph (g) or (i) of that AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for Dassault Aviation Model FALCON 2000EX airplanes.

Actions Since AD 2021–04–02 Was Issued

Since the FAA issued AD 2021–04–02, EASA superseded AD 2020–0114 and issued EASA AD 2022–0136, dated July 6, 2022 (EASA AD 2022–0136) (referred to after this as the MCAI), for all Dassault Aviation Model FALCON 2000EX airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after January 15, 2022, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet for those airplanes; this AD therefore does not include these airplanes in the applicability.

The FAA is proposing this AD to address reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1651.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0136. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2020–0114, which the Director of the Federal Register approved for incorporation by reference as of March 30, 2021 (86 FR 10738, February 23, 2021).

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain certain of the requirements of AD 2021–04–02. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0136 already described, as proposed for incorporation by reference. Any differences with EASA AD 2022–0136 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (n)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the IBR of EASA AD 2020–0114 and incorporate EASA AD 2022–0136 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0136 and EASA AD 2020–0114 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2020–0114 or EASA AD 2022–0136 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2020–0114 or EASA AD 2022–0136. Service information required by EASA AD 2020–0114 and EASA AD 2022–0136 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1651 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 245 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2021–04–02 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past,

the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–04–02, Amendment 39–21423 (86 FR 10738, February 23, 2021); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2022–1651; Project Identifier MCAI–2022–00893–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 6, 2023.

(b) Affected ADs

(1) This AD replaces AD 2021–04–02, Amendment 39–21423 (86 FR 10738, February 23, 2021) (AD 2021–04–02).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 2000EX airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 15, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2021–04–02, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before February 15, 2020, 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 2020–0114, dated May 20, 2020 (EASA AD 2020–0114). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0114, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2021–04–02, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0114 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0114 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0114 within 90 days after March 30, 2021 (the effective date of AD 2021–04–02).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0114 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0114, or within 90 days after the March 30, 2021 (the effective date of AD 2021–04–02), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0114 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0114 does not apply to this AD.

(i) Retained Provision: No Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2021–04–02, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0114.

(j) New Maintenance or Inspection Program Revision

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0136, dated July 6, 2022 (EASA AD 2022–0136). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0136

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0136 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0136 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0136 is at the applicable ''limitation'' and ''associated thresholds'' as

incorporated by the requirements of paragraph (3) of EASA AD 2022–0136, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0136 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0136 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections), and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0136.

(m) Terminating Action for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FALCON 2000EX airplanes only.

(n) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Additional Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.*

(p) 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.

(3) The following service information was approved for IBR on January 27, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0136, dated July 6, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 30, 2021 (86 FR 10738, February 23, 2021).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0114, dated May 20, 2020.

(ii) [Reserved]

(5) For EASA ADs 2020–0114 and 2022–0136, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(6) 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.

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

Issued on December 19, 2022.

Christina Underwood,

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

[FR Doc. 2022–27872 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1653; Project Identifier MCAI–2022–01193–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This proposed AD was prompted by reports of flap power unit (FPU) pressure switch failures resulting in flap inoperative events. This proposed AD would require replacing the FPU pressure switch or the FPU. This proposed AD would also prohibit the installation of affected parts. 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 February 6, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1653; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* website *dehavilland.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call (206) 231–3195.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1653; Project Identifier

MCAI–2022–01193–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

Transport Canada, which is the aviation authority for Canada, has issued AD CF–2022–52, dated September 1, 2022 (Transport Canada AD CF–2022–52) (also referred to as the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. The MCAI states there have been increasing reports of FPU pressure switch failures, part number (P/N) 150135–1 or P/N 162660–1, over the past year leading to a high number of flap inoperative events in flight and on the ground. An investigation has determined the root cause to be a deformation of the FPU pressure switch internal mechanism due to hydraulic pressure spikes. If not corrected, a failed FPU pressure switch could lead to a failure of the FPU resulting in abnormal flap landings and increased landing distances, which could require the use of emergency landing procedures and/or airfield diversions. The improved pressure switch, P/N 162660–2, has a restrictor insert in the pressure switch inlet.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1653.

Related Service Information Under 1 CFR Part 51

The FAA reviewed De Havilland Aircraft of Canada Limited (DHC) Service Bulletin (SB) 84–27–75, dated June 23, 2022 (SB 84–27–75). SB 84–27–75 is a combined service bulletin consisting of DHC SB 84–27–75 and Collins Aerospace SB 27–0029, Basic Issue, dated June 13, 2022. This service information specifies procedures for replacing FPU P/N C148656–1 or C148656–2 with a new FPU P/N C148656–3, or replacing FPU pressure switch P/N 150135–1 or 162660–1 within the FPU with a new pressure switch P/N 162660–2 and re-identifying the FPU as P/N C148656–3. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also prohibit the installation of affected parts.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 53 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 6 work-hours × $85 per hour = Up to $510	Up to $3,000	Up to $3,510	Up to $186,030.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–1653; Project Identifier MCAI–2022–01193–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 6, 2023.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

Air Transport Association (ATA) of America Code: 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by reports of flap power unit (FPU) pressure switch failures resulting in flap inoperative events. The FAA is issuing this AD to address FPU pressure switch failures. The unsafe condition, if not addressed, could result in abnormal flap landings and increased landing distances, which could require the use of emergency landing procedures and/or airfield diversions.

(f) Compliance

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

(g) Requirements

Within 8,000 flight hours or 48 months after the effective date of this AD, whichever occurs first: Do the actions specified in either paragraph (g)(1) or (2) of this AD.

(1) Replace FPU part number (P/N) C148656–1 or C148656–2 with P/N C148656–3 in accordance with Section 3.B. paragraph (1), of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–27–75, dated June 23, 2022.

(2) Replace FPU pressure switch P/N 150135–1 or 162660–1 with P/N 162660–2 in accordance with Section 3.B. paragraph (2), of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–27–75, dated June 23, 2022, and reidentify the FPU as P/N C148656–3 in accordance with Section 3.C of the Accomplishment Instructions of Collins Aerospace S B 27–0029, Basic Issue, dated June 13, 2022.

Note 1 to paragraph (g): The service information referred to De Havilland Aircraft of Canada Limited (DHC) Service Bulletin (SB) 84–27–75, dated June 23, 2022, is a combined service bulletin consisting of DHC SB 84–27–75 and Collins Aerospace SB 27–0029, Basic Issue, dated June 13, 2022.

(h) Parts Installation Prohibition

As of the effective date of this AD, do not install a FPU having P/N C148656–1 or C148656–2 or a FPU pressure switch having P/N 150135–1 or 162660–1.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada; or De Havilland Aircraft of Canada Limited's Transport Canada Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

(1) For related information, refer to Transport Canada AD CF–2022–52, dated September 1, 2022. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1653.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300; email *9-avs-nyaco-cos@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) De Havilland Aircraft of Canada Limited Service Bulletin 84–27–75, dated June 23, 2022.

(ii) [Reserved]

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

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call (206) 231–3195.

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

Issued on December 19, 2022.

Christina Underwood,

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

[FR Doc. 2022–27876 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1613; Airspace Docket No. 22–ASO–27]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface at Key West International Airport and Key West Naval Air Station (NAS), FL as a result of biennial airspace evaluations. This action would extend the Class E airspace extending upward from 700 feet above the surface for both airports by 0.1 nautical miles to ensure the safe transition to/from the terminal environment, as well as update the geographic coordinates for the airports and the Key West VORTAC. 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 February 6, 2023.

ADDRESSES: Send comments on this proposal to: 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 Docket No. FAA–2022–1613; Airspace Docket No. 22–ASO–27 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *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.

FOR FURTHER INFORMATION CONTACT: Jennifer Ledford, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5946.

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 airspace for Key West International Airport and Key West NAS, Key West, FL, 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–2022–1613 and Airspace Docket No. 22–ASO–27) 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 *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–2022–1613; Airspace Docket No. 22–ASO–27.'' The postcard will be dated/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 *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 on federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G 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 for Key West International Airport and Key West NAS by extending the airspace for each airport from within a 6.4-mile radius to a 6.5-mile radius, and by updating the airports' geographic coordinates to coincide with the FAA's database.

In addition, this action would replace the outdated terms Airport/Facility Directory with the term Chart Supplement and Notice to Airmen with the term Notice to Air Missions, in the Class D and Class E airspace descriptions.

Class D and E airspace designations are published in Paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Key West, FL [Amended]

Key West International Airport, FL
(Lat. 24°33′22″ N, long. 81°45′39″ W)
Key West NAS
(Lat. 24°34′29″, long. 81°41′12″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL beginning at Lat. 24°37′12″ N, long. 81°44′41″ W; to Lat. 24°33′04″ N, long. 81°43′48″ W; to Lat. 24°31′15″ N, long. 81°45′22″ W; to Lat. 24°30′35″ N, long. 81°45′14″ W; thence clockwise via the 3.9-mile radius of Key West International Airport to the intersection of the 5.3-mile radius of Key West NAS, thence clockwise via the 5.3-mile radius of Key West NAS to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

ASO FL D Key West NAS, FL [Amended]

Key West NAS, FL
(Lat. 24°34′29″ N, long. 81°41′12″ W)
Key West International Airport
(Lat. 24°33′22″ N, long. 81°45′39″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Key West NAS, excluding that airspace within the Key West International Airport Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to Class D Surface Area.

* * * * *

ASO FL E4 Key West, FL [Amended]

Key West International Airport, FL
(Lat. 24°33′22″ N, long. 81°45′39″ W)
Key West NAS
(Lat. 24°34′29″ N, long. 81°41′12″ W)
Key West VORTAC
(Lat. 24°35′09″ N, long. 81°48′02″ W)

That airspace extending upward from the surface within 3.1 miles on each side of the Key West VORTAC 309° radial extending from the 3.9-mile radius of the Key West International Airport and the 5.3-mile radius of Key West NAS to 7 miles northwest of the Key West VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. 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.

* * * * *

ASO FL E5 Key West, FL [Amended]

Key West International Airport, FL
(Lat. 24°33′22″ N, long. 81°45′39″ W)
Key West VORTAC
(Lat. 24°35′09″ N, long. 81°48′02″ W)
Key West NAS
(Lat. 24°34′29″ N, long. 81°41′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Key West International Airport and within 3.1 miles on each side of the Key West VORTAC 309° radial, extending from the 6.5-mile radius to 7 miles northwest of the Key West VORTAC; within a 6.8-mile radius of Key West NAS (Boca Chica).

Issued in College Park, Georgia, on December 15, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization

[FR Doc. 2022–27930 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1614; Airspace Docket No. 22–ASO–28]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace; Macon, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Middle Georgia Regional Airport, Macon, GA, as a result of the biennial airspace evaluation. This action would extend the Class D airspace and Class E surface airspace for the airport and reduce Class E airspace upward from 700 feet above the surface surrounding Middle Georgia Regional and Macon Downtown Airports. The extension of Class D and Class E surface airspace at Middle Georgia Regional Airport will not impact the Class D or Class E surface airspace boundaries of Robins AFB. 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 February 6, 2023.

ADDRESSES: Send comments on this proposal to: 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 Docket No. FAA–2022–1614; Airspace Docket No. 22–ASO–28 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *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.

FOR FURTHER INFORMATION CONTACT: Jennifer Ledford, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5946.

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 airspace for Middle Georgia Regional Airport, Macon, GA, 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–2022–1614 and Airspace Docket No. 22–ASO–28) 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 *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–2022–1614; Airspace Docket No. 22–ASO–28.'' The postcard will be dated/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 *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 on federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G 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 airspace for Middle Georgia Regional Airport by extending the airspace from a 4.1-mile radius to a 4.9-mile radius surrounding the airport. Class E surface airspace would also be amended for the airport. Class E surface airspace for Middle Georgia Regional Airport would be amended by extending the airspace from a 4.1-mile radius to a 4.9-mile radius surrounding the airport. The Class E airspace extending upward from 700 feet above the surface would be amended to within a 7.4-mile radius of Middle Georgia Regional Airport (reduced from a 7.8-mile radius). In addition, this action would replace the outdated terms Airport/Facility Directory with the term Chart Supplement and Notice to Airmen with the term Notice to Air Missions, in the airspace descriptions.

In addition, the Class E airspace extending upward from 700 feet above the surface would be amended to within a 7.5-mile radius of Macon Downtown Airport (reduced from an 8.8-mile radius). In addition, this action would replace the outdated terms Airport/Facility Directory with the term Chart Supplement and Notice to Airmen with the term Notice to Air Missions, in the airspace descriptions.

Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Macon, GA [Amended]

Middle Georgia Regional Airport, Macon, GA
(Lat. 32°41′34″ N, long. 83°38′57″ W)
Robins AFB
(Lat. 32°38′25″ N, long. 83°35′31″ W)

That airspace extending upward from the surface to and including 2,900 feet MSL from the intersection of the Middle Georgia Regional Airport 210° bearing and the 5.5-mile radius of the Robins AFB Airport, clockwise along the 4.9-mile radius centered on Middle Georgia Regional Airport to the intersection of Middle Georgia Regional Airport 065° bearing and Robins AFB Airport 5.5-mile radius, counter-clockwise along the Robins AFB Airport 5.5-mile radius to the intersection of the Middle Georgia Regional Airport 055° bearing, directly across to the Middle Georgia Regional Airport 219° bearing and the intersection of the Robins AFB Airport 5.5-mile radius, counter-clockwise along the Robins AFB Airport 5.5-mile radius to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace

* * * * *

ASO GA E2 Macon, GA [Amended]

Middle Georgia Regional Airport, Macon, GA
(Lat. 32°41′34″ N, long. 83°38′57″ W)
Robins AFB
(Lat. 32°38′25″ N, long. 83°35′31″ W)

That airspace extending upward from the surface from the intersection of the Middle Georgia Regional Airport 210° bearing and the 5.5-mile radius of the Robins AFB Airport, clockwise along the 4.9-mile radius centered on Middle Georgia Regional Airport to the intersection of Middle Georgia Regional Airport 065° bearing and Robins AFB Airport 5.5-mile radius, counter-clockwise along the Robins AFB Airport 5.5-mile radius to the intersection of the Middle Georgia Regional Airport 055° bearing, directly across to the Middle Georgia Regional Airport 219° bearing and the intersection of the Robins AFB Airport 5.5-mile radius, counter-clockwise along the Robins AFB Airport 5.5-mile radius to the point of beginning. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. 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.

* * * * *

ASO GA E5 Macon, GA [Amended]

Middle Georgia Regional Airport, GA
(Lat. 32°41′34″ N, long. 83°38′57″ W)
Macon Downtown Airport
(Lat. 32°49′18″ N, long. 83°33′43″ W)
Robins AFB
(Lat. 32°38′25″ N, long. 83°35′31″ W)
Perry-Houston County Airport
(Lat. 32°30′38″ N, long. 83°46′02″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Middle Georgia Regional Airport, and within a 7.5-mile radius of Macon Downtown Airport, a 7-mile radius of Robins AFB, and a 9.8-mile radius of Perry-Houston County Airport.

Issued in College Park, Georgia, on December 15, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization

[FR Doc. 2022–27931 Filed 12–22–22; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–989]

Schedules of Controlled Substances: Temporary Placement of Etizolam, Flualprazolam, Clonazolam, Flubromazolam, and Diclazepam in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is providing this notice of intent to publish a temporary order to schedule five synthetic benzodiazepine substances, as identified in this notice, in schedule I of the Controlled Substances Act. When it is issued, the temporary scheduling order will impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle these five specified controlled substances.

DATES: This notice of intent is effective December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: The notice of intent contained in this document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order [1] (in the form of a temporary amendment) to add the following five substances, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, to schedule I under the Controlled Substances Act (CSA):

- 4-(2-chlorophenyl)-2-ethyl-9-methyl-6*H*-thieno[3,2-*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as etizolam),
- 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as flualprazolam),
- 6-(2-chlorophenyl)-1-methyl-8-nitro-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as clonazolam),
- 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (alternate chemical name: 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-[1,2,4]triazolo[4,3-*a*][1,4]benzodiazepine and commonly known as, flubromazolam), and
- 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2*H*-benzo[*e*][1,4]diazepin-2-one (commonly known as diclazepam).

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

The temporary scheduling order will be published in the **Federal Register** on or after January 23, 2023.

Legal Authority

The CSA provides the Attorney General (as delegated to the Administrator of DEA (Administrator) pursuant to 28 CFR 0.100) with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if the Administrator finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Administrator may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308.

Background

The CSA requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of an intent to place a substance in schedule I of the CSA temporarily (*i.e.,* to issue a temporary scheduling order). 21 U.S.C. 811(h)(4). The Administrator transmitted the required notice to the Assistant Secretary for Health of HHS (Assistant Secretary),[2] by letter dated October 25, 2021, regarding etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. The Assistant Secretary responded to this notice by a letter dated January 3, 2022, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications (INDs) or approved new drug applications (NDAs) for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. The Assistant Secretary also stated that HHS had no objection to the temporary placement of these substances in schedule I. Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam currently are not listed in any schedule under the CSA, and no exemptions or approvals under 21 U.S.C. 355 are in effect for these five benzodiazepine substances.

To find that temporarily placing a substance in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator must consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). This consideration includes any information indicating actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution of these substances.

Substances meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I have high potential for abuse, no currently accepted medical use in treatment in the United States, and no accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Five Benzodiazepine Substances: Etizolam, Flualprazolam, Clonazolam, Flubromazolam, and Diclazepam

The dramatic increase in trafficking and abuse associated with novel psychoactive substances (NPS) of the benzodiazepine class in the United States has become a national public health concern in recent years. The availability of NPS benzodiazepine substances in the illicit drug market continues to pose an imminent hazard to the public safety. The Centers for Disease Control and Prevention (CDC) highlights this issue in their Morbidity and Mortality Weekly Report (MMWR) published on August 27, 2021.[3] CDC indicated that, from April 2019 to June 2020, prescription and illicit benzodiazepine-involved overdose deaths increased by 21.8% and 519.6% respectively. Additionally, benzodiazepines were involved in nearly 7,000 overdose deaths in 23 states from January 2019 to June 2020, accounting for 17% of all drug overdose deaths. Adverse health effects associated with the abuse of such substances known collectively as the ''designer benzodiazepines,'' their continued evolution, and increased popularity of these substances have been a serious concern in recent years. The increase in the co-use of opioids with the ''designer benzodiazepines'' has become a particular concern as the United States continues to experience an unprecedented epidemic of opioid misuse and abuse. CDC's 2021 MMWR further states that between January and June 2020, 92.7% of benzodiazepine-involved deaths also involved opioids and 66.7% involved illicitly manufactured fentanyl. It is well known that the combination of benzodiazepines with opioids substantially enhances the potential for lethality. Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam are benzodiazepine substances recently identified on the illicit drug market in the United States.

The abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam has been associated with numerous fatalities in recent years in the United States. The positive identification of these five substances in post-mortem cases is a serious concern to the public safety. Additionally, law enforcement data indicate that the substances at issue here have significant presence in the United States illicit drug market. In light of the law enforcement encounters and fatalities associated with the abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam these substances pose an imminent hazard to public safety.

Available data and information for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam, summarized below, indicate that these substances have high potential for abuse, no currently accepted medical use in treatment in the United States, and lack of accepted safety for use under medical supervision. DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–989.

Factor 4. History and Current Pattern of Abuse

The chemical synthesis of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam were previously reported in the scientific literature; however, the research did not lead to any medically approved products in the United States. Since 2012, numerous synthetic drugs belonging to the benzodiazepine class have begun to emerge in the illicit drug market as evidenced by the identification of these drugs in forensic drug exhibits from the National Forensic Laboratory Information System (NFLIS),[4] and toxicology samples.

[2] 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.

[3] Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report: Trends in Nonfatal and Fatal Overdoses Involving Benzodiazepines—38 States and the District of Columbia, 2019–2020. Vol. 70, No. 34. August 27, 2021.

[4] NFLIS represents an important resource in monitoring illicit drug trafficking, including the

Beginning in 2012, etizolam emerged on the illicit synthetic drug market as evidenced by its identification in drug seizures in the United States. In recent years, there has been a rise in the recreational use of etizolam. As evidenced by their identification in NFLIS-Drug, diclazepam emerged in the United States' illicit drug market in 2014, flubromazolam and clonazolam in 2015, and flualprazolam in 2017. While these substances are not approved for medical use in the United States, etizolam is approved for medical use in Italy, India, and Japan.[5] In a letter dated January 3, 2022, the Assistant Secretary informed DEA that there are no INDs or FDA-approved NDAs for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in the United States. Hence, there are no legitimate channels for these substances as marketed drug products in the United States. These five benzodiazepine substances are likely to be abused in the same manner as other sedative hypnotics. They have been identified in tablet form, as white to beige powders, or in liquid forms, typically of unknown purity or concentration.

Based on data from NFLIS, law enforcement often encountered etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in counterfeit pills, liquid, or powder. Substances often found in combination with some of these benzodiazepines include substances of abuse such as heroin (schedule I), fentanyl (schedule II), other substances structurally related to fentanyl (schedule I and other non-controlled substances), other benzodiazepines (both FDA-approved schedule IV benzodiazepines and other novel non-controlled benzodiazepines), and tramadol (schedule IV). Evidence suggests that individuals are using these substances to obtain ''legal highs'' or to self-medicate. Information gathered from case histories and autopsy findings shows that deaths involving etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam were predominantly associated with poly-drug use.

Factor 5. Scope, Duration, and Significance of Abuse

Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam are novel benzodiazepines, and evidence suggests they are abused for their sedative effects (see Factor 6). In death investigations involving polysubstance use, the co-appearance of benzodiazepines and opioids in toxicological analysis was common. Between August 2019 and January 2020, flualprazolam and etizolam were identified in seven and six postmortem blood specimens, respectively, out of 18 deaths associated with the abuse of isotonitazene, a schedule I opioid that was recently controlled. These cases corresponded to four states—Illinois (9), Indiana (7), Minnesota (1), and Wisconsin (1). Most (n = 12) of the decedents were male. The ages ranged from 24 to 66 years old with an average age of 41 years.[6]

In another recent publication, 20 forensic postmortem cases were reviewed and analyzed for the presence of metonitazine, NPS benzodiazepines, and opioids. Results indicated that NPS benzodiazepines were the most commonly identified substances found in combination with metonitazene. Specifically, clonazolam was positively identified in four cases, etizolam in two cases, flualprazolam in two cases, and pyrazolam in one case.[7] Law enforcement encounters of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam as reported to NFLIS (Federal, State and local laboratories) include 34,781 drug reports since 2014 (queried 01/13/2022). NFLIS-Drug registered three encounters of etizolam in 2012 (first year of encounter) and 3,022 reports in 2021. Flualprazolam was first encountered in 2017 when one report was identified in NFLIS-Drug, and then in 2021, 1,305 encounters were reported. A similar trend was seen with clonazolam. During 2015 (its first year of encounter), 57 cases were reported in NFLIS-Drug, while 3,994 drug reports were identified in 2021. NFLIS-Drug registered five diclazepam encounters in 2014 (its first year of encounter) and 54 encounters in 2021. Flubromazolam encounters totaled 14 in 2015 (its first year of encounter) and 414 in 2021.

The population likely to abuse etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam appears to be the same as those abusing prescription benzodiazepines, barbiturates, and other sedative hypnotic substances. This is evidenced by drug user reports associated with these substances. Because abusers of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam are likely to obtain these substances through unregulated sources, the identity, purity, and quantity of these substances are uncertain and inconsistent, thus posing significant adverse health risks to the end user.

The misuse and abuse of benzodiazepines have been demonstrated and are well-characterized.[8] According to the most recent data from the National Survey on Drug Use and Health (NSDUH),[9] as of 2020, an estimated 4.8 million people aged 12 years or older misused prescription benzodiazepines in the past year. This included 1.1 million young adults aged 18 to 25, 3.5 million adults aged 26 or older, and 157,000 adolescents aged 12 to 17. This population abusing prescription benzodiazepines is likely to be at risk of abusing etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. Individuals who initiate

diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS is a comprehensive information system that includes data from forensic laboratories that handle more than 96% of an estimated 1.0 million distinct annual state and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011.

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

[6] Krotulski AJ, Papsun DM, Kacinko SL, and Logan BK. Isotonitazene Quantitation and Metabolite Discovery in Authentic Forensic Casework. Journal of Analytical Toxicology, 2020, 44(6):521–530.

[7] Krotulski AJ, Papsun DM, Walton SE, and Logan BK. Metonitazene in the United States-Forensic toxicology assessment of a potent new synthetic opioid using liquid chromatography mass spectrometry. Drug Testing Analysis, 2021, 13(10):1697–1711.

[8] Votaw VR, Geyer R, Rieselbach MM, and McHugh RK. The epidemiology of benzodiazepine misuse: A systematic review. Drug Alcohol Dependence, 2019, 200:95–114.

[9] The National Survey on Drug Use and Health (NSDUH), formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by the Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population 12 years of age and older. The survey excludes homeless people who do not use shelters, active military personnel, and residents of institutional group quarters such as jails and hospitals. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (*i.e.,* ever used), past year, and past month abuse or dependence. The 2020 NSDUH annual report is available at *https://www.samhsa.gov/data/* (last accessed February 8, 2022).

use of these five substances (*i.e.,* use a drug for the first time) are likely to be at risk of developing substance use disorder, overdose, and death at rates similar to that of other sedative hypnotics (*e.g.,* alprazolam, clonazolam, etc.). Law enforcement or toxicology reports demonstrate that the five substances at issue are being distributed and abused.

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

The increase in benzodiazepine-related overdose deaths in the United States has been exacerbated recently by the availability of NPS benzodiazepines in the illicit drug market. Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam have been described as derivatives of other known benzodiazepines, each possessing various degrees of potency. Evidence suggests these substances are being abused for their sedative/hypnotic effects (see DEA 3-Factor Analysis). Public health risks associated with the five substances at issue here relate to their pharmacological similarities with known benzodiazepines. Thus, risk to the public health is associated with adverse reactions in humans, which are expected to include CNS depressant-like effects, such as slurred speech, ataxia, altered mental state, and respiratory depression.

Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam have been increasingly identified in toxicology reports, death investigations, and driving under the influence of drugs (DUID) cases since their first appearance in law enforcement seizures. According to the Center for Forensic Science Research and Education (CFSRE), a non-profit organization in collaboration with the Department of Justice and Centers for Disease Control, between 2020 and 2021, etizolam was the most identified NPS benzodiazepine accounting for 697 total toxicology cases in 2020, many of which were co-identified with fentanyl. In 2021, etizolam was identified in 1,012 toxicology cases, while flualprazolam, clonazolam, flubromazolam, and diclazepam were associated with 432, 331, 170, and four toxicology cases, respectively (CSFRE Quarterly Trend Reports: NPS Benzodiazepines in the United States).

Death investigations associated with four of the five NPS benzodiazepines at issue here have increased in recent years. In a 2021 publication by the Orange County Crime Lab in Santa Ana, California, flualprazolam was identified as serving a contributory role in the death of 13 of 24 cases analyzed in the study.[10] In another recently published study, between August 2019 and January 2020, flualprazolam and etizolam were identified in seven and six postmortem blood specimens respectively, out of 18 deaths associated with the abuse of isotonitazene, a schedule I opioid.[11] Then, a study published in 2021 which compiled data from 254 reports published between 2008 and 2021, identified: 33 deaths associated with etizolam, 20 flualprazolam-related deaths, six emergency department (ED) visits associated with clonazolam, 14 flubromazolam-related ED visits, and one death, 12 DUID cases, and four ED visits associated with diclazepam.[12] Additionally, in 2020, the European Monitoring Centre for Drugs and Drug Addiction reported 34 deaths associated with diclazepam use, which were determined through the analysis of biological samples.[13] Furthermore, the National Poison Data System reported that between January 2014 and December 2017, clonazolam was the second most common benzodiazepine associated with poison control center calls, accounting for 50 incidents.[14]

Impaired driving is another risk factor associated with the use and abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. In a recent published report from the Sedgwick County Regional Forensic Science Center in Wichita, Kansas, 12 DUID case samples were analyzed. Etizolam was positively identified in three cases, while flubromazolam was identified in nine of these cases.[15] In a 2021 publication, similar involvement of flubromazolam in drug-impaired driving was reported in Canada where flubromazolam was detected in 10 percent of 113 case samples.[16] Diclazepam has also been implicated in DUID cases domestically and internationally. In a Norwegian study conducted between July 2013 and May 2016, diclazepam was identified in 15 of 77 analyzed samples taken from impaired drivers and individuals involved in other criminal offenses. Then, in 2019, a study of Norwegian drivers was conducted using 575 samples taken predominantly from intoxicated drivers and individuals who committed other criminal offenses.[17] Notably, 334 samples were found to contain diclazepam. Additionally, in a 2021 publication, researchers identified 22 samples that tested positive for flualprazolam in samples obtained from DUID investigations between August 2018 and September 2020.[18]

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam pose imminent hazards to public safety. DEA is not aware of any currently accepted medical uses for these substances in the United States. As required by 21 U.S.C. 811(h)(4), the Administrator transmitted to the Assistant Secretary for Health, via a letter dated October 25, 2021, notice of her intent to place etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in schedule I on a temporary basis. HHS had no objection to the temporary placement of these substances in schedule I.

Conclusion

This notice of intent provides the 30-day notice pursuant to 21 U.S.C. 811(h)(1) of DEA's intent to issue a temporary scheduling order. In accordance with 21 U.S.C. 811(h)(1) and (3), the Administrator considered

[10] Ha HH and Mata DC. Flualprazolam distribution in postmortem samples. Journal of Forensic Sciences, 2022, 67(1): 297–308.

[11] Krotulski AJ, Papsun DM, Kacinko SL, and Logan BK. Isotonitazene Quantitation and Metabolite Discovery in Authentic Forensic Casework. Journal of Analytical Toxicology, 2020, 44(6): 521–530.

[12] Brunetti P, Giorgetti R, Tagliabracci A, Huestis MA, Busardò FP. Designer Benzodiazepines: A Review of Toxicology and Public Health Risks. Pharmaceuticals (Basel). 2021 Jun 11;14(6):560.

[13] EMCDDA (2020). EMCDDA response to WHO request for information on the new psychoactive substances, eutylone, α-PHiP, 4F-furanylfentanyl, 2-methyl-AP-237, and, diclazepam.

[14] Carpenter JE, Murray BP, Dunkley C, Kazzi ZN, Gittinger MH. Designer benzodiazepines: a report of exposures recorded in the National Poison Data System, 2014–2017. Clin Toxicol (Phila). 2019 Apr;57(4):282–286.

[15] Rohrig TP, Osawa KA, Baird TR, Youso KB. Driving Impairment Cases Involving Etizolam and Flubromazolam. J Anal Toxicol. 2021 Feb 6;45(1):93–98.

[16] Vaillancourt L, Viel E, Dombrowski C, Desharnais B, Mireault P. Drugs and driving prior to cannabis legalization: A 5-year review from DECP (DRE) cases in the province of Quebec, Canada. Accid Anal Prev. 2021 Jan;149:105832.

[17] Heide G, Høiseth G, Middelkoop G, and Øiestad ÅML. Blood concentrations of designer benzodiazepines: Relation to impairment and findings in forensic cases. Journal of Analytical Toxicology, 2020, 44(8): 905–914.

[18] Ha HH and Mata DC. Flualprazolam distribution in postmortem samples. Journal of Forensic Sciences, 2022, 67(1): 297–308.

available data and information, herein set forth the grounds for her determination that it is necessary to temporarily schedule etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in schedule I of the CSA and finds that placement of these substances in schedule I is necessary to avoid an imminent hazard to the public safety.

The temporary placement of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before January 23, 2023. Because the Administrator hereby finds this temporary scheduling order is necessary to avoid an imminent hazard to the public safety, it will take effect on the date the order is published in the **Federal Register** and remain in effect for two years, with a possible extension of one year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). The Administrator intends to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this document. Upon the temporary order's publication, etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam will then be subject to the CSA's schedule I regulatory controls and to administrative, civil, and criminal sanctions applicable to their manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession.

The CSA sets forth specific criteria for scheduling drugs or other substances. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties appropriate process and the government any additional relevant information needed to make determinations. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Analyses

The CSA provides for expedited temporary scheduling actions where necessary to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h)(1), the Administrator (as delegated by the Attorney General) may, by order, temporarily schedule substances in schedule I. Such orders may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intent to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary for Health of HHS, as delegated by the Secretary of HHS.

Inasmuch as this section directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, including the requirement to publish in the **Federal Register** a notice of intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. The APA expressly differentiates between orders and rules, as it defines an ''order'' to mean a ''final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making*.'' 5 U.S.C. 551(6) (emphasis added). The specific language chosen by Congress indicates its intent that DEA issue *orders* instead of proceeding by rulemaking when temporarily scheduling substances. Given that Congress specifically requires the Administrator (as delegated by the Attorney General) to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in section 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

Even assuming that this notice of intent is subject to section 553 of the APA, the Administrator finds that there is good cause to forgo its notice-and-comment requirements, as any further delays in the process for issuing temporary scheduling orders would be impracticable and contrary to the public interest given the manifest urgency to avoid an imminent hazard to the public safety.

Although DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this notice of intent is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

In accordance with the principles of Executive Orders (E.O.) 12866 and 13563, this notice of intent is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Because this is not a rulemaking action, this is not a significant regulatory action as defined in Section 3(f) of E.O. 12866.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 21 CFR Part 1308

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

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

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

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

■ 2. In § 1308.11, add paragraphs (h)(63) through (67) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(63) 4-(2-chlorophenyl)-2-ethyl-9-methyl-6*H*-thieno[3,2-*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: etizolam) 2780
(64) 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: flualprazolam) 2785
(65) 6-(2-chlorophenyl)-1-methyl-8-nitro-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: clonazolam) 2786
(66) 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: flubromazolam) 2788
(67) 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2*H*-benzo[*e*][1,4]diazepin-2-one, its salts, isomers, and salts of isomers (Other name: diclazepam) 2789

Signing Authority

This document of the Drug Enforcement Administration was signed on December 12, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–27278 Filed 12–22–22; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0155; FRL–10503–01–R4]

Air Plan Approval; Tennessee; Packaging Corporation of America Nitrogen Oxides SIP Call Alternative Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve a source-specific State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated June 29, 2021, which would establish alternative monitoring, recordkeeping, and reporting requirements under the Nitrogen Oxides (NO_X) SIP Call.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0155 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), also called the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state.

On October 27, 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone'' (NO_X SIP Call). The NO_X SIP Call required eastern states, including Tennessee, to submit SIPs limiting emissions of ozone season NO_X by implementing statewide emissions budgets. The NO_X SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NO_X emissions, one of the precursors of ozone.[1] EPA developed the NO_X Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_X SIP Call. This trading program allowed the following sources to participate in a regional cap and trade program: generally, electricity generating units (EGUs) with capacity greater than 25 megawatts (MW); and large industrial non-EGUs, such as

[1] As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr). The NO_X SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

To comply with the NO_X SIP Call requirements, in 2000 and 2001, TDEC submitted a revision to add new rule sections to the SIP-approved version of Chapter 1200–3–27, *Nitrogen Oxides,* of the Tennessee Rules. EPA approved the revision as compliant with Phase I of the NO_X SIP Call in 2004. *See* 69 FR 3015 (January 22, 2004). The approved revision required EGUs and large non-EGUs in the State to participate in the NO_X Budget Trading Program beginning in 2004. In 2005, Tennessee submitted, and EPA approved, a SIP revision to address additional emissions reductions required for the NO_X SIP Call under Phase II. *See* 70 FR 76408 (December 27, 2005).

In 2005, EPA published the Clean Air Interstate Rule (CAIR), which required several eastern states, including Tennessee, to submit SIPs that prohibited emissions consistent with revised ozone season NO_X budgets (as well as annual budgets for NO_X and sulfur dioxide). *See* 70 FR 25162 (May 12, 2005); *see also* 71 FR 25328 (April 28, 2006). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions with respect to ozone and $PM_{2.5.}$ CAIR established several trading programs that EPA implemented through federal implementation plans (FIPs) for EGUs greater than 25 MW in each affected state, but not large non-EGUs; states could submit SIPs to replace the FIPs that achieved the required emission reductions from EGUs and/or other types of sources.[2] When the CAIR trading program for ozone season NO_X was implemented beginning in 2009, EPA discontinued administration of the NO_X Budget Trading Program; however, the requirements of the NO_X SIP Call continued to apply.

On November 25, 2009 (74 FR 61535), EPA approved revisions to Tennessee's SIP that incorporated requirements for CAIR. Consistent with CAIR's requirements, EPA approved a SIP revision in which Tennessee regulations: (1) terminated its NO_X Budget Trading Program requirements, and (2) incorporated CAIR annual and ozone season NO_X state trading programs. *See* 74 FR 61535. Participation of EGUs in the CAIR ozone season NO_X trading program addressed the State's obligation under the NO_X SIP Call for those units, and Tennessee also chose to require non-EGUs subject to the NO_X SIP Call to participate in the same CAIR trading program. In this manner, Tennessee's CAIR rules incorporated into the SIP addressed the State's obligations under the NO_X SIP Call with respect to both EGUs and non-EGUs.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *See North Carolina* v. *EPA,* 531 F.3d 896, *modified on rehearing,* 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NO_X annual and ozone season trading programs beginning in 2009 and the SO_2 annual trading program beginning in 2010.

Following the D.C. Circuit's remand of CAIR, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address good neighbor obligations for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. *See* 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in eastern states, including Tennessee, to meet annual and ozone season NO_X emission budgets and annual SO_2 emission budgets implemented through new trading programs. Implementation of CSAPR began on January 1, 2015.[3] CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Participation by a state's EGUs in the CSAPR trading program for ozone season NO_X generally addressed the state's obligation under the NO_X SIP Call for EGUs. CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the NO_X SIP Call for non-EGUs. EPA also stopped administering CAIR trading programs with respect to emissions occurring after December 31, 2014.[4]

Even though the CAIR programs have not been implemented in Tennessee since 2014, ozone season NO_X emissions have remained well below the NO_X SIP Call budget levels. Through a letter to EPA dated February 27, 2017,[5] Tennessee provided a SIP revision to incorporate a new provision—TACPR 1200–03–27–.12, ''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (TN 2017 NO_X SIP Call Rule)—into the SIP. The TN 2017 NO_X SIP Call Rule established a state control program for sources that are subject to the NO_X SIP Call, but not covered under CSAPR or the CSAPR Update (background regarding the CSAPR Update is provided later in this notice). The TN 2017 NO_X SIP Call Rule contains several subsections that together comprise a non-EGU control program under which Tennessee will allocate a specified budget of allowances to affected sources. Subsequently, on May 11, 2018, and October 11, 2018, Tennessee submitted letters requesting conditional approval[6] of the TN 2017 NO_X SIP Call Rule and committing to provide a SIP revision to EPA by December 31, 2019, to address a deficiency by revising the definition of ''affected unit'' to remove the unqualified exclusion for any unit that serves a generator that produces power for sale. Based on the State's commitment to submit a SIP revision addressing the identified deficiency, EPA conditionally approved the February 27, 2017, submission. In the same action, EPA approved removal of the State's NO_X Budget Trading Program and CAIR rules from Tennessee's SIP. *See* 84 FR 7998 (March 6, 2019).

Tennessee submitted a SIP revision on December 19, 2019, which revised Tennessee Air Pollution Control Regulation (TAPCR) 1200–03–27–.12, ''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' to correct the definition of ''affected unit'' and to clarify requirements related to stationary boilers and combustion turbines. On March 2, 2021 (86 FR 12092), EPA published a final rule which corrected the definition of ''affected unit'' and clarified requirements related to stationary boilers and combustion turbines. EPA also converted the

[2] CAIR had separate trading programs for annual sulfur dioxide (SO_2) emissions, seasonal NO_X emissions, and annual NO_X emissions.

[3] *See* 79 FR 71663 (December 3, 2014).

[4] *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

[5] EPA notes that it received the submittal on February 28, 2017.

[6] Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval.

conditional approval of the TN 2017 NO_X SIP Call Rule to a full approval. See EPA's March 2, 2021 (86 FR 12092), final rule for further detail on these changes and EPA's rationale for approving them.

After litigation that reached the Supreme Court, the D.C. Circuit generally upheld CSAPR but remanded several state budgets to EPA for reconsideration. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 129–30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NO_X budgets in the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), which also partially addressed eastern states' good neighbor obligations for the 2008 ozone NAAQS. *See* 81 FR 74504 (October 26, 2016). The air quality modeling for the CSAPR Update demonstrated that Tennessee contributes significantly to nonattainment and/or interferes with maintenance of the 2008 ozone NAAQS in other states. The CSAPR Update reestablished an option for most states to meet their ongoing obligations for non-EGUs under the NO_X SIP Call by including the units in the CSAPR Update trading program.

The CSAPR Update trading program replaced the original CSAPR trading program for ozone season NO_X for most covered states. Tennessee's EGUs participate in the CSAPR Update trading program, which generally also addresses the State's obligations under the NO_X SIP Call for EGUs. However, Tennessee elected not to include its large non-EGUs in the CSAPR Update ozone season trading program. Because Tennessee's large non-EGUs do not participate in any CSAPR or CSAPR Update trading program for ozone season NO_X emissions, the NO_X SIP Call regulations at 40 CFR 51.121(r)(2), as well as anti-backsliding provisions at 40 CFR 51.905(f) and 40 CFR 51.1105(e), require these non-EGUs to maintain compliance with NO_X SIP Call requirements in some other way.

Under 40 CFR 51.121(f)(2) of the NO_X SIP Call regulations, where a state's implementation plan contains control measures for EGUs and large non-EGU boilers and combustion turbines, the SIP must contain enforceable limits on the ozone season NO_X mass emissions from these sources. In addition, under 40 CFR 51.121(i)(4) of the NO_X SIP Call regulations as originally promulgated, the SIP also had to require these sources to monitor emissions according to the provisions of 40 CFR part 75, which generally entails the use of continuous emission monitoring systems. Tennessee triggered these requirements by including control measures in its SIP for these types of sources, and the requirements have remained in effect despite the discontinuation of the NO_X Budget Trading Program after the 2008 ozone season.

On March 8, 2019, EPA revised some of the regulations that were originally promulgated in 1998 to implement the NO_X SIP Call.[7] The revision gave states covered by the NO_X SIP Call greater flexibility concerning the form of the NO_X emissions monitoring requirements that the states must include in their SIPs for certain emissions sources. The revision amended 40 CFR 51.121(i)(4) to make Part 75 monitoring, recordkeeping, and reporting optional, such that SIPs may establish alternative monitoring requirements for NO_X SIP Call budget units that meet the general requirements of 40 CFR 51.121(f)(1) and (i)(1). Under the updated provision, a state's implementation plan still needs to include some form of emissions monitoring requirements for these types of sources, consistent with the NO_X SIP Call's general enforceability and monitoring requirements at 40 CFR 51.121(f)(1) and (i)(1), respectively, but states are no longer required to satisfy these general NO_X SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements.

Following EPA's March 8, 2019, revision to the NO_X SIP Call requirements, Packaging Company of America (PCA) petitioned TDEC to adopt revised permit conditions applicable to PCA's Highway 57, Counce, Tennessee facility (PCA Counce Mill) with an alternative monitoring option for this large non-EGU, along with corresponding revised recordkeeping and reporting conditions. This petition resulted in the issuance of the permit for PCA Counce Mill included as part of TDEC's SIP submittal. The changes allow PCA Counce Mill to address the NO_X SIP Call's requirements for enforceable limits on ozone season NO_X mass emissions through non-Part 75 alternative monitoring and reporting methodologies. The June 29, 2021, source-specific SIP revision submitted by TDEC contains the permit provisions that TDEC modified to specifically address the alternative monitoring provisions allowed under the NO_X SIP Call and requests conditional approval of those provisions into the SIP. The contents of the submittal and EPA's analysis is further discussed in Section III.

[7] *See* ''Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_X SIP Call,'' 84 FR 8422 (March 8, 2019).

II. Why is EPA proposing this action?

TDEC's June 29, 2021, letter requests that EPA conditionally approve into Tennessee's SIP Tennessee Air Pollution Control Board operating permit No. 078563 for PCA Counce Mill, state effective on June 10, 2021, to provide alternative NO_X monitoring and reporting for Boiler #1 at this facility in accordance with 40 CFR 51.121(i). TDEC requests that this approval be conditioned on Tennessee's commitment to modify the provisions at Chapter 1200–03–27.12(11) to specify allowable non-Part 75 permissible alternative monitoring and reporting methodologies for large industrial non-EGUs subject to the NO_X SIP Call, such as the alternative monitoring and reporting provisions in permit No. 078563. The submission also includes a demonstration under CAA section 110(l) intended to show that the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. As discussed later, EPA has reviewed these changes, preliminarily finds them consistent with the CAA and regulations governing the NO_X SIP Call, and is proposing to conditionally approve the revisions to incorporate the source-specific SIP revision into the State's implementation plan.

III. Analysis of Tennessee's Submission

On September 16, 2020, PCA submitted a petition to TDEC requesting approval of alternative monitoring, recordkeeping, and reporting requirements for one boiler subject to the NO_X SIP Call (Combination Boiler #1) at PCA's Counce Mill. The petition states that PCA uses NO_X CEMS to demonstrate compliance with the Counce Mill's Plantwide Applicability Limit (PAL) permit. Combination Boiler #1 is the only monitor within the mill that is subject to the requirements of 40 CFR part 75, and the other NO_X sources at the mill operate CEMS in accordance with 40 CFR part 60. The petition states that PCA wishes to streamline the monitoring requirements among the sources at the mill.

That petition resulted in TDEC's revision of the PCA Counce Mill permit conditions to address NO_X SIP Call requirements and to adopt an alternative monitoring option (along with corresponding recordkeeping and reporting requirements) for this large non-EGU. These permit conditions have been submitted by TDEC for approval into Tennessee's SIP. These revised permit conditions are consistent with the flexibility provided to states on

March 8, 2019 (84 FR 8422) concerning the form of the NO_X emissions monitoring requirements that the states must include in their SIPs for certain emissions sources, such as PCA Counce Mill, to comply with the NO_X SIP Call, required at 40 CFR 51.121(i)(4). Permit condition one requires compliance with permit conditions two through five. Permit condition two provides that PCA Counce Mill may demonstrate compliance with Tennessee Rule 1200–03–27–.12 by monitoring NO_X emissions from Combination Boiler #1 using the monitoring methodologies for NO_X emission rate set forth in 40 CFR part 60, Appendix B in combination with monitoring of heat input.

Permit Condition 3 requires that PCA Counce Mill submit a program for conducting continuous in-stack monitoring for NO_X mass emissions for approval by TDEC in accordance with the requirements of 40 CFR 60, Appendix B. To be approvable be TDEC, the program shall address the following:

(a) A description of the overall monitoring program;

(b) Specifications demonstrating that the proposed monitoring instruments will meet the requirements of 40 CFR 60, Appendix B;

(c) Specifications for the proposed fuel flow meter and a discussion of how the fuel Btu content will be determined;

(d) Proposed location(s) of the monitoring instruments on the boiler effluent gas stream;

(e) Proposed procedures for conducting performance specification testing of the monitoring instruments in units of the applicable standard (*i.e.* NO_X mass emissions);

(f) Proposed ongoing monitoring instrument quality assurance procedures (40 CFR 60, Appendix F or approved alternative);

(g) Procedures for addressing missing data (40 CFR 75, Appendix C, Appendix F or approved alternative); and

(h) Proposed format for the reporting of data.

Permit condition four specifies that the permittee shall calculate NO_X mass emissions (in tons) for each control period and report the total to TDEC no later than December 31 following the end of the control period. Further, condition four requires that NO_X emission rates shall be calculated from continuous emissions monitoring system (CEMS) measurements using Method 19 in Appendix A–7 to 40 CFR part 60.

Permit condition five requires that the permittee shall maintain records of all measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this part recorded in a permanent form suitable for inspection. These records shall be retained for at least five years following the end of the control period in which such measurements, maintenance, reports, and records were collected.

Section 110(l) of the CAA prohibits revision of a SIP that would interfere with attainment or maintenance of a NAAQS, reasonable further progress toward attainment of a NAAQS, or any other applicable requirement of the CAA. In its submittal, TDEC includes a demonstration in accordance with Section 110(l) of the CAA that the proposed revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Tennessee's demonstration concludes that the proposed changes are compliant with Section 110(l) of the CAA because: (1) PCA Counce Mill's NO_X emissions remain substantially below the facility's NO_X budget established pursuant to TAPCR 1200–03–27–.12; (2) Tennessee's review of all non-EGUs subject to the NO_X SIP Call demonstrates that NO_X emissions for the collection of affected facilities are well below the state's NO_X budget; (3) the alternative monitoring requirements would be permanent, enforceable, and sufficient to determine whether the source is in compliance with the NO_X SIP Call emissions requirements; and (4) the work practice requirements of 40 CFR 63 Subpart DDDDD (periodic tune-ups) will provide additional assurance that the boiler is operating properly. EPA agrees with Tennessee's rationale summarized above and the conclusion that the proposed revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

In order to address the requirements of the NO_X SIP Call for sources that are not covered under a CSAPR trading program for ozone season NO_X emissions, SIP revisions must provide for enforceable emissions limitations and require emissions monitoring consistent with the NO_X SIP Call's general enforceability and monitoring requirements.[8] *See* 40 CFR 51.121(f)(2). EPA is proposing to find that TDEC's submittal meets these requirements and all other requirements of the CAA, including 40 CFR 51.121(i)(1) and (4), except that Tennessee additionally will need to modify TAPCR 1200–03–27.12(11) to specify permissible non-Part 75 alternative monitoring and reporting methodologies within one year of the effective date of EPA's conditional approval. Thus, EPA is proposing to conditionally approve TDEC operating permit No. 078563, state effective on June 10, 2021, into Tennessee's SIP pursuant to CAA section 110(k)(4), subject to TDEC's specific commitment to modify the provisions of TAPCR 1200–03–27.12(11) to specify permissible non-Part 75 alternative monitoring and reporting methodologies within one year of EPA's conditional approval, as described in TDEC's submittal.

If Tennessee meets its commitment to submit a SIP revision modifying the provisions of TAPCR 1200–03–27.12(11) to specify permissible non-Part 75 alternative monitoring and reporting methodologies, as allowed under 40 CFR 51.121(i)(1) and (4), by 12 months from the date of final approval of this proposed action, TDEC operating permit No. 078563 will remain a part of the SIP. However, if the State fails to submit this revision on or before 12 months from the date of final approval of this action, the conditional approval will become a disapproval pursuant to CAA section 110(k)(4).

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I through III of this preamble, EPA is proposing to incorporate by reference Tennessee Air Pollution Control Board's operating permit No. 078563 for the PCA Counce Mill, state effective on June 10, 2021. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Proposed Action

EPA is proposing to conditionally approve Tennessee Air Pollution Control Board operating permit No. 078563 for PCA Counce Mill, state effective June 10, 2021, for incorporation into the Tennessee SIP. These changes were submitted by Tennessee on June 29, 2021.

[8] *See* 40 CFR 51.121(f)(2)(ii) and 51.121(i)(4).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This proposed action merely proposes to conditionally approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 16, 2022

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–27867 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0947; FRL–10473–01–R4]

Air Plan Approval; Mississippi; PSD and Air Quality Modeling Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve portions of a State Implementation Plan (SIP) submission provided by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), via a letter dated January 25, 2021, and supplemented through a letter dated November 18, 2022. This proposal pertains to certain infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standards (NAAQS or standards). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of that NAAQS. The January 25, 2021, SIP submission addresses all infrastructure elements except for those pertaining to the contribution to nonattainment or interference with maintenance of the NAAQS in other states. EPA is proposing to conditionally approve the portions of the submittal related to the prevention of significant deterioration (PSD) infrastructure elements and the air quality modeling element.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0947 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

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I. Background

On October 1, 2015, EPA promulgated revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP'' or ''iSIP.'' States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

EPA is proposing to conditionally approve portions of Mississippi's January 25, 2021, SIP revision as supplemented on November 18, 2022,[2] provided to EPA through the MDEQ for the applicable requirements of the 2015 8-hour ozone NAAQS regarding the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of section 110(a)(2)(K).[3] Separately, EPA took final action on the remaining elements of Mississippi's January 25, 2021, SIP revision with the exception of the visibility protection provisions of section 110(a)(2)(D)(i)(II).[4] EPA will consider the portion of Mississippi's January 25, 2021, SIP revision that addresses the visibility protection provisions in a separate rulemaking.

As part of the January 25, 2021, SIP submission, as supplemented on November 18, 2022, Mississippi requested conditional approval of the PSD provisions related to major sources under CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) and the air quality modeling elements under section 110(a)(2)(K).[5] Related to its request for conditional approval, Mississippi provided a written commitment under CAA section 110(k)(4) to take action to meet the requirements of the PSD and air quality modeling elements for its 2015 ozone iSIP by adopting a rule revision no later than one year after EPA's conditional approval of these portions of Mississippi's ozone iSIP. Specifically, MDEQ intends to amend 11 Mississippi Administrative Code (MAC), Part 2, Chapter 2, as well as 11 MAC, Part 2, Chapter 5, to cite to the current version of 40 CFR part 51, Appendix W, *Guideline on Air Quality Models,* and submit a revision containing the revised regulations to EPA within one year of EPA conditional approval to meet its conditional approval commitment to EPA. For this reason, in this notice of proposed rulemaking EPA is proposing to conditionally approve the portions of Mississippi's 2015 8-hour ozone NAAQS iSIP addressing sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(J), and 110(a)(2)(K) related to the PSD program and air quality modeling.

II. What elements are required under sections 110(a)(1) and 110(a)(2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are listed below and are described in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 Guidance).[6]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport (broken down into four separate Prongs)
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection

[1] In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

[2] On November 21, 2022, Mississippi submitted a letter, dated November 18, 2022, related to its request for conditional approval of the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of section 110(a)(2)(K). This letter is in the docket for this proposed rulemaking.

[3] On September 6, 2019, Mississippi provided a SIP submission addressing the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance of the NAAQS in other states. EPA will address the interstate transport provisions of section 110(a)(2)(D)(i)(I) through a separate rulemaking.

[4] *See* 87 FR 57832 (September 22, 2022).

[5] Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval.

[6] Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) for infrastructure SIPs because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (1) submissions required by section 110(a)(2)(C) to the extent that this subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the major source nonattainment permitting requirements of 110(a)(2)(C).

- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting Fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIPs that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[7]

Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[8] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. What is EPA's analysis of how Mississippi addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions related to prevention of significant deterioration and modeling?

A. Section 110(a)(2)(C)—Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for a NAAQS as required by CAA title I, part C (*i.e.,* the PSD program). Mississippi's 2015 8-hour ozone NAAQS infrastructure SIP submission cites to several SIP-approved provisions to address these requirements. Through a separate rulemaking, EPA has already taken final action to approve all but the PSD program sub-element. EPA's rationale for this proposed action regarding the PSD program sub-element is described below.

For the PSD program sub-element of section 110(a)(2)(C), EPA interprets the CAA to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has an up-to-date PSD permitting program in place covering the PSD requirements for all regulated NSR pollutants.[9] A state's PSD permitting program is complete for this sub-element (as well as prong 3 of 110(a)(2)(D)(i)(II) and 110(a)(2)(J) related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's action on the infrastructure SIP submission. Mississippi's 2015 8-hour ozone NAAQS infrastructure SIP submission cites to several SIP-approved provisions to address PSD program sub-element of section 110(a)(2)(C) as described below.

Mississippi's January 25, 2021, iSIP submission cites to two separate SIP-approved regulations. Specifically, Mississippi cites to 11 MAC, Part 2, Chapter 5 and portions of Chapter 2. These SIP-approved regulations provide that any new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally approved PSD permitting program under part C of title I of the CAA. However, Mississippi's SIP-approved PSD regulations cited above do not reference the most updated version of EPA's *Guideline on Air Quality Models,* codified at 40 CFR part 51, Appendix W.[10]

EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W. As detailed in EPA's 2013 Guidance, approval of element C requires a fully approved and up-to-date PSD permitting program, which requires application of Appendix W consistent with EPA's PSD implementing regulations (approval of PSD elements 110(a)(2)(D)(i)(II) and 110(a)(2)(J) is also contingent on an up-to-date PSD program). As noted, Mississippi's PSD program does not meet these updated modeling requirements and, for this reason, the State has committed to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations within one year of EPA's conditional approval. In this notice of proposed rulemaking, EPA is proposing to conditionally approve Mississippi's January 25, 2021, submission, as supplemented on November 18, 2022, related to the PSD element of section 110(a)(2)(C).

B. Sections 110(a)(2)(D)(i)(I) and (II)—Interstate Pollution Transport

Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts, resulting in four distinct components commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, contained in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1'') and from interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, contained in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required in another state to prevent significant deterioration of air quality (''prong 3'') or to protect visibility (''prong 4'').

1. *110(a)(2)(D)(i)(I)—prongs 1, 2, and 4:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) or the visibility protection provisions (prong 4). EPA will consider these requirements in relation to Mississippi's 2015 8-hour ozone NAAQS infrastructure in a separate rulemaking.

2. *110(a)(2)(D)(i)(II)—prong 3:* Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions that prohibit emissions activity in one state from interfering with measures required in another state to prevent significant deterioration of air quality. With regard to prong 3 of section 110(a)(2)(D)(i)(II), a state may meet this requirement by a confirmation in its infrastructure SIP

[7] EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions including EPA's prior actions on Mississippi infrastructure SIPs such as the action to address the 2012 $PM_{2.5}$ NAAQS. *See* 81 FR 36848 (June 8, 2016).

[8] *See Mont. Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

[9] *See* EPA's 2013 Guidance.

[10] EPA approved the most recent version of Appendix W on January 17, 2017, at 82 FR 5182.

submission that new major sources and major modifications in the state are subject to a PSD program meeting current structural requirements of part C, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a nonattainment NSR program.

To meet prong 3, Mississippi's January 25, 2021, iSIP submission cites to SIP-approved regulation 11 MAC, Part 2, Chapter 5. This regulation provides that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally approved PSD permitting program under part C of title I of the CAA.

However, as described in section IV.A concerning section 110(a)(2)(C) above, Mississippi's SIP-approved PSD regulations do not reference the most updated version of EPA's *Guideline on Air Quality Models,* codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission, as supplemented on November 18, 2022, includes a request for conditional approval of prong 3 and a commitment to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations to EPA within one year of EPA conditional approval.

EPA has made the preliminary determination that Mississippi's SIP and practices are adequate to meet the prong 3 requirements related to the 2015 8-hour ozone NAAQS, with the exception of the citation to an outdated version of Appendix W. Accordingly, EPA is proposing to conditionally approve Mississippi's infrastructure SIP submission with respect to the PSD provisions for section 110(a)(2)(D)(II) (prong 3).

C. Section 110(a)(2)(J)—Consultation With Government Officials, Public Notification, PSD, and Visibility Protection

Section 110(a)(2)(J) has four components related to: (1) consultation with government officials, (2) public notification, (3) PSD, and (4) visibility protection. Through a previous rulemaking, EPA has approved all but the PSD element for section 110(a)(2)(J) from Mississippi's January 25, 2021, SIP revision. EPA's rationale for proposed action regarding the PSD element for section 110(a)(2)(J) sub-element is described below.

With regard to the PSD element of section 110(a)(2)(J), this requirement is met (similarly to 110(a)(2)(C)) by a state's confirmation, in an infrastructure SIP submission, that the state has a SIP-approved PSD program meeting all the current requirements of part C of title I of the CAA for all NSR regulated pollutants. To meet the requirements of element J, Mississippi's January 25, 2021, iSIP submission cites to SIP-approved regulation 11 MAC, Part 2, Chapter 5, which provides that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally approved PSD permitting program under part C of title I of the CAA.

However, as described in section IV.A concerning section 110(a)(2)(C) above, Mississippi's SIP-approved PSD regulations do not reference the most updated version of EPA's *Guideline on Air Quality Models,* codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission, as supplemented on November 18, 2022, includes a request for conditional approval of element J and a commitment to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations to EPA within one year of EPA conditional approval.

EPA has made the preliminary determination that Mississippi's SIP and practices are adequate to meet the PSD requirements of section 110(a)(2)(J) related to the 2015 8-hour ozone NAAQS, with the exception of the citation to an outdated version of Appendix W. Accordingly, EPA is proposing to conditionally approve Mississippi's infrastructure SIP submission with respect to the PSD provisions for section 110(a)(2)(J).

D. Section 110(a)(2)(K)—Air Quality Modeling and Submission of Modeling Data

Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. Section 110(a)(2)(K) has two components related to: (1) the performance of air quality modeling, and (2) the submission of data related to such air quality modeling to the Administrator.

Mississippi's January 25, 2021, iSIP submission cites to two separate SIP-approved regulations to meet the modeling requirement of element K. Specifically, Mississippi cites to 11 MAC, Part 2, Chapter 2 and 11 MAC, Part 2, Chapter 5. These SIP-approved regulations include requirements for air quality modeling and reporting for the PSD permitting program. However, as described in section IV.A concerning 110(a)(2)(C) above, Mississippi's SIP-approved PSD regulations cited above do not reference the most updated version of EPA's *Guideline on Air Quality Models,* codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission, as supplemented on November 18, 2022, includes a request for conditional approval of element K and a commitment to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations to EPA within one year of EPA conditional approval. Because of the outdated reference to Appendix W modeling, EPA is proposing to conditionally approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(K).

V. Proposed Action

For the reasons stated herein, EPA is proposing to conditionally approve the portions of the 2015 8-hour Ozone NAAQS iSIP that address the PSD related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K). With the exception of the visibility provisions, EPA has already taken final action on the remainder of Mississippi's January 25, 2021, SIP revision. EPA will consider Mississippi's visibility provisions in the January 25, 2021, SIP revision through a future rulemaking.

VI. 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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 16, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–27868 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0102; FRL–10369–01–R9]

Air Plan Approval; Bay Area Air Quality Management District; Nonattainment New Source Review; 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of California addressing the nonattainment new source review (NNSR) requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). This SIP revision addresses the Bay Area Air Quality Management District (BAAQMD or ''District'') portion of the California SIP. This action is being taken pursuant to the Clean Air Act (CAA or ''Act'') and its implementing regulations.

DATES: Comments must be received by January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0102, at *https://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* 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: Po-Chieh Ting, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3191 or by email at *ting.pochieh@epa.gov.*

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

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I. Background and Purpose

On October 26, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).[1] Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. This action relates to one California air district that was designated nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018.[2] The San Francisco Bay Area, whose boundary matches that of the BAAQMD, was classified as a Marginal ozone nonattainment area.

On December 6, 2018, the EPA issued a final rule entitled, ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,'' (''2015 SIP Requirements Rule''), which established the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2015 8-hour ozone NAAQS.[3] Based on its initial nonattainment designation for the 2015 8-hour ozone standards, the District was required to make a SIP

[1] 80 FR 65292 (October 26, 2015).

[2] 83 FR 25776 (June 4, 2018).

[3] 83 FR 62998 (December 6, 2018). The 2015 SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP.

revision addressing NNSR program requirements no later than August 3, 2021.[4] This requirement may be met by submitting a SIP revision consisting of a new or revised NNSR permit program, or an analysis demonstrating that the existing SIP-approved NNSR permit program meets the applicable 2015 ozone requirements and a letter certifying the analysis.

II. The State's Submittal

A. What did the State submit?

Table 1 lists the dates the submitted 2015 Ozone Certification letter addressed by this proposal was adopted by the District and submitted by the California Air Resources Board (CARB), the agency that serves as the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED CERTIFICATION LETTER

District	Adoption date	Submittal date
Bay Area Air Quality Management District (BAAQMD)	9/1/2021	10/6/2021

CARB's October 6, 2021 submittal of the BAAQMD 2015 Certification letter was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V on April 6, 2022, which must be met before formal EPA review.

B. What is the purpose of the submitted certification letter?

The submittal from the District is intended to satisfy the 2015 SIP Requirement Rule that requires states to make a SIP revision addressing NNSR. The SIP for the District currently contains the approved NNSR permit program based on its Marginal nonattainment classification for the 2008 8-hour ozone NAAQS. The submitted certification letter provides a mechanism for the District to satisfy the 40 CFR 51.1314 submittal requirements based on its 2015 8-hr ozone Marginal nonattainment designation. The EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2015 8-hour ozone NAAQS is provided below.

III. Analysis of Nonattainment New Source Review Requirements

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources within a nonattainment area and is required under CAA sections 172(c)(5) and 173.

As mentioned in Section I of this notice, NNSR permit program requirements were adopted for the 2015 ozone NAAQS at 40 CFR 51.1314 as part of the 2015 SIP Requirements Rule. The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are contained in 40 CFR 51.165. The SIP for each ozone nonattainment area must contain NNSR provisions that: (1) set major source thresholds for nitrogen oxides (NO_X) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*i*)–(*iv*) and (*2*); (2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*3*); (3) consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); (4) consider any increase of VOC emissions in Extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); (5) set significant emissions rates for VOC and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); (6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*)–(*2*); (7) provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); (8) set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(ii)–(iv); and (9) require public participation procedures complaint with 40 CFR 51.165(i).

The District's SIP-approved NNSR program,[5] established in Regulation 2 (''Permits''), Rule 2, ''New Source Review,'' of the District's Rules and Regulations, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. The District's submitted SIP revision includes a compliance demonstration, consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of the rule satisfying the requirement. The submittal also includes a certification by the District that the cited rules meet the federal NNSR requirements for the applicable ozone nonattainment designation. These documents, including our Summary of Evaluation of the District's submittal, are available in the docket for this action. The EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the District's submittal because the current SIP-approved NSR program satisfies all the 2015 SIP Requirements Rule NNSR program requirements applicable to the San Francisco Bay Area as a Marginal ozone nonattainment area.

IV. Proposed Action and Public Comment

The EPA is proposing to approve the SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the District. In support of this proposed action, we have concluded that our approval of the submitted 2015 ozone certification for the District would comply with section 110(l) of the Act because the submittal will not interfere with continued attainment or maintenance of the NAAQS in the District. The EPA has concluded that the State's submission fulfills the 40 CFR 51.1314 revision requirement and meets the requirements of CAA sections 110, 172(c)(5), 173, and 182(a), and the minimum SIP requirements of 40 CFR 51.165. If we finalize this action as proposed, our action will incorporate this certification into the federally enforceable SIP and be codified through revisions to 40 CFR 52.220 (Identification of plan—in part).

We will accept comments from the public on this proposal until January 23, 2023.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the certification letter listed in Table 1 of this preamble. The certification letter

[4] 40 CFR 51.1314.

[5] 83 FR 23372 (May 21, 2018).

addresses the NNSR requirements for the 2015 8-hour ozone NAAQS. The EPA has made, and will continue to make, these materials available electronically 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).

VI. 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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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).

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: December 16, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–27870 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0202; FRL–10511–01–R4]

Air Plan Approval; Georgia; Murray County Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (EPD), on October 20, 2021. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the portion of Murray County, Georgia, previously designated nonattainment for the 1997 8-hour ozone NAAQS (hereinafter referred to as the Murray County 1997 8-hour Ozone NAAQS Area or Murray County Area or Area). EPA is proposing to approve the Murray County Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Murray County Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Murray County Area federally enforceable as part of the Georgia SIP.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0202 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the LMP for the Murray County 1997 8-hour Ozone NAAQS Area submitted by Georgia EPD as a revision to the Georgia SIP on October 20, 2021. In 2004, the Murray County Area was designated as nonattainment for the 1997 8-hour ozone NAAQS, effective June 15, 2004.[1] *See* 69 FR 23857 (April 30, 2004). Subsequently, in 2007, this Area was redesignated to attainment for the 1997 8-hour ozone NAAQS with EPA's approval of the first maintenance plan demonstrating attainment through the initial 10-year period. The Murray County LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Murray County Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A. As a general matter, the Murray County Area LMP relies on the same control measures and relevant contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by Georgia EPD for the first 10-year period.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, increased medication use, doctor visits, and emergency department visits, and increased hospital admissions for individuals with lung disease. Children are at a higher level of risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.[2]

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm),[3] averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).[4] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour ozone NAAQS would be more protective of human health, especially for children and adults who are active outdoors and for individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Murray County Area as nonattainment for the 1997 8-hour ozone NAAQS. The designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004).

Similarly, on July 20, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. The Murray County Area was designated as attainment for the 2008 8-hour ozone standard with an effective date of July 20, 2012. *See* 77 FR 30088 (May 21, 2012).

In addition, on November 16, 2017, EPA designated areas for the 2015 8-hour ozone NAAQS. The Murray County area was designated as attainment/unclassifiable for the 2015 8-hour ozone standard with an effective date of January 16, 2018. *See* 82 FR 54232 (November 16, 2017) and 83 FR 25776 (June 4, 2018).

A state may submit a request to redesignate a nonattainment area that is attaining a NAAQS to attainment, and, if the area has met the criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.[5] One of the criteria for redesignation is for the area to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans. The Calcagni memo[6] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni memo at 9. EPA clarified in three subsequent guidance memos that certain areas can meet the CAA section 175A requirement to provide for maintenance by showing that they are unlikely to violate the NAAQS in the future, using information such as area design values[7] when they

[1] The Murray County 1997 8-hour Ozone NAAQS Area is located entirely within the Chattahoochee National Forest area of Murray County, Georgia. The Area consists of all mountain peaks within the Chattahoochee National Forest that have an elevation greater than or equal to 2,400 feet and that are enclosed by contour lines that close on themselves.

[2] *See* ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010, and 75 FR 2938 (January 19, 2010).

[3] 0.12 ppm converts to 120 parts per billion (ppb). 1 ppm = 1,000 ppb.

[4] In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and strengthened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and strengthened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

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

[6] John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards (OAQPS), ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

[7] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations.

Continued

are significantly below the standard and have been historically stable.[8] EPA refers to a maintenance plan containing this streamlined demonstration as a limited maintenance plan (LMP).

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[9] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[10]

In this case, EPA is proposing to approve the Murray County LMP because Georgia has made a showing, consistent with EPA's prior LMP guidance, that the Murray County 1997 8-hour Ozone NAAQS Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that the Area has met the other maintenance plan requirements. Georgia EPD submitted this LMP for the Murray County Area to fulfill the CAA's second maintenance plan requirement. EPA's evaluation of the Murray County Area LMP is presented in section IV below.

In June of 2007, Georgia EPD submitted to EPA a request to redesignate the Murray County 1997 8-hour Ozone NAAQS Area to attainment for the 1997 8-hour ozone NAAQS. This submittal contained a plan, for inclusion in the Georgia SIP, to provide for maintenance of the 1997 8-hour ozone NAAQS in the Area through 2018. EPA approved Georgia's Murray County 1997 8-hour Ozone NAAQS Area maintenance plan and the State's request to redesignate the Area to attainment effective November 15, 2007.[11]

Section 175A(b) of the CAA requires states to submit a second 10-year maintenance plan as a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. However, EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that a consequence of that revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[12] In *South Coast Air Quality Management District* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's interpretation that second maintenance plans were not required for ''orphan maintenance areas'' (*i.e.,* areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS (maintenance areas) and were designated attainment for the 2008 ozone NAAQS). *South Coast,* 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, through a letter dated October 20, 2021, Georgia submitted a second maintenance plan covering the Murray County Area that provides for attainment of the 1997 8-hour ozone NAAQS through 2027.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Murray County Area well below the 1997 8-hour ozone NAAQS, Georgia EPD chose the LMP option for the development of its second 1997 8-hour ozone NAAQS maintenance plan for the Area. On October 20, 2021, Georgia EPD adopted this second 10-year maintenance plan and subsequently submitted the Murray County LMP to EPA as a revision to the Georgia SIP.

III. Georgia's SIP Submittal

Georgia's October 20, 2021, submittal includes the LMP, air quality data, a summary of the previous emissions inventory and a conclusion regarding future emission levels, and attachments, as well as certification of adoption of the plan by Georgia EPD. Attachments to the plan include documentation of notice, opportunity for hearing and public participation prior to adoption of the plan by Georgia EPD, and state legal authority. The LMP notes that Georgia's submittal for the remainder of the 20-year maintenance period for the Murray County Area is in response to the D.C. Circuit's decision overturning aspects of EPA's Implementation Plan rule.

The Murray County Area LMP does not include any additional emissions reduction measures but relies on the same emissions reduction strategy as the first 10-year maintenance plan that provides for the maintenance of the 1997 8-hour ozone NAAQS through 2018. Prevention of significant deterioration (PSD) requirements and control measures contained in the SIP will continue to apply, and federal measures (*e.g.,* Tier 3 Motor Vehicle Emission and Fuel Standards) will continue to be implemented.

IV. EPA's Evaluation of Georgia's SIP Submittal

EPA has reviewed the Murray County Area LMP, which is designed to maintain the 1997 8-hour ozone NAAQS within the Murray County Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a more detailed summary of EPA's interpretation of the section 175A requirements[13] and EPA's evaluation of how each requirement is met.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NO_X, as these pollutants are

The design value for an ozone area is the highest design value of any monitoring site in the area.

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

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

[10] *See, e.g.,* 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 SO_2 maintenance area).

[11] *See* 72 FR 58538 (October 16, 2007).

[12] *See* 80 FR 12264, 12315 (March 6, 2015).

[13] *See* Calcagni memo at 7–13.

precursors to ozone formation. The Murray County LMP also includes an ozone attainment inventory for Murray County [14] generated from the data EPA made available from the 2014 National Emissions Inventory (NEI) and that Georgia represents as 2014 summer tons.[15] Table 1 presents a summary of the inventory for 2014 contained in the LMP.

TABLE 1—2014 VOC AND NO_X EMISSIONS (SUMMER TONS) FOR MURRAY COUNTY

Sector	2014	
	NO_X	VOC
Fire	0	0
Nonpoint	77	224
Nonroad	37	45
Onroad	260	190
Point	60	28
Total [16]	433	487

The Attainment Emissions Inventory section of the Murray County Area LMP describes the methods, models, and assumptions used to develop the attainment inventory and notes that Georgia EPD relied on version 2 of the 2014 National Emissions Inventory (NEI) (2014NEIv2) from EPA 2014 version 7.0 modeling platform.[17] Area source emissions were estimated by multiplying an emission factor by some known indicator of collective activity, such as fuel usage, and were estimated on the county level. Nonroad mobile source emissions in the 2014NEIv2, in part, were estimated using the latest version of the EPA's motor vehicles emission model, MOVES (which includes estimates nonroad emissions like agriculture, commercial and mining, industrial and recreational equipment, and commercial and residential lawn and garden equipment). Locomotives, aircraft, and marine nonroad sources are not included in MOVES, and Georgia EPD relied on EPA-generated emissions data for these sectors.[18] Onroad mobile sources in the 2014NEIv2 were estimated using MOVES and the latest planning assumptions regarding vehicle type, vehicle activity, and vehicle speeds to estimate vehicular emissions for 2014. Georgia EPD's estimates of vehicle emissions reflect emissions inventories and ancillary data files used for emissions modeling, as well as the meteorological, initial condition, and boundary condition files need to run the air quality model.

Based on our review of the methods, models, and assumptions used by Georgia to develop the inventory, as well as our review of the 2014 summer emissions data, EPA proposes to find that the Murray County 1997 ozone NAAQS LMP includes a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014, and proposes to conclude that this is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied in a LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[19] These criteria are evaluated below.

1. Evaluation of Ozone Concentrations

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm or below. EPA evaluated quality assured and certified 2018–2020 monitoring data (which was the most recent quality assured and certified data at the time of submission) and determined that the 2018–2020 design value for the Murray County 1997 8-hour Ozone NAAQS Area was 0.062 ppm, or 74 percent of the level of the 1997 8-hour ozone NAAQS (measured at the Fort Mountain, Cohutta Overlook monitor in Murray County, Georgia (AQS ID: 13–213–0003)). Based on quality assured and certified monitoring data for 2019–2021 (the most recent quality assured and certified data), the current design value for the Murray County 1997 8-hour Ozone NAAQS Area is 0.062 ppm, or 74 percent of the level of the 1997 8-hour ozone NAAQS (measured at the Fort Mountain, Cohutta Overlook monitor in Murray County, Georgia (AQS ID: 13–213–0003)). Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85 percent of the NAAQS, or in this case below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of PSD requirements and any control measures already in the SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 2 presents the design values for the monitor in the Murray County 1997 8-hour Ozone NAAQS Area over the 2010–2021 period. As shown, the site has been below the level of the 1997 8-hour ozone NAAQS during this time, and the most current design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

[14] The Murray County Area is the portion of Murray County that consists of all mountain peaks within the Chattahoochee National Forest that have an elevation greater than or equal to 2,400 feet and that are enclosed by contour lines that close on themselves.

[15] Georgia defines summer tons as the total cumulative emissions from May through September.

[16] The totals represented in the table may be slightly different than the inventories in the LMP based on rounding convention.

[17] Documentation and data for the 2014 NEIv2 can be accessed via the following website: *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.* The 2014 summer emissions data for the Murray County Area are from the EPA 2014 version 7.0 modeling platform, which is based on the National Emissions Inventory (2014 NEI version 2) and are available at *https://www.epa.gov/sites/default/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx.*

[18] EPA developed emissions data for these sectors based on AP–42 emissions factors and information supplied by the Eastern Regional Technical Advisory Committee for locomotives and Federal Aviation Administration's Emissions and Dispersion Modeling System (since replaced by the Aviation Environmental Design Tool).

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

TABLE 2—1997 8-HOUR OZONE NAAQS DESIGN VALUES (DV) (ppb) AT THE MONITORING SITE IN THE MURRAY COUNTY 1997 OZONE NAAQS AREA FOR THE 2010–2021 TIME PERIOD

Location	County (state)/tribal land	AQS site ID	2008–2010 DV	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV	2019–2021 DV
Fort Mountain, Cohutta Overlook Monitor.	Murray County (Georgia).	13–213–0003	73	71	72	68	66	64	65	65	65	65	62	62

*The ozone monitor located in the Murray County 1997 8-hour Ozone NAAQS Maintenance Area at Fort Mountain, Cohutta Overlook (AQS Site ID 13–2013–0003) began operation in 1999 and provided data for the 1997 8-hour ozone designation finalized in 2004.

Therefore, the Murray County Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_X emissions control programs, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Murray County Area through the second 10-year maintenance period and beyond.

2. Stability of Ozone Levels

As discussed above, the Murray County Area has maintained ozone concentrations below the 1997 8-hour ozone NAAQS over the past fifteen 3-year design value periods.[20] Additionally, the design value data shown in Table 2 illustrates that ozone levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data in Table 2 indicate that the largest year-over-year change in design value at any one monitor during these twelve design value years was 0.004 ppm, which occurred between the 2010–2012 design value and the 2011–2013 design value, representing approximately a 5 percent decrease at monitor 13–213–0013 (Fort Mountain, Cohutta Overlook). At this monitor, four design values spanning over six years remained steady at 0.065 ppm, which occurred between the 2014–2016 design value through 2017–2019 design value. Furthermore, there is an overall downward trend in design values for the Murray County Area. This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Murray County Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

C. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring networks operated and maintained by the states in accordance with 40 CFR part 58. The network plans, which are submitted annually to EPA, are consistent with the ambient air quality monitoring network assessment. The Murray County 1997 8-hour Ozone NAAQS Area was designated nonattainment due to ozone concentrations at the monitor located at Fort Mountain in the Chattahoochee National Forest.[21]

Under a CAA section 103 grant agreement with EPA, Georgia has operated this monitor since 1999, following EPA's promulgation of the 1997 8-hour ozone NAAQS. EPA provides oversight of the State's operation of this monitor on an annual basis through normal grant monitoring activities. Georgia operates a network plan that includes this monitor. The annual network plan developed by Georgia follows a public notification and review process. EPA has reviewed and approved Georgia's 2021 Ambient Air Monitoring Network Plan (''2021 Annual Network Plan''), which addresses the monitor used to determine attainment for the Murray County 1997 8-hour Ozone NAAQS Area.[22] Separately, Georgia has committed to maintaining the monitor within the Murray County Area.[23]

To verify the attainment status of an area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, Georgia's 2021 Annual Network Plan, which covers the monitor within the Murray County Area, has been approved by EPA in accordance with 40 CFR part 58, and Georgia commits to continuing operation of this monitor and to consulting with the EPA prior to making any changes to it. The State also acknowledges the obligation to meet monitoring requirements in compliance with 40 CFR part 58.[24] EPA proposes to find that there is an adequate ambient air quality monitoring network in the Murray County Area to verify continued attainment of the 1997 8-hour ozone NAAQS.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period.

The Murray County Area LMP contingency plan includes tracking and triggering mechanisms to determine when control measures are needed, and a process for developing and adopting appropriate control measures. There are two potential triggers for the contingency plan. The Tier I trigger will be any 8-hour ozone monitoring reading exceeding 84 ppb at the Fort Moutain ambient monitoring station located in the Murray County Area or periodic emissions inventory updates[25] that reveal excessive or unanticipated growth greater than 10 percent in either NO_X or VOC emissions over the attainment inventory for the Murray County Area. The Tier II trigger will be any recorded violation of the 1997 8-hour ozone NAAQS at the Fort Mountain ambient monitoring station in

[20] The Murray County Area has maintained ozone concentrations below the 1997 8-hour ozone NAAQS since 2007 when the Area was redesignated to attainment for the 1997 8-hour ozone NAAQS. *See* Air Quality Design Values, Previous Design Value Reports, *https://www.epa.gov/air-trends/air-quality-design-values#previous.*

[21] *See* 69 FR 23858 (April 30, 2004) (final designation action for the 1997 8-hour ozone NAAQS) and *https://www.epa.gov/ground-level-ozone-pollution/1997-ozone-national-ambient-air-quality-standards-naaqs-nonattainment* (monitoring data associated with the designation for the 1997 8-hour ozone NAAQS).

[22] *See* October 19, 2021, letter and approval from Caroline Freeman, Director, Air and Radiation Division, EPA Region 4 to Karen Hays, Chief, Environmental Protection Division, Georgia Department of Natural Resources, available in the docket for this proposed action.

[23] *See* 72 FR 49679 (August 29, 2007).

[24] *See* Georgia's October 20, 2021, SIP submittal (available in the docket for this proposed rulemaking) at page 11.

[25] The Air Emissions Reporting Rule (AERR) requires state and local agencies to collect and submit criteria pollutant emissions data to EPA's Emissions Inventory System (EIS) according to the schedule in 40 CFR 51.30.

the Murray County Area. Upon either the Tier I or Tier II triggers being activated, Georgia EPD will commence analyses to determine what additional measures, if any, will be necessary to attain or maintain the ozone standard. If activation of either trigger occurs, the plan provides a regulatory adoption process for revising emission control strategies. If Georgia's analysis determines that the Murray County Area is the source of emissions that contribute to a violation, the State will evaluate those measures as specified in section 172 of the CAA for control options as well as other available measures. Georgia will implement necessary controls as expeditiously as possible, and at least one contingency measure will be implemented within 24 months after the determination, based on quality-assured ambient data, that a violation has occurred. The Georgia EPD will begin initial analysis of possible contingency measures within 6 months of the trigger occurring.[26]

EPA proposes to find that the contingency provisions in Georgia's second maintenance plan for the 1997 8-hour ozone NAAQS meet the requirements of CAA section 175A(d).

E. Conclusion

EPA proposes to find that the Murray County Area LMP for the 1997 8-hour ozone NAAQS includes an approvable update of various elements of the initial EPA-approved maintenance plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Murray County Area qualifies for the LMP option and adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and historically stable design values. EPA believes the Murray County Area LMP, which retains existing control measures in the SIP, is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Murray County Area over the second maintenance period (*i.e.,* through 2027) and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve Georgia's October 20, 2021, submission of the Murray County Area LMP as a revision to the Georgia SIP.

V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93 subpart A requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Metropolitan Transportation Plan (MTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as ''the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.'' *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). On October 16, 2007, EPA made a finding that the MVEBs for the first 10 years of the 1997 8-hour ozone maintenance plan for the Murray County 1997 8-hour Ozone NAAQS Area were adequate for transportation conformity purposes. In a **Federal Register** notice dated August 29, 2007, EPA notified the public of that status of that finding. *See* 72 FR 49679. This adequacy determination became effective on November 15, 2007. After approval of this LMP or an adequacy finding for this LMP, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the Murray County Area. All actions that would require a transportation conformity determination for the Murray County Area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 as a result of EPA's adequacy finding for this LMP. *See* 69 FR 40004 (July 1, 2004).

According to 40 CFR 93.101, isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have Federally required MTPs or TIPs and do not have projects that are part of the emissions analysis of any metropolitan planning organizations' MTP or TIP. Projects in such areas are instead included in the statewide transportation improvement program. Murray County is considered an isolated rural area. Transportation conformity is done in isolated rural areas only when non-exempt Federal Highway/Federal Transit projects need funding or approval. Specifically, these areas must demonstrate they have met the consultation requirements according to 40 CFR 93.112; use the latest planning assumptions per 40 CFR 93.110 as it relates to information about Transportation Control Measures (TCMs) in an approved SIP, as well as ensure the timely implementation of the TCMs according to 40 CFR 93.113.

VI. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Murray County Area LMP for the 1997 8-hour ozone NAAQS, submitted by Georgia EPD on October 20, 2021, as a revision to the Georgia SIP. EPA is proposing to approve the Murray County Area LMP because it includes an acceptable update of various elements of the 1997 8-hour ozone NAAQS maintenance plan approved by EPA for the first 10-year period and retains the relevant provisions of the SIP.

EPA also finds that the Murray County Area qualifies for the LMP option and that the Murray County Area LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Murray County Area's 1997 8-Hour Ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Murray County Area over the second 10-year maintenance period, through 2027, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

VII. 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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to

[26] See the Contingency Plan Section of the LMP for further information regarding the contingency plan, including measures that Georgia will consider for adoption if any of the triggers are activated.

approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 et seq.

Dated: December 16, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–27866 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R09–OAR–2022–0623; FRL–10031–01–R9]

Clean Air Act Operating Permit Program; California; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of revisions to the Clean Air Act (CAA or ''Act'') Operating Permit Program (title V) of the San Diego County Air Pollution Control District (SDCAPCD or ''District'') in California. Once approved by the EPA, these program revisions will modify the major source title V potential to emit (PTE) thresholds to conform with the recent reclassification of the San Diego County ozone nonattainment area to ''Severe'' for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). We are taking comments on these proposed revisions and publish our final action approving these revisions elsewhere in this issue of the **Federal Register** in a direct final rule.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0623 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* 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 Weeda Ward, Permits Office (Air–3–1), U.S. Environmental Protection Agency, Region IX, (213) 244–1812, *ward.laweeda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA. This proposal addresses the following local rule: SDCAPCD Rule 1401, ''Title V Operating Permits—General Provisions.'' In the Final Rules section of this **Federal Register**, the EPA is approving the District's submissions and making administrative updates as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the action is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA contemplates no further action. If the EPA receives adverse comments, the EPA will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. We do not plan to open a second comment period on this action, so anyone interested in commenting should do so at this time. Please note that if the EPA receives an adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule of the same title that is located in the Final Rules section of this **Federal Register**.

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I. Background
II. What are the requirements for approval of revisions to Title V programs?
III. What is the State's proposed Title V program revision?

I. Background

The CAA Amendments of 1990 include title V, which requires states to develop an operating permits program that meets the Federal criteria codified in title 40 of the Code of Federal Regulations (CFR) part 70. The title V program requires certain sources of air pollution to obtain Federal operating permits from their respective states. These Federal operating permits improve enforcement and compliance by consolidating all applicable Federal requirements into one federally enforceable document. Before a state can issue permits under 40 CFR part 70 (which are referred to as ''title V permits''), the EPA must approve its programs as amendments to appendix A of 40 CFR part 70. States may submit revisions to their approved programs for EPA approval.

Title V of the CAA applies to ''major stationary sources'' as defined in title I, part D of the Act. The regulations at 40 CFR 70.2 and 40 CFR 51.165(a)(1)(iv)(A) base the definition of ''major stationary source'' on the nonattainment classification of the area where the source is located. Table 1 shows the attainment/non-attainment/unclassifiable status for the applicable NAAQS within the District's jurisdictional boundary. As shown in Table 1, SDCAPCD's jurisdiction is classified as Severe-15 nonattainment for the 2008 and 2015 8-hour ozone NAAQS.[1] The area is designated attainment/unclassifiable for all other NAAQS. See 40 CFR 81.305.

TABLE 1—AIR QUALITY ATTAINMENT STATUS

NAAQS pollutant/standards	San Diego County (NA = Non-attainment/Classification, A = Attainment, M = Maintenance, U = Unclassified)
Ozone 2008 8-Hour	NA, Severe-15.
Ozone 2015 8-Hour	NA, Severe-15.
Nitrogen dioxide (NO_2)	A/U.
$PM_{2.5}$ 2012 24-Hour	A/U.
PM_{10} 1987 24-Hour	A/U.
Sulfur dioxide (SO_2) 2010 Standards	A/U.
Carbon monoxide 1971 Standards	A/U.
Lead (pb) 2008 Standards	A/U.

The emission thresholds above which a title V operating permit is required pursuant to 40 CFR 70.3(a) and 40 CFR 51.165(a)(1)(iv)(A)(*1*) and (*2*) are shown in Table 2.

TABLE 2—TITLE V EMISSIONS THRESHOLDS [a]

Non-attainment designation/classification	VOC or NO_X (tpy)	CO (tpy)	PM_{10} (tpy)
Marginal	100	100	100
Moderate	100	100	100
Serious	50	50	70
Ozone transport region (other than Severe or Extreme)	50		
Severe	25		
Extreme	10		

[a] 40 CFR 51.165(a)(1)(iv)(A).

II. What are the requirements for approval of revisions to Title V programs?

Pursuant to 40 CFR 70.4(i), either the EPA or the state may initiate a title V program revision ''when the relevant Federal or State statutes or regulations are modified or supplemented.'' It is the responsibility of the state to keep the EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures. Revision of a state program shall be accomplished as follows:

(a) The state submits a modified program description, attorney general's statement (if necessary for expanded or additional authority), or other documents as the EPA determines to be necessary. 40 CFR 70.4(i)(2)(i).

(b) After the EPA receives a proposed program revision, it will publish a notice of the proposed change in the **Federal Register** and provide for a public comment period of at least 30 days. 40 CFR 70.4(i)(2)(ii).

(c) The Administrator shall approve or disapprove program revisions based on the requirements of 40 CFR part 70 and the Act. 40 CFR 70.4(i)(2)(iii).

(d) The EPA must publish a notice of approval in the **Federal Register** for any substantial program revisions. 40 CFR 70.4(i)(2)(iv).

(e) Approval of nonsubstantial revisions may be given by a letter from the Administrator to the Governor or a designee. 40 CFR 70.4(i)(2)(iv).

(f) A program revision shall become effective upon the approval of the Administrator. 40 CFR 70.4(i)(2)(iv).

III. What is the State's proposed Title V program revision?

Table 3 lists the rules submitted as part of the SDCAPCD's title V program revisions and the dates they were adopted by the District and submitted by the California Air Resources Board

[1] The EPA reclassified the San Diego region to a Severe ozone nonattainment area, effective July 2, 2021. This reclassification to Severe means that a major stationary source is now defined as a source emitting 25 tons or more per year of either oxides of nitrogen or volatile organic compounds. 86 FR 29522 (June 2, 2021).

(CARB), which is the Governor's designee for California rule submittals.[2]

TABLE 3—SUBMITTED RULES

Rule No.	Rule title	Amended date	Submitted date [a]
1401	Title V Operating Permits—General Provisions	10/14/2021	1/24/2022

[a] CARB transmitted the submittal to the EPA by a letter dated January 20, 2022.

SDCAPCD revised the definition of ''complete application'' in Rule 1401 to incorporate Rule 1418,[3] ''Action on Applications,'' Section (a): Completeness Determination, by reference.

Additionally, SDCAPCD revised the definition of a major stationary source in Rule 1401, Section (c)(26), to incorporate Rule 20.1,[4] ''New Source Review-General Provisions,'' Section (c)(30), ''Federal Major Stationary Source'' by reference. Rule 20.1 contains the definition of a ''Federal Major Stationary Source'' pursuant to 40 CFR 70.2, Definitions, ''Major source.''

List of Subjects in 40 CFR Part 70

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 14, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–27724 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

[2] Rule 1401 was amended to revise the definitions of ''complete application'' and ''major stationary source.'' A detailed explanation of the EPA's evaluation of these proposed revisions as well as a change copy of the revised rule can be found in the Technical Support Document (TSD) and docket.

[3] All references to SDCAPCD Rule 1418 refer to the current EPA-approved version of this rule. 68 FR 74871 (December 29, 2003). Any future changes to Rule 1418 that amend Section (a) of this rule will necessitate a conforming amendment to Rule 1401 and a subsequent title V program revision.

[4] All references to SDCAPCD Rule 20.1 refer to the current SIP-approved version of this rule. 87 FR 58729 (September 28, 2022). A correction to this final rule was published on October 27, 2022 (87 FR 65015). Any future changes to Rule 20.1 that amend Table 20.1–5b of this rule will necessitate a conforming amendment to Rule 1401 and a subsequent title V program revision.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 9, 23, and 52

[FAR Case 2021–015, Docket No. FAR–2021–0015, Sequence No. 1]

RIN 9000–AO32

Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD, GSA, and NASA issued a proposed rule on November 14, 2022, proposing to amend the Federal Acquisition Regulation (FAR) to implement a requirement to ensure certain Federal contractors disclose their greenhouse gas emissions and climate-related financial risk and set science-based targets to reduce their greenhouse gas emissions. The deadline for submitting comments is being extended from January 13, 2023, to February 13, 2023, to provide additional time for interested parties to provide comments on the proposed rule.

DATES: For the proposed rule published on November 14, 2022, (87 FR 68312), submit comments by February 13, 2023.

ADDRESSES: Submit comments in response to FAR Case 2021–015 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2021–015''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2021–015''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2021–015'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2021–015'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content contact, Ms. Jennifer Hawes, Procurement Analyst, at 202–255–9194 or by email at *jennifer.hawes@gsa.gov.* For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2021–015.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 87 FR 68312, on November 14, 2022. The comment period is extended to February 13, 2023, to allow additional time for interested parties to develop comments on the rule.

List of Subjects in 48 CFR Parts 1, 4, 9, 23, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–27884 Filed 12–22–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 227, and 252

[Docket DARS–2020–0033]

RIN 0750–AK84

Defense Federal Acquisition Regulation Supplement: Small Business Innovation Research Data Rights (DFARS Case 2019–D043); Correction

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; correction.

SUMMARY: DoD is correcting proposed regulations published in the **Federal Register** on December 19, 2022, regarding Small Business Innovation Research Data Rights. The document heading carried an incorrect Regulation Identifier Number. This document reflects the correct Regulation Identifier Number.

DATES: Comments on the proposed rule published on December 19, 2022, at 87 FR 77680, continue to be accepted on or before February 17, 2023, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019–D043, using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2019–D043.'' Select ''Comment'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2019–D043'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2019–D043 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: On December 19, 2022, DoD published a proposed rule in the **Federal Register** at 87 FR 77680 titled ''Small Business Innovation Research Data Rights''. The document's heading on page 77680, in the first column, contained the incorrect Regulation Identifier Number (RIN) 0750–AK71. The correct RIN is ''RIN 0750–AK84'' and is in the heading of this correction.

Jennifer D. Johnson,

Editor/Publisher,Defense Acquisition Regulations System.

[FR Doc. 2022–27885 Filed 12–22–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Chapter XII

[Docket No. TSA–2022–0001]

RIN 1652–AA74

Enhancing Surface Cyber Risk Management

AGENCY: Transportation Security Administration, DHS.

ACTION: Extension of comment period.

SUMMARY: On November 30, 2022, the Transportation Security Administration (TSA) published an advance notice of proposed rulemaking (ANPRM) seeking input regarding ways to strengthen cybersecurity and resiliency in the pipeline and rail (including freight, passenger, and transit rail) sectors. The ANPRM solicited comment on specific questions, which would assist TSA in better understanding how the pipeline and rail sectors implement cyber risk management in their operations, support TSA in achieving objectives related to the enhancement of pipeline and rail cybersecurity, and help TSA develop a comprehensive and forward-looking approach to cybersecurity requirements. Through this document, TSA is extending the comment period by 15 calendar days to provide additional time for the public to provide comments.

DATES: The comment period for the ANPRM published at 87 FR 73527 (November 30, 2022) is extended by 15 calendar days, from January 17, 2023, to February 1, 2023.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system. To avoid duplication, please use only one of the following methods:

- *Electronic Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS. Comments must be postmarked by the date indicated above.
- *Fax:* (202) 493–2251.

See the **SUPPLEMENTARY INFORMATION** section for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: *For program questions:* Victor Parker, Surface Division, Policy, Plans, and Engagement, TSA–28, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6002; telephone (571) 227–1039; email: *VettingPolicy@tsa.dhs.gov. For legal questions:* David Kasminoff (TSA, Senior Counsel, Regulations and Security Standards) at telephone (571) 227–3583, or email to *VettingPolicy@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this ANPRM by submitting written comments, including relevant data. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from a rulemaking action. *See* **ADDRESSES** section above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or in person, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. TSA will

stamp the date on the postcard and mail it to you.

All comments, except those that include confidential or sensitive security information (SSI) [1] will be posted to *https://www.regulations.gov,* and will include any personal information you have provided. Should you wish your personally identifiable information redacted prior to filing in the docket, please clearly indicate this request in your submission to TSA. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Certain Sensitive Information Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, SSI, or protected critical infrastructure information to the public regulatory docket. Comments containing this type of information should be submitted separately from other comments, appropriately marked as containing such information, and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section. TSA will take the following actions for all submissions containing SSI:

- TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access.
- TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents.
- TSA may include a redacted version of the comment in the public docket.
- TSA will treat requests to examine or copy information that is not in the public docket as any other request under the Freedom of Information Act (5 U.S.C. 552) and the Department of Homeland Security (DHS) Freedom of Information Act regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual, association, business entity, labor union, *etc.,* who submitted the comment. For more about privacy and the docket, review the Privacy and Security Notice for the FDMS at *https://www.regulations.gov/privacy-notice,* as well as the System of Records Notice DOT/ALL 14—Federal Docket Management System (73 FR 3316, January 17, 2008) and the System of Records Notice DHS/ALL 044—eRulemaking (85 FR 14226, March 11, 2020).

You may review TSA's electronic public docket at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. and 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This DOT facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE, Washington, DC 20590.

Availability of Rulemaking Document

You can find an electronic copy of rulemaking documents relevant to this action by searching the electronic FDMS web page at *https://www.regulations.gov* or at *https://www.federalregister.gov.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this ANPRM.

Extension of Comment Period

On November 30, 2022 (87 FR 73527), TSA published an ANPRM seeking comment on ways to strengthen cybersecurity and resiliency in the pipeline and rail (including freight, passenger, and transit rail) sectors. The ANPRM provides a 45-day comment period that would have closed on January 17, 2023. In a joint letter dated December 5, 2022, the American Gas Association, Interstate Natural Gas Association, American Fuel & Petrochemical Manufacturers, American Public Gas Association, American Petroleum Institute, Liquid Energy Pipeline Association, Association of American Railroads, and American Short Line and Regional Railroad Association requested an extension of the deadline for submitting comments on the ANPRM. See Docket No. TSA–2022–0001–0002. In response to the requests by prospective commenters for additional time to adequately consider and respond to the ANPRM, TSA has determined that an extension of the comment period until February 1, 2023 is appropriate.

Dated: December 19, 2022.

Austin Gould,

Acting Executive Assistant Administrator, Operations Support.

[FR Doc. 2022–27917 Filed 12–22–22; 8:45 am]

BILLING CODE 9110–05–P

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

Notices

Federal Register

Vol. 87, No. 246

Friday, December 23, 2022

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

Economic Research Service

Agency Information Collection Activities: Comment Request

AGENCY: Economic Research Service, US Department of Agriculture.

ACTION: Notice.

SUMMARY: Economic Research Service (ERS) within US Department of Agriculture (USDA) invites the general public and other Federal agencies to comment on a proposed information collection. ERS plans to collect information from the public to fulfill its data security requirements when providing access to restricted use microdata for the purpose of evidence building. ERS's data security agreements and other paperwork along with the corresponding security protocols allow ERS to maintain careful controls on confidentiality and privacy, as required by law. The purpose of this notice is to allow for 60 days of public comment on the proposed data security information collection, prior to submission of the information collection request (ICR) to the Office of Management and Budget (OMB).

DATES: Written comments on this notice must be received by February 21, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of ERS, including whether the information will have practical utility; (b) the accuracy of ERS's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

ADDRESSES: Address all comments concerning this notice to *ers.pra@usda.gov* identified by docket number 0535–NEW.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Julie Parker at *ers.pra@usda.gov* or 202–923–4910.

SUPPLEMENTARY INFORMATION: The Foundations for Evidence-Based Policymaking Act of 2018 mandates that the Office of Management and Budget (OMB) establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. While the adoption of the SAP is required for statistical agencies and units designated under CIPSEA, it is recognized that other agencies and organizational units within the Executive branch may benefit from the adoption of the SAP to accept applications for access to confidential data assets. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP. The SAP Portal is to be a single web-based common application for the public to request access to confidential data assets from federal statistical agencies and units. The National Center for Science and Engineering Statistics (NCSES), within the National Science Foundation (NSF), submitted a **Federal Register** Notice announcing plans to collect information through the SAP Portal (87 FR 53793).

Once an application for confidential data is approved through the SAP Portal, ERS will collect information to meet its data security requirements. This collection will occur outside of the SAP Portal.

Title of Collection: Data Security Requirements for Accessing Confidential Data.

OMB Control Number: 3145–NEW.

Expiration Date of Current Approval: Not Applicable.

Type of Request: Intent to seek approval to collect information from the public to fulfill Economic Research Service's security requirements allowing individuals to access confidential data assets for the purposes of building evidence.

Abstract: Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (hereafter referred to as the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. Specifically, the Evidence Act requires OMB to establish a common application process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply for access to confidential data assets collected, accessed, or acquired by a statistical agency or unit. This new process will be implemented while maintaining stringent controls to protect confidentiality and privacy, as required by the law.

Data collected, accessed, or acquired by statistical agencies and units is vital for developing evidence on conditions, characteristics, and behaviors of the public and on the operations and outcomes of public programs and policies. This evidence can benefit the stakeholders in the programs, the broader public, as well as policymakers and program managers at the local, State, Tribal, and National levels. The many benefits of access to data for evidence building notwithstanding, ERS is required by law to maintain careful controls that allow it to minimize disclosure risk while protecting confidentiality and privacy. The fulfillment of ERS data security requirements places a degree of burden on the public, which is outlined below.

The SAP Portal is a web-based application for the public to request access to confidential data assets from federal statistical agencies and units. The objective of the SAP Portal is to increase public access to confidential data for the purposes of evidence building and reduce the burden of

applying for confidential data. Once an individual's application in the SAP Portal has received a positive determination, the data-owning agency(ies) or unit(s) will begin the process of collecting information to fulfill their data security requirements.

The paragraphs below outline the SAP Policy, the steps to complete an application through the SAP Portal, and the process for agencies to collect information fulfilling their data security requirements.

The SAP Policy

At the recommendation of the ICSP, the SAP Policy establishes the SAP to be implemented by statistical agencies and units and incorporates directives from the Evidence Act. The policy is intended to provide guidance as to the application and review processes using the SAP Portal, setting forth clear standards that enable statistical agencies and units to implement a common application form and a uniform review process. The SAP Policy was submitted to the public for comment in January 2022 (87 FR 2459, 2022). The policy is currently under review and has not yet been finalized.

The SAP Portal

The SAP Portal is an application interface connecting applicants seeking data with a catalog of data assets owned by the federal statistical agencies and units. The SAP Portal is not a new data repository or warehouse; confidential data assets will continue to be stored in secure data access facilities owned and hosted by the federal statistical agencies and units. The Portal will provide a streamlined application process across agencies, reducing redundancies in the application process. This single SAP Portal will improve the process for applicants, tracking and communicating the application process throughout its lifecycle. This reduces redundancies and burden on applicants that request access to data from multiple agencies. The SAP Portal will automate key tasks to save resources and time and will bring agencies into compliance with the Evidence Act statutory requirements.

Data Discovery

Individuals begin the process of accessing restricted use data by discovering confidential data assets through the SAP data catalog, maintained by federal statistical agencies at *www.researchdatagov.org.* Potential applicants can search by agency, topic, or keyword to identify data of interest or relevance. Once they have identified data of interest, applicants can view metadata outlining the title, description or abstract, scope and coverage, and detailed methodology related to a specific data asset to determine its relevance to their research.

While statistical agencies and units shall endeavor to include metadata in the SAP data catalog on all confidential data assets for which they accept applications, it may not be feasible to include metadata for some data assets (*e.g.,* potential curated versions of administrative data). A statistical agency or unit may still accept an application through the SAP Policy even if the requested data asset is not listed in the SAP data catalog.

SAP Application Process

Individuals who have identified and wish to access confidential data assets will be able to apply for access through the SAP Portal when it is released to the public in late 2022. Applicants must create an account and follow all steps to complete the application. Applicants begin by entering their personal, contact, and institutional information, as well as the personal, contact, and institutional information of all individuals on their research team. Applicants proceed to provide summary information about their proposed project, to include project title, duration, funding, timeline, and other details including the data asset(s) they are requesting and any proposed linkages to data not listed in the SAP data catalog, including non-federal data sources. Applicants then proceed to enter detailed information regarding their proposed project, including a project abstract, research question(s), literature review, project scope, research methodology, project products, and anticipated output. Applicants must demonstrate a need for confidential data, outlining why their research question cannot be answered using publicly available information.

Submission for Review

Upon submission of their application, applicants will receive a notification that their application has been received and is under review by the data owning agency or agencies (in the event where data assets are requested from multiple agencies). At this point, applicants will also be notified that application approval does not alone grant access to confidential data, and that, if approved, applicants must comply with the data-owning agency's security requirements outside of the SAP Portal, which may include a background check.

In accordance with the Evidence Act and the direction of the ICSP, agencies will approve or reject an application within a prompt timeframe. In some cases, agencies may determine that additional clarity, information, or modification is needed and request the applicant to ''revise and resubmit'' their application. This is also in accordance with the SAP Policy, which was submitted to the public for comment in January 2022 (87 FR 2459, 2022). The policy is currently under review and has not yet been finalized.

Data discovery, the SAP application process, and the submission for review are planned to take place within the web-based SAP Portal. The notice announcing plans to collect information through the SAP Portal has been published separately (87 FR 53793).

Access to Restricted Use Data

In the event of a positive determination, the applicant will be notified that their proposal has been accepted. The positive or final adverse determination concludes the SAP Portal process. In the instance of a positive determination, the data-owning agency (or agencies) will contact the applicant to provide instructions on the agency's security requirements that must be completed to gain access to the confidential data. The completion and submission of the agency's security requirements will take place outside of the SAP Portal.

Collection of Information for Data Security Requirements

In the instance of a positive determination for an application requesting access to a ERS confidential data asset, ERS will contact the applicant(s) to initiate the process of collecting information to fulfill their security requirements. These include additional requirements necessary for the statistical agency or unit to place the applicant(s) in a trusted category that may include the applicant's successful completion of a background investigation, confidentiality training, nondisclosure, and data use agreements.

ERS's data security requirements include the collection of the following information:

- *CIPSEA Training:* ERS personnel provide a Security Briefing to all applicants who were approved access to restricted data. The Briefing includes information on the Confidential Information Protection and Statistical Efficiency Act of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35 and other applicable Federal laws that protect the restricted data. Researchers will be asked to fill out the *CIPSEA Review Form* to verify that they reviewed the training.

• Completion of form *Certification and Restrictions on the Use of Confidential ERS Data.* This form is required to be signed by researchers who have been approved to access unpublished ERS data (alternatively, some approved researchers complete on-line training in lieu of completing this form). The form contains excerpts of the various laws that apply to the unpublished data being provided to the researcher. The form explains the restrictions associated with the unpublished data and includes a place for the research to sign the form, thereby acknowledging the restrictions and agreeing to abide by them.

• Completion of *ERS Data Remote Workplace Security Inspection Checklist.* Researchers approved to access unpublished ERS data do so using a secure data enclave environment accessible at their own location. An ERS employee performs a site inspection (either in-person or via a video call) of the researcher's location prior to the researcher being granted access to the unpublished data. During the site inspection, the ERS employee administers the form ERS *Site Inspection Checklist,* which asks questions pertaining to the suitability of the location for restricted data access and some of the policies associated with accessing the restricted data. The form also collects information about the computer the researcher will use to access the ERS data enclave.

• Completion of *ERS Memorandum of Understanding (MOU).* Researchers approved to access unpublished ERS data need to complete a Memorandum of Understanding Agreement between the Economic Research Service and their university, institution, or agency. The form establishes data access protocols and party responsibilities. If necessary, researchers may request an extension to their MOU using the *Extension of MOU Request Form.*

• If a researcher wishes to add a new researcher to their previously approved project, they can fill out the *Amendment for New Collaborators.* If a researcher wishes to change the scope of a previously approved project, they may fill out the *Request for Amended Project Agreement Form.*

Estimate of Burden: The amount of time to complete the agreements and other paperwork that comprise ERS's security requirements will vary based on the confidential data assets requested and the access modality. To obtain access to ERS confidential data assets, it is estimated that the average time to complete and submit ERS data security agreements and other paperwork is 110 minutes. This estimate does not include the time needed to complete and submit an application within the SAP Portal. All efforts related to SAP Portal applications occur prior to and separate from ERS effort to collect information related to data security requirements.

The expected number of applications in the SAP Portal that receive a positive determination from ERS in a given year may vary. Overall, per year, ERS estimates it will collect data security information for 120 application submissions that received a positive determination within the SAP Portal. ERS estimates that the total burden for the collection of information for data security requirements over the course of the three-year OMB clearance will be about 1,080 hours and, as a result, an average annual burden of 360 hours.

Spiro Stefanou,

Administrator, Economic Research Service, United States Department of Agriculture.

[FR Doc. 2022–27772 Filed 12–22–22; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2022–0033]

2023 Rate Changes for the Basetime, Overtime, Holiday, Laboratory Services, and Export Application Fees

AGENCY: Food Safety and Inspection Service (FSIS), Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: FSIS is announcing the 2023 rates it will charge meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services. Additionally, FSIS is announcing that there will be no changes to the fee FSIS assesses to exporters that choose to apply for export certificates electronically through the export component of the Agency's Public Health Information System. The 2023 basetime, overtime, holiday, and laboratory services rates will be applied on January 1, 2023.

DATES: FSIS will charge the rates announced in this notice beginning January 1, 2023.

FOR FURTHER INFORMATION CONTACT: For further information contact Michael Toner, Director, Budget Division, Office of the Chief Financial Officer, FSIS, U.S. Department of Agriculture, Room 2159, South Building, 1400 Independence Avenue SW, Washington, DC 20250–3700; Telephone: (202) 690–8398, Fax: (202) 690–4155.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2011, FSIS published a final rule amending its regulations to establish formulas for calculating the rates it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services (76 FR 20220).

In the final rule, FSIS stated that it would use the formulas to calculate the annual rates, publish the rates in **Federal Register** notices prior to the start of each calendar year, and apply the rates on the first FSIS pay period at the beginning of the calendar year. This notice provides the 2023 rates, which will be applied starting on January 1, 2023.

On September 6, 2017, FSIS published a **Federal Register** notice, ''Public Health Information System (PHIS) Export Component Country Implementation'' (FR 82 42056). The notice announced the delayed implementation of the export component to ensure sufficient testing and outreach to stakeholders and that the application fee would be recalculated based on available costs and number of applications but would not be assessed prior to January 1, 2019. In addition, FSIS announced that it would implement the PHIS Export Component with a limited number of countries and gradually expand implementation to additional countries.

On April 29, 2019, FSIS published a **Federal Register** notice, ''Public Health Information System Export Component Fee'' (84 FR 17999). The notice announced that starting June 1, 2019, FSIS would assess a fee of $4.01 to exporters that chose to apply for export certificates electronically through the export component of PHIS. As noted below, that fee remains unchanged since 2019.

On July 15, 2021, FSIS published a **Federal Register** notice, ''Overtime and Holiday Inspection Fee Reductions for Small and Very Small Establishments'' (86 FR 37276). The notice explained that the American Rescue Plan Act provided FSIS with $100 million in budget authority to reduce the costs of overtime inspection for small and very small official meat and poultry establishments and egg products plants. The notice also announced that FSIS implemented this provision by reducing overtime and holiday inspection fees for small establishments by 30 percent and

very small establishments by 75 percent. More information on how to apply for the fee reduction is available at: *https://www.fsis.usda.gov/policy/federal-register-rulemaking/federal-register-notices/overtime-and-holiday-inspection-fee*.

2023 Rates and Calculations

The following table lists the 2023 Rates per hour, per employee, by type of service:

Service	2023 Rate (estimates rounded to reflect billable quarter hour)
Basetime	$67.12
Overtime	82.80
Holiday	98.44
Laboratory	87.36
Export Application	*4.01

*Per application.

The regulations that cover these fees (other than the export application fee) state that FSIS will calculate the rates using formulas that include the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay and regular hours (9 CFR 391.2, 391.3, 391.4, 590.126, 590.128, 592.510, 592.520, and 592.530). The final rates have been rounded to make the amount divisible by the quarter hour (15 minutes). Fifteen minutes is the minimum charge for the services covered by these rates.

FSIS determined the 2023 rates using the following calculations:

Basetime Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost-of-living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2023 basetime rate per hour per program employee is:

[FY 2022 OFO Regular Direct Pay divided by the previous fiscal year's Regular Hours ($462,882,117/15,449,262)] = $29.96+ ($29.96 * 4.6% (calendar year 2023 Cost of Living Increase)) = $31.34 + $11.59 (benefits rate) + $2.48 (travel and operating rate) + $21.71(overhead rate) + $0.00 (bad debt allowance rate) = $67.12, which is divisible by 4.

Overtime Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost-of-living increase, multiplied by 1.5 (for overtime), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2023 overtime rate per hour per program employee is:

[FY 2022 OFO Regular Direct Pay divided by previous fiscal year's Regular Hours ($462,882,117/15,449,262)] = $29.96 + ($29.96 * 4.6% (calendar year 2022 Cost of Living Increase)) = $31.34 * 1.5 = $47.01 + $11.59 (benefits rate) + $2.48 (travel and operating rate) + $21.71(overhead rate) + $0.00(bad debt allowance rate) = $82.80, which is divisible by 4.

Holiday Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost-of-living increase, multiplied by 2 (for holiday pay), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2023 holiday rate per hour per program employee calculation is:

[FY 2022 OFO Regular Direct Pay divided by Regular Hours ($462,882,117/15,449,262)] = $29.96 + ($29.96 * 4.6% (calendar year 2022 Cost of Living Increase)) = $31.34* 2 = $62.68+ $11.59(benefits rate) + $2.48 (travel and operating rate) + $21.71 (overhead rate) + $0.00 (bad debt allowance rate) = $98.46, rounded down to 98.44, so that it is divisible by 4.

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2023 laboratory services rate per hour per program employee is:

[FY 2022 OPHS Regular Direct Pay/OPHS Regular hours ($27,499,214/557,759)] = $49.30 + ($49.30 * 4.6% (calendar year 2022 Cost of Living Increase)) = $51.57+ $11.59 (benefits rate) + $2.48 (travel and operating rate) + $21.71 (overhead rate) + $0.00 (bad debt allowance rate) = $87.35, rounded up to 85.36, so that it is divisible by 4.

Calculations for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2023 benefits rate per hour per program employee is:

[FY 2022 Direct Benefits/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($212,068,102/19,142,899)] = $11.08 + ($11.08* 4.6% (calendar year 2022 Cost of Living Increase)) = $11.59.

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2023 travel and operating rate per hour per program employee is:

[FY 2022 Total Direct Travel and Operating Costs/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($46,365,745/19,142,899)] = $2.48 + ($2.48 * 2.3% (2023 Inflation) = $2.48.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the provision for the operating balance less any Greenbook costs (*i.e.,* costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2023 overhead rate per hour per program employee is:

[FY 2022 Total Overhead/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($ 406,272,208/19,142,899)] = $21.22 + ($21.22 * 2.3% (2021 Inflation) = $21.71.

Allowance for Bad Debt Rate = Previous fiscal year's total allowance for bad debt (for example, debt owed for

overtime and holiday inspection services that is not paid in full by plants and establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2023 calculation for bad debt rate per hour per program employee is:

[FY 2022 Total Bad Debt/(Total Regular hours + Total Overtime hours + Total Holiday hours) = ($69,944/19,142,899)] = $0.00.

2023 Electronic Export Application Fee

The 2023 Electronic Export Application Fee:

$$\frac{\text{Labor Cost } (\$560{,}901.60 + (\$337{,}369)) + \text{IT Cost } (\$1{,}414{,}285.60 + \$0)}{576{,}192} = \$4.01$$

As published in FSIS' final rule, *Electronic Export Application and Certification Charge; Flexibility in the Requirements for Export Inspection Marks, Devices, and Certificates; Egg Products Export Certification* (81 FR 42225), the Electronic Export Application Fee Formula is:

$$\frac{\text{Labor Cost (Technical Support + Export Library Maintenance) + IT Cost (Ongoing Operations and Maintenance + eAuthentication)}}{\text{Number of Export Applications}}$$

FSIS stated in the 2016 final rule (81 FR 42225) and the 2017 **Federal Register** notice (FR 82 42056) that it would update and recalculate the fee based on the best available estimates for costs and number of applications; however, the number of export applications (the denominator in the formula) cannot be accurately assessed until a majority of countries are included in the export component. Therefore, because a majority of countries are not yet included in the PHIS Export component, the cost estimates and projected export applications in the final rule remain the best estimate for 2023, leaving the electronic export application fee unchanged.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register*.

FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov*.

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

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2022–27943 Filed 12–22–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Healthy Meals Incentives Recognition Awards Application for School Food Authorities

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for the Healthy Meals Incentives Recognition Awards Application. The Recognition Awards will recognize School Food Authorities (SFAs) that have made significant improvements to the nutritional quality of their school meals by exceeding the transitional school meal pattern requirements, engaging students, and implementing innovative practices. SFAs can apply to one or more Recognition Awards included in the Application form.

DATES: Written comments must be received on or before March 10, 2023.

ADDRESSES: Comments may be sent to: Kaylyn Padovani, Food and Nutrition Service, U.S. Department of Agriculture, 4th Floor, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314; telephone: 703–305–2078. Comments may also be submitted via email to *TeamNutrition@fns.usda.gov* with ''Comments to HMI Recognition Awards Application for SFAs'' in the subject line. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kaylyn Padovani via email to *TeamNutrition@fns.usda.gov,* or 703–305–2078.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Healthy Meals Incentives Recognition Awards Application for School Food Authorities.

Form Number: Not yet assigned.

OMB Number: Not yet assigned.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: The National School Lunch Program (NSLP) and School Breakfast Program (SBP) are Federally assisted meal programs operating in public and non-profit private schools and residential child care institutions. The Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) administers the NSLP and SBP at the Federal level. These programs provide nutritionally balanced, low-cost, or no-cost meals to children each school day. School lunches and breakfasts provided through these programs (*i.e.,* school meals) must meet Federal nutrition requirements, which are based upon the Dietary Guidelines for Americans.

On December 29, 2020, USDA and the United States Department of Health and Human Services (HHS) released the *Dietary Guidelines for Americans, 2020–2025* (2020–2025 DGA). During this same time period, the Coronavirus (COVID–19) public health emergency caused major disruptions to the NSLP and SBP and the food supply chain.

In February 2022, USDA FNS published the Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium Final Rule (hereafter referred to as ''Transitional Standards''). This rule establishes transitional standards to support the continued provision of nutritious school meals as schools respond to and recover from the pandemic and while USDA engages in notice-and-comment rulemaking to update the meal pattern standards to more comprehensively reflect the 2020–2025 DGA.

At the State level, the NSLP and SBP are administered by State agencies, which operate these programs through agreements with School Food Authorities (SFAs). While USDA FNS establishes meal pattern requirements and weekly dietary specifications for school meals, decisions about the specific foods to serve and how the foods are prepared are made by SFAs.

USDA FNS recently announced the Healthy Meals Incentives Initiative Recognition Awards to support improvements in the nutritional quality of school meals through the generation and sharing of innovative ideas and tested practices being implemented at the local level. These efforts will also highlight the remarkable achievements SFAs are making in the offering of nutritious school meals that students enjoy. The recognition awards will spotlight innovative practices, student and community engagement strategies, and strategies schools have used to provide meals that are consistent with the 2020–2025 DGA. USDA FNS will highlight and share these diverse best practices nationwide through training and technical assistance resources and Healthy Meals Summits. SFAs meeting Healthy Meals Incentives Recognition Award criteria will receive nonmonetary recognition and stipends to attend and participate in the Healthy Meals Summits.

FNS is developing the Recognition Awards Application and is seeking OMB approval. From August through October 2022, FNS met with State agencies and key school nutrition stakeholders to discuss potential Recognition Award categories, criteria, and documentation.

The collected feedback has informed the development of the Healthy Meals Incentives Recognition Awards. FNS anticipates providing up to 10 types of recognition awards. SFAs may receive awards in more than one category, but SFAs shall receive each award only once.

The application for the Healthy Meals Incentives Recognition Awards is planned to be available for SFAs to apply between School Year 2023–2024 through School Year 2024–2025 (a two-year period). The application form will be available in both English and Spanish, and in other languages and alternative formats upon request. It will include instructions, the awards' criteria and required documentation, and sections to populate and/or upload the required documentation. The form will be designed to reduce burden for SFA applicants by being accessible online and including fillable sections to enter text. The type of information that will

be collected will include SFA information such as address, total number of schools, number of schools participating in the NSLP and SBP, percentage of student eligible for free- and reduced-price meals, school demographic information, such as percentage of students' race and ethnicity, and the SFA point of contact for the application. Also, each award may have up to ten questions that will be easy to respond by just entering a short narrative or uploading documentation and checking the box once it has been completed. This information will be used to verify that the SFA meets the established Recognition Award criteria. The type of documentation to be submitted with the application will vary by award but will consist primarily of documentation that the SFA is already required to maintain as part of the NSLP and SBP, such as school meal production records, menus, Nutrition Facts labels and ingredients statements for foods and beverages, and recipes. As part of the application, the SFA must include a form to be completed by the State agency that has an agreement with the SFA to operate the NSLP and SBP. This form will document that the SFA participates in the NSLP and/or SBP, and does not have any outstanding corrective actions, unresolved findings, or findings related to program discrimination complaints. This form will include the name, title, and contact information of the State agency official that completes the form. The form will include four questions that will be answered by selecting the best answer and a space to provide more details as needed.

SFAs applying for the Healthy Meals Incentives Recognition Awards will receive up to three notifications about the progress of their application, including the confirmation that the application has been submitted and received, assistance for an incomplete application, and final application results. These notifications will be electronic and will inform the SFA of their application status and any required steps to complete the application process.

SFAs participating in the Healthy Meals Incentives Recognition Awards will also be asked to complete up to three feedback forms. These forms are needed to collect information about the customer service provided to SFA during the application process, collect best practices, and collect follow up information related to the delivery of the Recognition Awards and attendance at the Healthy Meals Summit. To maintain the burden to complete these forms as low as possible, they will be completed online, with no more than five questions, formatted so that the SFA can select the best option, and provide more details or comments as needed.

The NSLP and SBP and the Healthy Meals Incentives Recognition Awards are administered in a nondiscriminatory manner in accordance with civil rights laws and regulations.

Affected Public: This collection has two respondent groups. The first respondent group includes School Food Authorities (SFAs) that participate in the National School Lunch Program (NSLP) in the contiguous United States, Hawaii, Alaska, District of Columbia, Puerto Rico, Guam, or the United States Virgin Islands. The second respondent group includes State agencies that administer the NSLP and/or SBP, and have agreements with the SFAs.

Estimated Number of Respondents: The total estimated number of respondents is 2,054, consisting of 2,000 School Food Authorities and 54 State agencies.

Estimated Number of Responses per Respondent: School Food Authorities (SFA) participating in the National School Lunch Program will be invited and encouraged to apply for at least one of the Healthy Meals Incentives Recognition Awards. There will be one application with all the awards. The SFA can use the application to apply for any number of the awards. The SFA can apply for all of the awards but may only receive recognition for each award once. SFAs that apply to the Healthy Meals Incentives Recognition Awards will need to read up to three notifications related to the application process, complete up to three feedback forms, and may need to update their application to correct missing or inaccurate information.

State agencies will need to complete only one State Agency Confirmation Form per applicant SFA.

Estimated Total Annual Responses: The estimated total annual responses are 18,000 responses.

2,000 respondents × 8 responses = 16,000 total annual responses from School Food Authorities

2,000 respondents × 1 response = 2,000 total annual responses from State agencies

Estimated Time per Response: The average estimated time of response by School Food Authorities (SFAs) and State agencies is shown in the table below and described in this section.

The estimated time of response by the SFAs is broken down in four activities: new application, updated application, application notifications, and feedback forms. For SFAs to complete the Healthy Meals Incentives Recognition Awards Application, the estimated time of response varies from 300 to 1,500 minutes depending on how many awards the SFA applies for, with an average estimated time of 15 hours. To update the application, the estimated time to respond by each SFA is between 20 to 90 minutes depending on the number of updates needed to the application information and/or documentation, with an average estimated time of 1 hour. To read each of the notifications regarding the status of the application, the estimated time of response by SFA is between 5 to 35 minutes, with an average estimated time of 0.334 hour. To complete each feedback form, the estimated time of response by SFAs is between 25 to 35 minutes, with an average estimated time of 0.5 hour.

The estimated time of response by State agency to complete and send the State agency confirmation form per SFA is between 20 to 40 minutes, with and average estimated time of 0.5 hour.

Estimated Total Annual Burden on Respondents: The estimated total annual burden on respondents is 2,280,240 minutes (38,004 hours). See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses (col. bxc)	Estimated average number of hours per response	Estimated total hours (col. dxe)
Reporting Burden					
School Food Authorities—HMI Recognition Awards Application	2,000	1.00	2,000	15	30,000.0

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses (col. bxc)	Estimated average number of hours per response	Estimated total hours (col. dxe)
School Food Authorities—Updated HMI Recognition Awards Application	2,000	1.00	2,000	1	2,000.0
School Food Authorities—HMI Recognition Awards Application Notifications (Confirmation of Submission, Incomplete Status, Final Status)	2,000	3.00	6,000	0.334	2,004.0
School Food Authorities—HMI Recognition Awards Feedback Forms (Success Stories, Summit Celebration, Customer Service, and Technical Assistance)	2,000	3.00	6,000	0.5	3,000.0
State Agencies of National School Lunch Program	54	37	2,000	0.5	1,000.0
Total Reporting Burden	2,054		18,000		38,004

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2022–27941 Filed 12–22–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Priscilla Bustos Martinez, 7731 Glasgow Drive, San Antonio, TX 78223

On November 24, 2020, in the U.S. District Court for the Western District of Texas, Priscilla Bustos Martinez (''Martinez'') was convicted of violating 18 U.S.C. 554. Specifically, Martinez was convicted of fraudulently and knowingly exporting and sending or attempting to export and send from the United States to Mexico, four .22 caliber pistols without obtaining a license or written authorization for such export. As a result of her conviction, the Court sentenced Martinez to 37 months in prison, with credit for time served, three years supervised release, and a $100 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Martinez's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Martinez to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Martinez.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Martinez's export privileges under the Regulations for a period of 8 years from the date of Martinez's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Martinez had an interest at the time of her conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until November 24, 2028, Priscilla Bustos Martinez, with a last known address of 7731 Glasgow Drive, San Antonio, TX, 78223 and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Martinez by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Martinez may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Martinez and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 24, 2028.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–27944 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Temporary Denial of Export Privileges; Siberian Airlines d/b/a S7 Airlines, 633104, Novosibirskaya obl., g. Ob, prospekt Mozzherina, d. 10 ofis 201

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or ''the Regulations''),[1] I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order (''TDO'') issued in this matter on June 24, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On June 24, 2022, I signed an order denying the export privileges of Siberian Airlines d/b/a S7 Airlines (''Siberian'') for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.[2]

On December 1, 2022, BIS, through OEE, submitted a written request for renewal of the TDO that issued on June 24, 2022. The written request was made more than 20 days before the TDO's scheduled expiration. A copy of the renewal request was sent to Siberian in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (Section 746.8(a)(1) of the EAR).[3] BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (Section 740.15 of the EAR).[4] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and the evidence developed over the course of this investigation, which indicate a blatant disregard for U.S. export controls, as well as the TDO. Specifically, the initial TDO, issued on June 24, 2022, was based on evidence that Siberian engaged in conduct prohibited by the

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

[2] The TDO was published in the **Federal Register** on June 29, 2022 (87 FR 38709).

[3] 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (''CCL'') under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

[4] 87 FR 13048 (Mar. 8, 2022).

Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Atyrau, Kazakhstan, Bishkek, Kyrgyzstan, and Urgench, Uzbekistan, without the required BIS authorization.[5]

In its December 1, 2022, request for renewal of the TDO, BIS has submitted evidence that Siberian continues to operate in violation of the June 24, 2022 TDO and/or the Regulations by operating aircraft subject to the EAR and classified under ECCN 9A991.b. Specifically, BIS's evidence and related investigation indicates that after the issuance of the TDO, Siberian continued to fly aircraft into Russia in violation of the EAR, including flights from Bangkok, Thailand, Antalya, Turkey, Istanbul, Turkey, Fergana, Uzbekistan, and Tashkent, Uzbekistan. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73667	41707	737–8LP (B738)	Antalya, TR/Novosibirisk, RU	November 19, 2022.
RA–73667	41707	737–8LP (B738)	Tashkent, UZ/Novosibirisk, RU	November 27, 2022.
RA–73667	41707	737–8LP (B738)	Antalya, TR/Novosibirisk, RU	November 30, 2022.
RA–73667	41707	737–8LP (B738)	Antalya, TR/Moscow, RU	December 4, 2022.
RA–73667	41707	737–8LP (B738)	Urgench, UZ/Moscow, RU	December 10, 2022.
RA–73667	41707	737–8LP (B738)	Istanbul, TR/Moscow, RU	December 12, 2022.
RA–73668	41709	737–8LP (B738)	Bangkok, TH/Irkutsk, RU	November 30, 2022.
RA–73668	41709	737–8LP (B738)	Fergana, UZ/Novosibirisk, RU	December 3, 2022.
RA–73668	41709	737–8LP (B738)	Istanbul, TR/Novosibirisk, RU	December 9, 2022.
RA–73668	41709	737–8LP (B738)	Bangkok, TH/Irkutsk, RU	December 11, 2022.
RA–73668	41709	737–8LP (B738)	Bangkok, TH/Irkutsk, RU	December 12, 2022.
RA–73670	41710	737–8LP (B738)	Tashkent, UZ/Novosibirisk, RU	November 24, 2022.
RA–73670	41710	737–8LP (B738)	Istanbul, TR/Novosibirisk, RU	November 29, 2022.
RA–73670	41710	737–8LP (B738)	Fergana, UZ/Novosibirisk, RU	November 29, 2022.
RA–73670	41710	737–8LP (B738)	Bangkok, TH/Irkutsk, RU	December 8, 2022.
RA–73670	41710	737–8LP (B738)	Bangkok, TH/Irkutsk, RU	December 9, 2022.
RA–73670	41710	737–8LP (B738)	Bangkok, TH/Irkutsk, RU	December 10, 2022.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Siberian has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Siberian, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Siberian Airlines d/b/a S7 Airlines, 633104, Novosibirskaya obl., g. Ob, prospekt Mozzherina, d. 10 ofis 201, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Siberian any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Siberian of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Siberian acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Siberian of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Siberian in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and

[5] Publicly available flight tracking information shows, for example, that on March 10, 2022, serial number (''SN'') 41400 flew from Atyrau, Kazakhstan to Moscow, Russia. On May 1, 2022, SN 41707 flew from Bishkek, Kyrgyzstan to Novosibirisk, Russia and, on March 4, 2022, SN 41841 flew from Urgench, Uzbekistan to Moscow, Russia.

authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Siberian, or service any item, of whatever origin, that is owned, possessed or controlled by Siberian if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Siberian by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Siberian may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Siberian as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Siberian and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–27985 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau Of Industry And Security

Order Denying Export Privileges; In the Matter of: Jesse Cortez-Arguelles, 150 W. Lincoln Street, Apt. A, Tucson, AZ 85714

On November 5, 2020, in the U.S. District Court for the District of Arizona, Jesse Cortez-Arguelles (''Cortez-Arguelles'') was convicted of violating 18 U.S.C. 554(a). Specifically, Cortez-Arguelles was convicted of attempting to smuggle one 9 mm pistol, two 5.56 caliber rifles, two 9 mm firearm magazines, two 30-round 5.56 caliber firearm magazines, 1,030 rounds of 9 mm ammunition, and 1,000 rounds of 10 mm ammunition, in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Cortez-Arguelles to 36 months of confinement, with credit for time served, three years of supervised release and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Cortez-Arguelles's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Cortez-Arguelles to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Cortez-Arguelles.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Cortez-Arguelles's export privileges under the Regulations for a period of 10 years from the date of Cortez-Arguelles's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Cortez-Arguelles had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until November 5, 2030, Jesse Cortez-Arguelles, with a last known address of 150 W. Lincoln Street, Apt. A, Tucson, AZ 85714, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Cortez-Arguelles by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Cortez-Arguelles may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Cortez-Arguelles and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 5, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–27945 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 221208–0263]

RIN 0694–XC094

Impact of the Implementation of the Chemical Weapons Convention (CWC) on Legitimate Commercial Chemical, Biotechnology, and Pharmaceutical Activities Involving "Schedule 1" Chemicals (Including "Schedule 1" Chemicals Produced as Intermediates) During Calendar Year 2022

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security is seeking public comments on the impact that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act of 1998 and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals during calendar year 2022. The purpose of this notice of inquiry is to collect information to assist BIS in its preparation of the annual certification to the Congress on whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms are harmed by such implementation. This certification is required under Condition 9 of Senate Resolution 75 (April 24, 1997), in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

DATES: Comments must be received by January 23, 2023.

ADDRESSES: You may submit comments, identified by *regulations.gov* docket number BIS–2022–0033 or by RIN 0694–XC094, using any of the following methods:

- Federal rulemaking portal (*http://www.regulations.gov*). You can find this notice by searching under its regulations.gov docket number, which is BIS–2022–0033;
- *Email: PublicComments@bis.doc.gov.* Include RIN 0694–XC094 in the subject line of the message.

All filers using the portal or email should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Parties submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and also provide a non-confidential version of the submission.

For comments (including rebuttal comments) submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' The ''BC'' or ''P'' (as appropriate) in the file name should be followed by the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a ''P'' or ''BC'' will be assumed to be public and will be made publicly available through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for ''Schedule 1'' chemicals, contact Douglas Brown, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–5808, Email: *Douglas.Brown@bis.doc.gov.* For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–6057, Email: *RPD2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In providing its advice and consent to the ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC or ''the Convention''), the Senate included, in Senate Resolution 75 (S. Res. 75, April 24, 1997), several conditions to its ratification. Condition 9, titled ''Protection of Advanced Biotechnology,'' calls for the President to certify to Congress on an annual basis that ''the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1.'' On July 8, 2004, President George W. Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The CWC is an international arms control treaty that contains certain verification provisions. In order to implement these verification provisions, the CWC established the Organization for the Prohibition of Chemical Weapons (OPCW). In order to achieve the object and purpose of the Convention and the implementation of its provisions, the CWC imposes certain obligations on countries that have ratified the Convention (*i.e.,* States Parties), among which are the enactment of legislation to prohibit the production, storage, and use of chemical weapons

and the establishment of a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties. The CWC also requires each State Party to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of the State Party are not engaged in activities prohibited under the CWC. In the United States, the Chemical Weapons Convention Implementation Act of 1998, 22 U.S.C. 6701 *et seq.,* implements the provisions of the CWC.

''Schedule 1'' chemicals consist of those toxic chemicals and precursors set forth in the CWC ''Annex on Chemicals'' and in ''Supplement No. 1 to part 712—SCHEDULE 1 CHEMICALS'' of the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–722). The CWC identified these toxic chemicals and precursors as posing a high risk to the object and purpose of the Convention.

The CWC (Part VI of the ''Verification Annex'') restricts the production of ''Schedule 1'' chemicals for protective purposes to two facilities per State Party: a single small-scale facility and a facility for production in quantities not exceeding 10 kg per year. The CWC Article-by-Article Analysis submitted to the Senate in Treaty Doc. 103–21 defined the term ''protective purposes'' to mean ''used for determining the adequacy of defense equipment and measures.'' Consistent with this definition and as authorized by Presidential Decision Directive (PDD) 70 (December 17, 1999), which specifies agency and departmental responsibilities as part of the U.S. implementation of the CWC, the Department of Defense (DOD) was assigned the responsibility to operate these two facilities. DOD maintains strict controls on ''Schedule 1'' chemicals produced at its facilities in order to ensure accountability for such chemicals, as well as their proper use, consistent with the object and purpose of the Convention. Although this assignment of responsibility to DOD under PDD–70 effectively precluded commercial production of ''Schedule 1'' chemicals for ''protective purposes'' in the United States, it did not establish any limitations on ''Schedule 1'' chemical activities that are not prohibited by the CWC.

The provisions of the CWC that affect commercial activities involving ''Schedule 1'' chemicals are implemented in the CWCR (*see* 15 CFR part 712) and in the Export Administration Regulations (EAR) (*see* 15 CFR 742.18 and 15 CFR part 745), both of which are administered by the Bureau of Industry and Security (BIS). Pursuant to CWC requirements, the CWCR restrict commercial production of ''Schedule 1'' chemicals to research, medical, or pharmaceutical purposes. The CWCR prohibit commercial production of ''Schedule 1'' chemicals for ''protective purposes'' because such production is effectively precluded per PDD–70, as described above. *See* 15 CFR 712.2(a).

The CWCR also contain other requirements and prohibitions that apply to ''Schedule 1'' chemicals and/or ''Schedule 1'' facilities. Specifically, the CWCR:

(1) Prohibit the import of ''Schedule 1'' chemicals from States not Party to the Convention (15 CFR 712.2(b));

(2) Require annual declarations by certain facilities engaged in the production of ''Schedule 1'' chemicals in excess of 100 grams aggregate per calendar year *(i.e.,* declared ''Schedule 1'' facilities) for purposes not prohibited by the Convention (15 CFR 712.5(a)(1) and (a)(2));

(3) Provide for government approval of ''declared Schedule 1'' facilities (15 CFR 712.5(f));

(4) Require 200 days advance notification of the establishment of new ''Schedule 1'' production facilities producing greater than 100 grams aggregate of ''Schedule 1'' chemicals per calendar year (15 CFR 712.4);

(5) Provide that ''declared Schedule 1'' facilities are subject to initial and routine inspection by the OPCW (15 CFR 712.5(e) and 716.1(b)(1));

(6) Require advance notification and annual reporting of all imports and exports of ''Schedule 1'' chemicals to, or from, other States Parties to the Convention (15 CFR 712.6, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of ''Schedule 1'' chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

For purposes of the CWCR (*see* the definition of ''production'' in 15 CFR 710.1), the phrase ''production of a Schedule 1 chemical'' means the formation of ''Schedule 1'' chemicals through chemical synthesis, as well as processing to extract and isolate ''Schedule 1'' chemicals. The phrase also encompasses the formation of a chemical through chemical reaction, including by a biochemical or biologically mediated reaction. ''Production of a Schedule 1 chemical'' is understood, for CWCR declaration purposes, to include intermediates, by-products, or waste products that are produced and consumed within a defined chemical manufacturing sequence, where such intermediates, by-products, or waste products are chemically stable and therefore exist for a sufficient time to make isolation from the manufacturing stream possible, but where, under normal or design operating conditions, isolation does not occur.

Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are significantly harmed by the limitations of the Convention on access to, and production of, ''Schedule 1'' chemicals as described in this notice, BIS is seeking public comments on any effects that implementation of the CWC, through the Chemical Weapons Convention Implementation Act of 1998 and the CWCR, has had on commercial activities involving ''Schedule 1'' chemicals during calendar year 2022. Such information will assist BIS in its preparation of the annual certification to Congress described above. To allow BIS to properly evaluate the significance of any harm to commercial activities involving ''Schedule 1'' chemicals, public comments submitted in response to this notice of inquiry should include both a quantitative and qualitative assessment of the impact of the CWC on such activities.

Submission of Comments

All comments must be submitted to one of the addresses indicated in this notice and in accordance with the instructions provided herein. BIS will consider all comments received on or before January 23, 2023.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022–27952 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Temporary Denial of Export Privileges; Pobeda Airlines, 108811, Russian Federation, Moscow, p. Moskovskiy, Kievskoe shosse, 22nd km, 4/1. Moscow, Russia

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or ''the Regulations''),[1] I hereby grant the

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense

Continued

request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order (''TDO'') issued in this matter on June 24, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On June 24, 2022, I signed an order denying the export privileges of Pobeda Airlines (''Pobeda'') for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.[2]

On December 1, 2022, BIS, through OEE, submitted a written request for renewal of the TDO that issued on June 24, 2022. The written request was made more than 20 days before the TDO's scheduled expiration. A copy of the renewal request was sent to Pobeda in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (section 746.8(a)(1) of the EAR).[3] BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (section 740.15 of the EAR), and as part of the same rule, imposed a license requirement for the export, reexport, or transfer (in-country) of all items controlled under CCL Categories 3 through 9 to Belarus.[4] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and the evidence developed over the course of this investigation, which indicate a blatant disregard for U.S. export controls, as well as the TDO. Specifically, the initial TDO, issued on June 24, 2022, was based on evidence that Pobeda engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Antalya, Turkey, Gazipasa, Turkey, and Istanbul, Turkey, without the required BIS authorization.[5] As also noted in OEE's initial request for a temporary denial order, Aeroflot Russian Airlines JSC, a/k/a PJSC Aeroflot (''Aeroflot'') is Pobeda's majority shareholder.[6]

In its December 1, 2022, request for renewal of the TDO, BIS has submitted evidence that Pobeda continues to operate in violation of the June 24, 2022 TDO and/or the Regulations by operating aircraft subject to the EAR and classified under ECCN 9A991.b. Specifically, BIS's evidence and related investigation indicates that after the issuance of the TDO, Pobeda continued to fly aircraft into Russia and Belarus in violation of the EAR, including flights between Minsk, Belarus and Moscow, Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73305	61793	737–8AL (B738)	Minsk, BY/Moscow, RU	November 26, 2022.
RA–73305	61793	737–8AL (B738)	Moscow, RU/Minsk, BY	November 29, 2022.
RA–73305	61793	737–8AL (B738)	Minsk, BY/Moscow, RU	November 29, 2022.
RA–73305	61793	737–8AL (B738)	Moscow, RU/Minsk, BY	December 3, 2022.

Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

[2] The TDO was published in the **Federal Register** on June 29, 2022 (87 FR 38707).

[3] 87 FR 12226 (Mar. 3, 2022).

[4] 87 FR 13048 (Mar. 8, 2022).

[5] Publicly available flight tracking information shows, for example, that on March 6, 2022, serial number (''SN'') 64862 flew from Antalya, Turkey to Moscow, Russia. On March 7, 2022, SN 64863 flew from Gazipasa, Turkey to Moscow, Russia, and, on March 6, 2022, SN 64864 flew from Istanbul, Turkey to Mineralnye Vody, Russia.

[6] Aeroflot is the subject of a Temporary Denial Order issued on April 8, 2022, which was renewed on October 3, 2022. *See* 87 FR 21611 (April 12, 2022) and 87 FR 60985 (October 7, 2022).

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73305	61793	737–8AL (B738)	Minsk, BY/Moscow, RU	December 3, 2022.
RA–73248	41238	737–8LJ (B738)	Moscow, RU/Minsk, BY	November 22, 2022
RA–73248	41238	737–8LJ (B738)	Minsk, BY/Moscow, RU	November 22, 2022.
RA–73248	41238	737–8LJ (B738)	Moscow, RU/Minsk, BY	November 28, 2022.
RA–73248	41238	737–8LJ (B738)	Minsk, BY/Moscow, RU	November 28, 2022.
RA–73229	64866	737–8MC (B738)	St. Petersburg, RU/Minsk, BY	November 23, 2022.
RA–73229	64866	737–8MC (B738)	Minsk, BY/St. Petersburg, RU	November 23, 2022.
RA–73229	64866	737–8MC (B738)	Moscow, RU/Minsk, BY	November 24, 2022.
RA–73229	64866	737–8MC (B738)	Minsk, BY/Moscow, RU	November 24, 2022.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Pobeda has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Pobeda, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First Pobeda Airlines, 108811, Russian Federation, Moscow, p. Moskovskiy, Kievskoe shosse, 22nd km, 4/1. Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Pobeda any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Pobeda of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Pobeda acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Pobeda of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Pobeda in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Pobeda, or service any item, of whatever origin, that is owned, possessed or controlled by Pobeda if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Pobeda by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Pobeda may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Pobeda as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Pobeda, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–27989 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–827]

Certain Lemon Juice From the Republic of South Africa: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain lemon juice (lemon juice) from the Republic of South Africa (South Africa) is being, or is likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bremer or Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–2638, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2022, Commerce published the *Preliminary Determination.*[1] On September 15, 2022, Commerce postponed the final determination of this investigation.[2] 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.[3]

Period of Investigation

The period of investigation is October 1, 2020, through September 30, 2021.

Scope of the Investigation

The products covered by this investigation are certain lemon juice from South Africa. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination.* Therefore, no changes were made to the scope of the investigation.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce 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 available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

Commerce conducted verification of the information relied upon in making its final determination in this investigation with respect to Cape Fruit Processors (Pty) Ltd. (Cape Fruit), in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[4] Specifically, Commerce conducted on-site verifications of the home market sales, U.S. sales, and cost of production responses submitted by Cape Fruit.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain changes to the margin calculation for Cape Fruit and certain changes to the rate for Granor Passi (Pty) Ltd. (Granor Passi) after the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or de minimis or any margins determined entirely under section 776 of the Act.

In this investigation, Commerce assigned a rate based entirely on facts available to Granor Passi. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Cape Fruit. Consequently, the rate calculated for Cape Fruit is also assigned as the rate for all other producers and exporters.

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Cape Fruit Processors (Pty) Ltd	47.89
Granor Passi (Pty) Ltd	*73.69
All Others	47.89

*Based on total facts available with adverse inferences (AFA). For a full description of the methodology underlying our conclusions regarding the application of AFA, *see* the Issues and Decision Memorandum.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of subject merchandise, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after August 4, 2022, the date of publication of the *Preliminary Determination* in this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act, we will instruct CBP to require a cash deposit equal to the estimated

[1] *See Certain Lemon Juice From the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 47707 (August 4, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See Certain Lemon Juice From the Republic of South Africa: Postponement of Final Determination and Extension of Provisional Measures,* 87 FR 56631 (September 15, 2022).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Lemon Juice From the Republic of South Africa,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum)

[4] *See* Memoranda, ''Verification of the Sales Questionnaire Responses of Cape Fruit Processors (Pty) Ltd. in the Antidumping Duty Investigation of Certain Lemon Juice from the Republic of South Africa,'' dated October 4, 2022; and '' Verification of the Cost Responses of Cape Fruit Processors (Pty) Ltd. in the Antidumping Duty Investigation of Lemon Juice from the Republic of South Africa,'' dated October 5, 2022.

amount by which the normal value exceeds the U.S. price in this final determination, as follows: (1) the cash deposit rate for each of the respondents listed in the table above is the company-specific cash deposit rate listed for the respondent in the table; (2) if the exporter is not a respondent listed in the table above, but the producer is, then the cash deposit rate is the company-specific cash deposit rate listed for the producer of the subject merchandise in the table above; and (3) the cash deposit rate for all other producers and exporters is the all-others cash deposit rate listed in the table above. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this proceeding 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, no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material 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.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely 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 sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: December 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product covered by this investigation is certain lemon juice. Lemon juice is covered: (1) with or without addition of preservatives, sugar, or other sweeteners; (2) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (3) regardless of the grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (4) regardless of the U.S. Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (2) beverage products, such as lemonade, that contain 20 percent or less lemon juice as an ingredient by actual volume. ''Retail-sized containers'' are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding, nutritional facts listed, *etc.*) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to this investigation. Only the subject lemon juice component of such blended merchandise is covered by the scope of this investigation. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to this investigation is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although 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. Period of Investigation
IV. Changes Since the *Preliminary Determination*
V. Discussion of the Issues
  Comment 1: Whether to Apply Total Adverse Facts Available (AFA) to Cape Fruit Processors
  Comment 2: Whether to Continue to Apply Total AFA to Granor Passi
VI. Recommendation

[FR Doc. 2022–28012 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–844]

Certain Steel Nails From Thailand: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain steel nails (steel nails) from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021.

DATES: Applicable December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Palmer, 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) 482–4246 or (202) 482–1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2022, Commerce published in the **Federal Register** its preliminary determination in the LTFV investigation of steel nails from Thailand, in which it also postponed the final determination until December 19, 2022.[1] Commerce invited interested parties to comment on the *Preliminary Determination.*

For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is available 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

[1] *See Certain Steel Nails from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 87 FR 47708 (August 4, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Antidumping Duty Determination in the Less-Than-Fair-Value Investigation of Certain Steel Nails from Thailand,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope Comments

On July 5, 2022, we issued the Preliminary Scope Decision Memorandum.[3] The scope case briefs were due on July 19, 2022.[4] We did not receive any scope case briefs from interested parties. Therefore, Commerce has not made any changes to the scope of this investigation since the *Preliminary Determination.*

Scope of the Investigation

The product covered by this investigation is steel nails from Thailand. For a complete description of the scope of this investigation, *see* Appendix I.

Verification

Commerce conducted verification of the information relied upon in making its final determination in this investigation, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Specifically, Commerce conducted a virtual verification of Come Best (Thailand) Co., Ltd. (Come Best)'s U.S. and third country sales responses, and an on-site verification of Come Best's cost response.[5] In addition, we conducted on-site verifications of Jinhai Hardware Co., Ltd. (Jinhai Hardware)'s U.S. sales and cost of production responses.[6]

Analysis of Comments Received

All issues raised in Come Best's case brief (the sole case or rebuttal brief submitted in this investigation) are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

[3] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Decision Memorandum).

[4] *Id* at 4.

[5] *See* Memoranda, ''Antidumping Duty Investigation of Certain Steel Nails from Thailand: Sales Verification of Come Best Co., Ltd.,'' dated October 18, 2022; and ''Verification of the Cost Response of Come Best Thailand Co., Ltd. in the Antidumping Duty Investigation of Certain Steel Nails from Thailand,'' dated October 27, 2022.

[6] *See* Memoranda, ''Antidumping Duty Investigation of Certain Steel Nails from Thailand: Sales Verification of Jinhai Hardware Co., Ltd.,'' dated October 19, 2022; and ''Verification of the Cost Response of Jinhai Hardware Co., Ltd. in the Antidumping Duty Investigation of Certain Steel Nails from Thailand,'' dated November 1, 2022.

Changes From the Preliminary Determination

We made certain changes to the margin calculations for Come Best and Jinhai Hardware since the *Preliminary Determination. See* the Issues and Decision Memorandum for a discussion of these changes.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Come Best and Jinhai Hardware 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 estimated weighted-average dumping margins calculated for the individually examined respondents using each respondent's publicly-ranged values for the merchandise under consideration to the United States during the POI.[7]

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist for the POI:

Exporter/producer	Weighted-average dumping margin (percent)
Come Best (Thailand) Co., Ltd	12.61
Jinhai Hardware Co., Ltd	13.90
All Others	13.07

[7] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins 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 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). As complete publicly ranged sales data was available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* Memorandum, ''Certain Steel Nails from Thailand: Calculation of All-Others' Rate in the Final Determination,'' dated concurrently with this notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of steel nails from Thailand, as described in Appendix I of this notice, which were entered or withdrawn from warehouse for consumption on or after August 4, 2022, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon the publication of this notice, we will instruct CBP to require a cash deposit for estimated antidumping duties for such entries of merchandise as follows: (1) the cash deposit rate for the respondents listed in the table above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific 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 listed in the table above. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this investigation 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 of steel nails from Thailand no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted 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 in the ''Continuation of Suspension of Liquidation'' section.

Administrative Protective Order

This notice serves as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: December 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000, or other HTSUS subheadings. 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. Changes Since the *Preliminary Determination*
IV. Discussion of the Issues
Comment 1: Come Best's Product Characteristics
Comment 2: Come Best's Corrected Surface Finish Codes
V. Recommendation

[FR Doc. 2022–28017 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–878]

Glycine From Japan: Final Results of Antidumping Duty Administrative; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Yuki Gosei Kogyo Co., Ltd. (YGK) and Nagase & Co., Ltd. (Nagase) (collectively, YGK/Nagase) made sales of glycine from Japan at less than normal value during the period of review (POR) June 1, 2020, through May 31, 2021.

DATES: Applicable December 23, 2022.

FOR FURTHER INFORMATION CONTACT: John Drury, 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) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2022, Commerce published the *Preliminary Results.*[1] A summary of the events that occurred since Commerce published these *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, may be found in the Issues and Decision Memorandum.[2]

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 at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by this order is glycine. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. For a list of the issues raised by parties, *see* the appendix to this notice.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made certain changes to the margin calculations for YGK/Nagase.[3]

Final Results of the Administrative Review

We determine that the following estimated weighted-average dumping margins exist for the period June 1, 2020, through May 31, 2021:

Producer/exporter	Estimated weighted-average dumping margin (percent)
Yuki Gosei Kogyo Co., Ltd./ Nagase & Co., Ltd[4]	24.92

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days after the date of the public announcement of these final results of review, in accordance with 19 CFR 351.224(b).

Assessment Rate

Commerce shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[5] For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.5 percent), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis,* Commerce will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent has reported reliable entered values, we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR.

Commerce intends to issue appropriate assessment instructions directly 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 will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for respondents noted above will be equal to the weighted-average dumping margins 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 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 producers or exporters will continue to be 53.66 percent, the all-others rate established in the less-than-fair-value investigation.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their

[1] *See Glycine from Japan: Preliminary Results of Antidumping Duty Administrative Review, 2020–2021,* 87 FR 40788 (July 8, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Glycine from Japan; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Issues and Decision Memorandum at Comments 3b and 4.

[4] Based on the record information, Commerce preliminarily determined that Nagase and YGK are affiliated within the meaning of section 771(33)(E) of Tariff Act of 1930, as amended (the Act), and should be treated as a single entity pursuant to 19 CFR 351.401(f). *See Preliminary Results.* No party commented on our preliminary determination with respect to this issue, and we have received no new information regarding this issue. Therefore, we determine that Nagase and YGK are affiliated within the meaning of section 771(33)(E) of the Act.

[5] In these final 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 Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[6] *See Glycine from India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 84 FR 29170 (June 21, 2019).

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 the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties did occur and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a 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 351.213(h) and 19 CFR 351.221(b)(5).

Dated: December 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
  Comment 1: Costs of Production
  Comment 2: Adjustment of U.S. Indirect Selling Expense Ratio
  Comment 3: Adjustment of General and Administrative Expenses
  Comment 4: U.S. Repacking Expense
V. Recommendation

[FR Doc. 2022–28007 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–542–804]

Certain Steel Nails From Sri Lanka: Final Negative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain steel nails (steel nails) from Sri Lanka are not being, nor are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021.

DATES: Applicable December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Allison Hollander, 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) 482–2805.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2022, Commerce published in the **Federal Register** its preliminary negative determination in the LTFV investigation of steel nails from Sri Lanka, in which it also postponed the final determination until December 19, 2022.[1] Commerce invited interested parties to comment on the *Preliminary Determination*.

For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Scope Comments

On July 5, 2022, we issued the Preliminary Scope Decision Memorandum.[3] The scope case briefs were due on July 19, 2022.[4] We did not receive any scope case briefs from interested parties. Therefore, Commerce has not made any changes to the scope of this investigation since the *Preliminary Determination*.

Scope of the Investigation

The product covered by this investigation is steel nails from Sri Lanka. For a complete description of the scope of this investigation, *see* Appendix I.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation pursuant to section 782(i) of the Tariff Act of 1930, as amended (the Act). Accordingly, we took additional steps in lieu of an on-site verification and requested additional documentation and information.[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made a change to the margin calculation for Trinity Steel Private Limited since the *Preliminary Determination*. For a discussion of the change, *see* the Issues and Decision Memorandum.

Final Determination

Commerce determines that the following estimated weighted-average dumping margin exists for the POI:

[1] *See Certain Steel Nails from Sri Lanka: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 87 FR 47701 (August 4, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Decision Memorandum for the Final Negative Determination of Sales at Less-Than-Fair-Value in the Investigation of Certain Steel Nails from Sri Lanka,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Decision Memorandum).

[4] *Id* at 4.

[5] *See* Commerce's Letter, ''Questionnaire in Lieu of Verification,'' dated October 3, 2022.

Exporter or producer	Weighted-average dumping margin (percent)
Trinity Steel Private Limited	0.00

Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters pursuant to sections 735(c)(1)(B) and (c)(5) of the Act, because it has not made a final affirmative determination of sales at LTFV.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

Because Commerce has made a final negative determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of steel nails from Sri Lanka.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its final negative determination of sales at LTFV. As our final determination is negative, this proceeding is terminated in accordance with section 735(c)(2) of the Act.

Administrative Protective Order

This notice serves as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: December 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000, or other HTSUS subheadings. 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. Change Since the *Preliminary Determination*
IV. Discussion of the Issues
  Comment 1: Valuation of Constructed Value (CV) Profit and Indirect Selling Expense (ISE) Ratios
  Comment 2: Application of the Cohen's *d* Test
  Comment 3: Quarterly Cost Database

V. Recommendation

[FR Doc. 2022–28019 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–846]

Certain Steel Nails From the Republic of Turkey: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain steel nails (nails) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021.

DATES: Applicable December 23, 2022.

FOR FURTHER INFORMATION CONTACT: David Crespo or Amaris Wade, 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) 482–3693 or (202) 482–6334, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2022, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of nails from Turkey.[1] We invited interested parties to comment on the *Preliminary Determination.* We received one case brief from Sertel Vida Metal A.S. (Sertel Vida).[2] We received no other case or rebuttal briefs. A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by Sertel Vida for the final determination, may be found in the Issues and Decision Memorandum.[3]

Scope Comments

On July 5, 2022, we issued the Preliminary Scope Decision Memorandum.[4] The scope case briefs were due on July 19, 2022.[5] We did not receive any scope case briefs from interested parties. Therefore, Commerce has not made any changes to the scope of this investigation since the *Preliminary Determination.*

Scope of the Investigation

The products covered by this investigation are nails from Turkey. For a full description of the scope of this investigation, *see* Appendix I.

Analysis of Comments Received

The sole issue raised in comments that were submitted by parties in this investigation is addressed in the Issues and Decision Memorandum.[6] A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at 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 *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in September 2022, we verified the sales and cost information submitted by Aslanbas Civi Tel Ve Celik Hasir San A.S (Aslanbas), for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Aslanbas.

In addition, as provided in section 782(i) of the Act, in September and October 2022, we conducted verification of the cost and sales information submitted by Sertel Vida using standard verification procedures. However, as explained in the Issues and Decision Memorandum, Commerce was unable to verify the accuracy of Sertel Vida's reporting with respect to its sales data. As a consequence, we find that Sertel Vida's reported sales data are unverified, and, thus, cannot serve as a reliable basis for calculating an accurate margin for Sertel Vida in this investigation. Specifically, because we encountered so many errors within Sertel Vida's reported sales data at verification, and the submitted sales information is integral to the proper evaluation of its margin calculation, we find that all of the sales information submitted by Sertel Vida is unverified. For further discussion, *see* the Issues and Decision Memorandum.

Changes from the *Preliminary Determination*

Based on our analysis of the comment received and our findings at verification, we made certain changes to the margin calculations for Aslanbas and Sertel Vida. For a discussion of these changes, *see* the Issues and Decision Memorandum. Additionally, because the U.S. International Trade Commission (ITC) found that the United States is not materially injured or threatened with material injury by reason of imports of steel nails from India, Oman, and Turkey, the companion countervailing duty investigation has been terminated.[7] Thus, we will not adjust the final estimated weighted-average dumping margin for Aslanbas or Sertel Vida for export subsidies to determine each company's cash deposit rate.

Adverse Facts Available

Due to our inability to verify Sertel Vida's submitted data, we are unable to use its data to calculate an accurate dumping margin for the company. We also find that Sertel Vida did not act to the best of its ability to comply with our requests for information. Therefore, for this final determination we find it appropriate to assign Sertel Vida an estimated weighted-average dumping margin based on facts available with an adverse inference (AFA), in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. For further discussion, *see* the Issues and Decision Memorandum.

Pursuant to section 776(b) of the Act, we examined the dumping margins alleged in the petition, the weighted-average dumping margins calculated in this final determination, and other information of the record of this investigation to determine an appropriate estimated weighted-average dumping margin for Sertel Vida based

[1] *See Certain Steel Nails from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 47699 (August 4, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Sertel Vida's Letter, ''Sertel Case Brief,'' dated November 14, 2022.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair Value Investigation of Certain Steel Nails from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice.

[4] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Decision Memorandum).

[5] *Id.* at 4.

[6] *See* the Issues and Decision Memorandum.

[7] *See* ITC's Letter, Notification Regarding the Countervailing Duty Investigation, dated October 6, 2022.

on AFA. We are assigning the highest transaction-specific dumping margin calculated for Aslanbas as the estimated weighted-average dumping margin to Sertel Vida based on AFA. Because we are relying on information obtained in the course of this investigation, we do not need to corroborate this margin pursuant section 776(c) of the Act. For further discussion, *see* the Issues and Decision Memorandum at ''Use of Adverse Facts Available.''

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be 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 margins determined entirely under section 776 of the Act. Aslanbas is the only respondent for which Commerce calculated a company-specific estimated weighted-average dumping margin that is above *de minimis* and not based entirely on AFA. Therefore, for purposes of determining the ''all-others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for Aslanbas, as referenced in the ''Final Determination'' section, below.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)
Aslanbas Civi Tel Ve Celik Hasir San A.S.	27.62
Sertel Vida Metal A.S.	118.20
All Others	27.62

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of nails from Turkey, as described in Appendix I to this notice, entered, or withdrawn from warehouse, for consumption on or after August 4, 2022, the date of publication of *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), where appropriate, Commerce will instruct CBP to require a cash deposit for estimated antidumping duties equal to the estimated weighted-average dumping margin, as follows: (1) the cash deposit rate for the companies listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific 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.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding. Accordingly, in a LTFV investigation where Commerce has made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate countervailed export subsidy rate. Here, because the ITC made a negative determination in the companion CVD proceeding, we are no longer adjusting our cash deposit rate to account for export subsidies in this final determination.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose under administrative protective order (APO) its calculations and related analysis to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we will notify the 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 nails from Turkey 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 posted will be refunded and suspension of liquidation will be lifted. 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.

Administrative Protective Order

This notice will serve as a final reminder to the parties subject to an 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

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: December 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000, or other HTSUS subheadings. 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. Use of Facts Available with an Adverse Inference
IV. Changes from the *Preliminary Determination*
V. Discussion of the Issue
Comment: Sertel Vida's Date of Sale
VI. Recommendation

[FR Doc. 2022–28018 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–904]

Certain Steel Nails From India: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain steel nails (steel nails) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021.

DATES: Applicable December 23, 2022.

FOR FURTHER INFORMATION CONTACT: David Lindgren or Charles Doss, 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) 482–1671 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2022, Commerce published in the **Federal Register** its *Preliminary Determination* in the LTFV investigation of steel nails from India, in which it also postponed the final determination until December 19, 2022.[1] Commerce invited interested parties to comment on the *Preliminary Determination.*

For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope Comments

On July 5, 2022, we issued the Preliminary Scope Decision Memorandum.[3] The scope case briefs were due on July 19, 2022.[4] We did not receive any scope case briefs from interested parties. Therefore, Commerce has not made any changes to the scope of this investigation since the *Preliminary Determination.*

Scope of the Investigation

The product covered by this investigation are steel nails from India. For a complete description of the scope of this investigation, *see* Appendix I.

Verification

Commerce conducted verification of the information relied upon in making its final determination in this investigation, in accordance with

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[1] *See Certain Steel Nails from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 87 FR 47719 (August 4, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Antidumping Duty Determination in the Less-Than-Fair-Value Investigation of Certain Steel Nails from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Decision Memorandum).

[4] *Id* at 4.

section 782(i) of the Tariff Act of 1930, as amended (the Act). Specifically, Commerce conducted on-site verifications of the U.S. sales and cost of production responses submitted by Astrotech Steels Private Limited (Astrotech) and Geekay Wires Limited (Geekay).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Changes From the Preliminary Determination

We have made certain changes to the margin calculations for Astrotech and Geekay since the *Preliminary Determination. See* the Issues and Decision Memorandum for a discussion of these changes.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Astrotech and Geekay 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 estimated weighted-average dumping margins calculated for the individually examined respondents using each respondent's publicly-ranged values for the merchandise under consideration to the United States during the POI.[5]

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist for the POI:

Exporter/producer	Weighted-average dumping margin (percent)
Astrotech Steels Private Limited	2.94
Geekay Wires Limited	3.98
All Others	3.33

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of steel nails from India, as described in Appendix I of this notice, which were entered or withdrawn from warehouse for consumption on or after August 4, 2022, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon the publication of this notice, we will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) the cash deposit rate for the respondents listed in the table above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific 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 listed in the table above. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this investigation 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 steel nails from India no later than 45 days after our final determination. If the ITC determines that such injury does not exist, all cash deposits posted will be refunded, and suspension of liquidation will be lifted. 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 in the ''Continuation of Suspension of Liquidation'' section.

Administrative Protective Order

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

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: December 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails

[5] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins 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 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). As complete publicly ranged sales data was available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* Memorandum, ''Calculation of the Final All-Others Rate,'' dated concurrently with this notice.

may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000, or other HTSUS subheadings. 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. Changes from the *Preliminary Determination*
IV. Discussion of the Issues
Comment 1: Differential Pricing Analysis
Comment 2: Treatment of Section 232 Duties
V. Recommendation

[FR Doc. 2022–28016 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–858]

Certain Lemon Juice From Brazil: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain lemon juice (lemon juice) from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Dakota Potts, 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) 482–6412 or (202) 482–0223, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2022, Commerce published in the **Federal Register** the *Preliminary Determination* in this investigation.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by interested parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Period of Investigation

The period of investigation is October 1, 2020, through September 30, 2021.

Scope of the Investigation

The product covered by this investigation is lemon juice from Brazil. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination.* Therefore, no changes were made to the scope of the investigation.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice

[1] *See Certain Lemon Juice from Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 87 FR 47697 (August 4, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Lemon Juice from Brazil,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

as Appendix II. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

Commerce conducted verification of the information relied upon in making its final determination in this investigation with respect to Louis Dreyfus Company Sucos S.A. (LDC) and Citrus Juice Eireli (Citrus Juice) in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[3] Specifically, Commerce conducted on-site verifications of the third country market sales, U.S. sales, and cost of production responses submitted by LDC and Citrus Juice.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain changes to the margin calculation for Citrus Juice and LDC after the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 735(c)(1)(B)(i)(I) of the Act, we calculated an individual estimated weighted-average dumping margin for the two mandatory respondents, Citrus Juice and LDC. Section 735(c)(5)(A) of the Act states that, for companies not individually investigated, Commerce will determine estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any rates determined entirely on facts otherwise available under section 776 of the Act.

In this investigation, Commerce calculated a *de minimis* rate for LDC. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Citrus Juice. Consequently, the rate calculated for Citrus Juice is also assigned as the rate for all other producers and exporters.

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Citrus Juice Eireli	22.31
Louis Dreyfus Company Sucos S.A	0.00
All Others	22.31

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of lemon juice, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after August 4, 2022, the date of publication of the *Preliminary Determination* in this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act, we will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for each of the respondents listed in the table above is the company-specific cash deposit rate listed for the respondent in the table; (2) if the exporter is not a respondent listed in the table above, but the producer is, then the cash deposit rate is the company-specific cash deposit rate listed for the producer of the subject merchandise in the table above; and (3) the cash deposit rate for all other producers and exporters is the all-others cash deposit rate listed in the table above. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this proceeding 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 importation of lemon juice from Brazil, no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, all cash deposits will be refunded, and suspension of liquidation will be lifted. If the ITC determines that material injury or threat of material 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.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely 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 sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: December 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product covered by this investigation is certain lemon juice. Lemon juice is covered: (1) with or without addition of preservatives, sugar, or other sweeteners; (2) regardless of the GPL (grams per liter of citric

[3] *See* Memoranda, ''Verification of the Sales Response of Citrus Juice Eireli in the Antidumping Investigation of Certain Lemon Juice from Brazil,'' dated September 30, 2022; ''Verification of the Sales Questionnaire Response of Louis Dreyfus Company Sucos S.A. in the Antidumping Investigation of Certain Lemon Juice from Brazil,'' dated October 5, 2022; ''Verification of the Cost Response of Citrus Juice Eireli in the Less Than Fair Value Investigation of Certain Lemon Juice from Brazil,'' dated October 18, 2022; and ''Verification of the Cost Response of Louis Dreyfus Company Sucos S.A. in the Lower-Than-Fair-Value Investigation of Certain Lemon Juice from Brazil,'' dated October 21, 2022.

acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (3) regardless of the grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (4) regardless of the U.S. Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (2) beverage products, such as lemonade, that contain 20 percent or less lemon juice as an ingredient by actual volume. ''Retail-sized containers'' are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding, nutritional facts listed, *etc.*) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to this investigation. Only the subject lemon juice component of such blended merchandise is covered by the scope of this investigation. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to this investigation is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although 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. Period of Investigation
IV. Scope of the Investigation
V. Changes Since the *Preliminary Determination*
VI. Discussion of the Issues
  Comment 1: Application of Adverse Facts Available (AFA) for Citrus Juice
  Comment 2: Whether Commerce's Preliminary Adjustment to the Net Realizable Value (NRV) of Citrus Juice's Lemon Coproducts was Correct
  Comment 3: Affiliations between LDC and Its Supplier
  Comment 4: Revision to the Adjustment for Affiliated Transactions
  Comment 5: Financial Statements for the Period Cost Calculations
  Comment 6: Revisions to LDC's Reported Cost for Verification Findings and Material Price Difference Adjustments
  Comment 7: Whether Commerce Should Include LDC's Parent Company General and Administrative (G&A) Expenses in the Reported G&A Expenses
  Comment 8: Margin Calculation Methodology for LDC
VII. Recommendation

[FR Doc. 2022–28009 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Notice of Final Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: On November 9, 2022, the U.S. Department of Commerce (Commerce) published the notice of initiation and preliminary results of a changed circumstances review (CCR) of the antidumping duty (AD) order on certain frozen warmwater shrimp from India. For these final results, Commerce continues to find that Kader Exports Private Limited (Kader Exports) is the successor-in-interest to the Liberty Group.

DATES: Applicable December 23, 2022.

FOR FURTHER INFORMATION CONTACT: 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) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2022, Kader Exports requested that Commerce conduct an expedited CCR, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), to confirm that Kader Exports is the successor-in-interest to the Liberty Group [1] for purposes of determining AD cash deposits and liabilities.[2] In its submission, Kader Exports stated that it underwent a restructuring in which the companies comprising the Liberty Group were merged into Kader Exports.[3]

On November 9, 2022, Commerce initiated this CCR and published the *Preliminary Results,* preliminarily determining that Kader Exports is the successor-in-interest to the Liberty Group.[4] In the *Preliminary Results,* we provided all interested parties with an opportunity to comment.[5] However, we received no comments.

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[6] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 0306.17.00.03, 0306.17.00.04, 0306.17.00.05, 0306.17.00.06, 0306.17.00.07, 0306.17.00.08, 0306.17.00.09, 0306.17.00.10, 0306.17.00.11, 0306.17.00.12, 0306.17.00.13, 0306.17.00.14, 0306.17.00.15, 0306.17.00.16, 0306.17.00.17, 0306.17.00.18, 0306.17.00.19, 0306.17.00.20, 0306.17.00.21, 0306.17.00.22, 0306.17.00.23, 0306.17.00.24, 0306.17.00.25, 0306.17.00.26, 0306.17.00.27, 0306.17.00.28, 0306.17.00.29, 0306.17.00.40, 0306.17.00.41, 0306.17.00.42, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Final Results of CCR

For the reasons stated in the *Preliminary Results,* Commerce continues to find that Kader Exports is the successor-in-interest to the Liberty Group. As a result of this determination and consistent with established practice, we find that Kader Exports should receive the AD cash deposit rate previously assigned to the Liberty Group. Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by Kader Exports and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at zero percent, which is the current AD cash deposit rate for the Liberty Group.[7] This cash deposit

[1] The Liberty Group includes the following affiliated companies: Devi Marine Food Exports Private Limited, Kader Exports, Kader Investment and Trading Company Private Limited, Liberty Frozen Foods Private Limited, Liberty Oil Mills Limited, Premier Marine Products Pvt. Ltd., and Universal Cold Storage Private Limited.

[2] *See* Kader Exports' Letter, ''Request for an expedited Changed Circumstances Review in Certain Frozen Warmwater Shrimp from India, Case No. A–533–840,'' dated September 19, 2022.

[3] *Id.*

[4] *See Certain Frozen Warmwater Shrimp from India: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 87 FR 67669 (November 9, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[5] *Id.*

[6] For a complete description of the scope of the order, *see Preliminary Results* PDM at 2.

[7] *See Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty*

Continued

requirement shall remain in effect until further notice.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1), and 777(i)(1) and (2) of the Act, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: December 19, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–28008 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–DS–P

Administrative Review; 2016–2017, 83 FR 32835 (July 16, 2018).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 220208–0264]

National Cybersecurity Center of Excellence (NCCoE) Responding to and Recovering From a Cyberattack: Cybersecurity for the Manufacturing Sector

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide letters of interest describing products and technical expertise to support and demonstrate security platforms for the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project. Participation in the project is open to all interested organizations.

DATES: Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than January 23, 2023.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *manufacturing_nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Interested parties can access the letter of interest request by visiting *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack* and completing the letter of interest webform. NIST will announce the completion of the selection of participants and inform the public that it is no longer accepting letters of interest for this project at *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack.* Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign an NCCoE consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at: *https://www.nccoe.nist.gov/publications/other/nccoe-consortium-crada-example.*

FOR FURTHER INFORMATION CONTACT: Michael Powell via telephone at 301–975–0310; by email at *manufacturing_nccoe@nist.gov;* or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project are available at *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack.*

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) and Operational Technology (OT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT and OT assets, the NCCoE will enhance trust in U.S. IT and OT communications, data, and storage systems; reduce risk for companies and individuals using IT and OT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into an NCCoE Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project. The full project can be viewed at: *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack.*

Interested parties can access the request for a letter of interest template by visiting the project website at *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack* and completing the letter of interest webform. On completion of the webform, interested parties will receive access to the letter of interest template, which the party must complete, certify as accurate, and submit to NIST by email or hardcopy. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the project objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this project. When the project has been completed, NIST will post a notice on the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project website at *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack* announcing the next phase of the project and informing the public that it will no longer accept letters of interest for this project. There may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into an NCCoE consortium CRADA with NIST (for reference, see **ADDRESSES** section above).

Project Objective: This project is focused on responding to and recovering from a cyberattack within an Industrial Control System (ICS) environment. Manufacturing organizations rely on ICS to monitor and control physical processes that produce goods for public consumption. These same systems are facing an increasing number of cyberattacks resulting in a loss of production from destructive malware, malicious insider activity, or honest mistakes. This creates the imperative for organizations to be able to quickly, safely, and accurately recover from an event that corrupts or destroys data (*e.g.,* database records, system files, configurations, user files, application code).

The purpose of this NCCoE project is to demonstrate how to operationalize the NIST *Framework for Improving Critical Infrastructure Cybersecurity* (NIST *Cybersecurity Framework*) Functions and Categories. Multiple systems need to work together to recover equipment and restore operations when data integrity is compromised. This project explores methods to effectively restore corrupted data in applications and software configurations as well as custom applications and data. The NCCoE—in collaboration with members of the business community and vendors of cybersecurity solutions—will identify standards-based, commercially available, and open-source hardware and software components to design a manufacturing lab environment that can address the challenge of responding to and recovering from a cyberattack in an ICS environment.

The proposed proof-of-concept solution(s) will integrate commercial and open source products that leverage cybersecurity standards and recommended practices to demonstrate the use case scenarios detailed in the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project description available at: *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack.* This project will result in a publicly available NIST Cybersecurity Practice Guide as a Special Publication 1800 series, a detailed implementation guide of the practical steps needed to implement a cybersecurity reference design that addresses this challenge.

Requirements for Letters of Interest: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 5 of the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project description available at: *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack* and include, but are not limited to:

Core Components

- Event reporting (Detection)
  - Network event detection
  - Behavior Anomaly Detection
  - Endpoint detection and response (EDR) (Host based detection)
- Event management
  - Event/Alert notification
  - Case creation
- Log review
  - Collection
  - Aggregation
  - Correlation
- Forensic analysis
  - Categorize incidents based on MITRE ATT&CK for ICS tactics and techniques
  - Understand impact
  - Determine root cause
  - Determine extent of compromise
- Incident handling and response
  - Containment of the incident
- Eradication of artifacts of incident
- Recovery
  - Restoration of systems
  - Verification of restoration

To demonstrate the scope specified in this Project Description, NIST is seeking to include the following components:

- Identity and Access Management System
- Endpoint Detection and Response System
- Network Monitoring Tool
- Behavior Anomaly Detection Tool
- Network and Host-based Intrusion Detection Systems
- Security Information and Event Monitoring System (SIEM)
- Network Policy Engine (PE)
- Firewall (FW)
- Integration Tool for Security Server/PE/FW
- Configuration Management, Back Up, Patch Management System
- Secure Remote Access
- Data Historian
- Cloud Based OT Capabilities: Data Historian, Supervisory Control and Data Acquisition (SCADA), Asset Management System

In their letters of interest, responding organizations need to acknowledge the importance of and commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.

2. Support for development and demonstration of the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project, which will be conducted in a manner consistent with the following standards and guidance: FIPS 200, FIPS 201, SP 800–82 and SP 800–53, the NIST Cybersecurity Framework, and the NIST Privacy Framework.

Additional details about the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project are available at *https://www.nccoe.nist.gov/manufacturing/responding-and-recovering-cyber-attack.*

NIST cannot guarantee that all the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the NCCoE consortium CRADA in the development of the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project. These descriptions will be public information.

Under the terms of the NCCoE consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project capability will be announced on the NCCoE website at least two weeks in advance at *https://nccoe.nist.gov/.* The expected outcome will demonstrate how the components of the *Responding to and Recovering from a Cyberattack: Cybersecurity for the Manufacturing Sector* project architecture can provide security capabilities to mitigate identified risks related to data throughout its lifecycle. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit

the NCCoE website *https://nccoe.nist.gov/.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–27995 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Admiistration

[RTID 0648–XC622]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of a Proposed Evaluation and Pending Determination and a draft Supplemental Environmental Assessment; request for comments.

SUMMARY: Notice is hereby given that the Sauk-Suiattle Indian Tribe, the Swinomish Indian Tribal Community, the Upper Skagit Indian Tribe, and the Washington Department of Fish and Wildlife have jointly provided a resource management plan (RMP) to NMFS pursuant to the limitation on take prohibitions for actions conducted for salmon and steelhead promulgated under the Endangered Species Act (ESA). The Skagit River Steelhead Fishery RMP proposes to manage the harvest of natural-origin Skagit River steelhead as an independent steelhead management unit within the ESA-listed Puget Sound steelhead distinct population segment (DPS), for harvest purposes. The RMP proposes to implement these fisheries pursuant to *U.S.* v. *Washington.*

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m. Pacific time on January 23, 2023. Comments received after this date may not be accepted.

ADDRESSES: Comments may be submitted by email. The mailbox address for providing email comments is: *salmon.harvest.comments@noaa.gov.* In the subject line of the email, include the following identifier: ''Comments on Skagit River Steelhead Fishery RMP.'' The documents available for public review and comment can be found at: *https://www.fisheries.noaa.gov/action/skagit-river-steelhead-fishery-joint-resource-management-plan.*

FOR FURTHER INFORMATION CONTACT: James Dixon at 360–522–3673, or via email at *james.dixon@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Puget Sound Steelhead (*Oncorhynchus mykiss*): threatened, naturally produced.

Background

The Sauk-Suiattle Indian Tribe, the Swinomish Indian Tribal Community, the Upper Skagit Indian Tribe, and the Washington Department of Fish and Wildlife have jointly submitted a Skagit River steelhead fishery RMP to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the ESA (73 FR 55451, September 25, 2008). The RMP was submitted in December of 2021. The RMP provides the management framework for the harvest of Skagit River natural-origin steelhead in the Skagit River terminal area. NMFS has prepared a Proposed Evaluation and Pending Determination (PEPD) as to whether the RMP meets the criteria under Limit 6 of the 4(d) Rule, and as to whether implementation of the RMP will appreciably reduce the likelihood of survival and recovery of ESA-listed Puget Sound steelhead, and a supplemental Environmental Assessment (EA) on the NMFS determination. By this notice, NMFS is inviting interested persons to comment on either or both documents.

As required by the ESA 4(d) Rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005), the Secretary is seeking public comment on this PEPD as to whether the RMP meets the criteria under Limit 6 of the 4(d) Rule and as to whether implementation of the RMP will appreciably reduce the likelihood of survival and recovery of ESA-listed Puget Sound steelhead. Prior to making a final determination, NMFS will take comments on its pending determination (50 CFR 223.204(b)(3)).

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–28021 Filed 12–22–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* January 22, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 9/9/2022; 9/16/2022; and 10/7/2022, 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):
5330–00–599–4230—Gasket
2590–00–299–0739—Valve, Poppet, Hull Drain
2520–01–211–6702—Parts Kit, Transmission Oil Filter
Designated Source of Supply: Goodwill Industries—Knoxville, Inc., Knoxville, TN.
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH.

NSN(s)—Product Name(s):
8415–00–NSH–0336—Trousers, Fleece
8415–00–NSH–0365—Trousers, Fleece
8415–00–NSH–0367—Trousers, Fleece
8415–00–NSH–0366—Trousers, Fleece
Designated Source of Supply: Peckham Vocational Industries, Inc., Lansing, MI.
Contracting Activity: W6QK ACC–APG NATICK, NATICK, MA.

Michael R. Jurkowski,
Acting Director, Business Operations.

[FR Doc. 2022–27933 Filed 12–22–22; 8:45 am]

BILLING CODE 6353–01–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 delete and service(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* January 22, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: 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):
5345–01–360–9967—Flap Disc, 4½″ × ⅞″, 60 Grit, Type 29
5345–01–499–9809—Flap Disc, 4½″ × ⅞″, 40 Grit, Type 29
530009501N—Flap Disc, 4½″ × ⅞″ 40 Grit Type 27
530009502N—Flap Disc, 4½″ × ⅞″ 60 Grit Type 27
530009503N—Flap Disc, 4½″ × ⅞″ 80 Grit Type 27
530009603N—Flap Disc, 4½″ × ⅞″ 80 Grit, Type 29
Designated Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY.
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI.
Distribution: B-List.
Mandatory For: Broad Government Requirement.

NSN(s)—Product Name(s):
5120–01–399–9477—Socket, ¼″ Drive, 9/32″ Shallow SAE 6 Point Fasteners
5120–01–355–1632—Socket Set, ¼″ Drive, 3/16″ Deep, SAE 6 Point Fastener
5120–01–335–0949—Socket Set, ¼″ Drive, 7/32″ Deep, SAE 6 Point Fastener
5120–01–348–9250—Socket Set, ¼″ Drive, ¼″ Deep, SAE 6 Point Fastener
5120–01–348–9251—Socket, Chrome, ¼″ Drive, 5 mm Shallow, Metric 6 Point Fastener
5120–01–348–9253—Socket, Chrome, ¼″ Drive, 6 mm Shallow, Metric 6 Point Fastener
5120–01–348–9254—Socket, Chrome, ¼″ Drive, 7 mm Shallow, Metric 6 Point Fastener
5120–01–348–9257—Socket, Chrome, ¼″ Drive, 10 mm Shallow, Metric 6 Point Fastener
5120–01–348–9291—Socket, Chrome, ¼″ Drive, 12 mm Shallow, Metric 6 Point Fastener
5120–01–348–9292—Socket, Chrome, ¼″ Drive, 13 mm Shallow, Metric 6 Point Fastener
5120–01–348–9293—Socket, Chrome, ¼″ Drive, 14 mm Shallow, Metric 6 Point Fastener
5120–01–348–7270—Socket, Chrome, ¼″ Drive, 5 mm Deep, Metric 6 Point Fastener
5120–01–348–7271—Socket, Chrome, ¼″ Drive, 5.5 mm Deep, Metric 6 Point Fastener
5120–01–348–7272—Socket, Chrome, ¼″ Drive, 6 mm Deep, Metric 6 Point Fastener
5120–01–348–7273—Socket, Chrome, ¼″ Drive, 7 mm Deep, Metric 6 Point Fastener
5120–01–112–9519—Socket, Chrome, ¼″ Drive, 8 mm Deep, Metric 6 Point Fastener
5120–01–348–7275—Socket, Chrome, ¼″ Drive, 9 mm Deep, Metric 6 Point Fastener
5120–01–080–6534—Socket, Chrome, ¼″ Drive, 10 mm Deep, Metric 6 Point Fastener
5120–01–348–7264—Socket, Chrome, ¼″ Drive, 11 mm Deep, Metric 6 Point Fastener
5120–01–348–7265—Socket, Chrome, ¼″ Drive, 12 mm Deep, Metric 6 Point Fastener
5120–01–348–7266—Socket, Chrome, ¼″ Drive, 13 mm Deep, Metric 6 Point Fastener
5120–01–348–7267—Socket, Chrome, ¼″ Drive, 14 mm Deep, Metric 6 Point Fastener
5120–01–348–9189—Socket, Chrome ⅜″ Drive, 10 mm Deep, Metric 6 Point Fastener
5120–01–348–9196—Socket, Chrome ⅜″ Drive, 17 mm Deep, Metric 6 Point Fastener
5120–01–348–9197—Socket, Chrome ⅜″ Drive, 18 mm Deep, Metric 6 Point Fastener
5120–01–335–1070—Extension, Chrome, ¼″ Drive, 2″ Knurled
5120–01–335–1071—Extension, Chrome, ¼″ Drive, 4″ Knurled
5120–01–335–0714—Breaker Bar, Chrome, ½″ Drive, 15 ½″
5120–01–335–0935—Socket, ¼″ Drive, 3/16″ Shallow SAE 6 Point Fasteners
5120–01–335–1057—Extension, Chrome, ⅜″ Drive, 3″ Knurled Friction Ball
5120–01–335–1059—Extension, Chrome, ⅜″ Drive, 6″ Knurled Friction Ball
5120–01–335–1061—Extension, Chrome, ⅜″ Drive, 11″ Knurled Friction Ball
5120–01–355–1865—Speeder Drive, Chrome, ⅜″ Drive, 18″
5120–01–348–9190—Socket, Chrome ⅜″ Drive, 11 mm Deep, Metric 6 Point Fastener
5120–01–348–9191—Socket, Chrome ⅜″ Drive, 12 mm Deep, Metric 6 Point Fastener
5120–01–348–9192—Socket, Chrome ⅜″ Drive, 13 mm Deep, Metric 6 Point Fastener
5120–01–348–9194—Socket, Chrome ⅜″ Drive, 15 mm Deep, Metric 6 Point Fastener
5120–01–348–9195—Socket, Chrome ⅜″ Drive, 16 mm Deep, Metric 6 Point Fastener
5120–01–348–9193—Socket, Chrome ⅜″ Drive, 14 mm Deep, Metric 6 Point Fastener
5120–01–348–9251—Socket, Chrome, ¼″ Drive, 5 mm Shallow, Metric 6 Point Fastener
5120–01–335–0934—Socket, ¼″ Drive, 7/32″ Shallow SAE 6 Point Fasteners
5120–01–335–1045—Universal Joint, Chrome, ⅜″ Drive, 2″ Friction Ball

5120–01–348–9107—Socket, Chrome 3/8″ Drive, 19 mm Deep, Metric 6 Point Fastener
5120–01–348–9187—Socket, Chrome 3/8″ Drive, 8 mm Deep, Metric 6 Point Fastener
5120–01–348–9188—Socket, Chrome 3/8″ Drive, 9 mm Deep, Metric 6 Point Fastener
5120–01–348–9255—Socket, Chrome, 1/4″ Drive, 8 mm Shallow, Metric 6 Point Fastener
5120–01–348–9256—Socket, Chrome, 1/4″ Drive, 9 mm Shallow, Metric 6 Point Fastener
5120–01–348–9290—Socket, Chrome, 1/4″ Drive, 11 mm Shallow, Metric 6 Point Fastener
5120–01–335–0951—Socket Set, 1/4″ Drive, 9/32″ Deep, SAE 6 Point Fastener
5120–01–348–9252—Socket, Chrome, 1/4″ Drive, 5.5 mm Shallow, Metric 6 Point Fastener
5120–01–335–0950—Socket Set, 1/4″ Drive, 1/4″ Deep, SAE 6 Point Fastener
5120–01–355–1864—Breaker Bar, Chrome, 3/8″ Drive, 8-9/16″

Designated Source of Supply: Source of Supply: Wiscraft, Inc., Milwaukee, WI.
Contracting Activity: FEDERAL ACQUISITION SERVICE, FAS HEARTLAND REGIONAL ADMINISTRATO.
Distribution: B-List.
Mandatory For: Broad Government Requirement.

Service(s)

Service Type: Grounds Maintenance.
Mandatory for: US Air Force, Military Family Housing Units, Wright Patterson AFB, OH.
Designated Source of Supply: Source of Supply: Goodwill Easter Seals Miami Valley, Dayton, OH.
Contracting Activity: DEPT OF THE AIR FORCE, FA8601 AFLCMC PZIO.

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: Food Service Attendant.
Mandatory for: US Army, Helemano Military Reservation, Building 300; Wahiawa, HI.
Designated Source of Supply: Opportunities and Resources, Inc., Wahiawa, HI.
Contracting Activity: DEPT OF THE ARMY, 0413 AQ HQ.
Service Type: Family Housing Maintenance.
Mandatory for: US Navy, NAVFAC SOUTHWEST, Naval Base Ventura County, 311 Main Road; Point Mugu, CA.
Designated Source of Supply: PRIDE Industries, Roseville, CA.
Contracting Activity: DEPT OF THE NAVY, NAVFAC SOUTHWEST.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–27932 Filed 12–22–22; 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 NCCC Impact Studies

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 NCCC Impact Studies 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 January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this 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, Melissa Gouge, at (202) 606–6736 or by email to *mgouge@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 CNCS, 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 September 16, 2022, at Vol. 87 FR 56936. This comment period ended November 15, 2022. No public comments were received from this Notice.

Title of Collection: NCCC Impact Studies.
OMB Control Number: 3045–0189.
Type of Review: Renewal.
Respondents/Affected Public: Individuals.
Total Estimated Number of Annual Responses: 300.
Total Estimated Number of Annual Burden Hours: 190.
Abstract: The purpose of the information collection is to finalize collecting data for the previously-approved AmeriCorps National Civilian Community Corps (NCCC) impact studies. The studies assess the performance and impact of NCCC programs on members and communities served by the program. In particular, the studies investigate three main components of NCCC:

1. The impact of NCCC on developing leaders.
2. The impact of NCCC on strengthening communities.
3. Retention at the different phases of the program, from application to completion. AmeriCorps seeks to renew the current information collection. The revisions are intended to finalize collecting data for the previously approved AmeriCorps National Civilian Community Corps (NCCC) impact studies. 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 12/31/2022.

Mary Hyde,

Director, Office of Research and Evaluation.

[FR Doc. 2022–27980 Filed 12–22–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2022–HQ–0016]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Army Radiation Permit; OMB Control Number 0702–0109.

Type of Request: Revision.

Number of Respondents: 235.

Responses per Respondent: 1.

Annual Responses: 235.

Average Burden per Response: 2 hours.

Annual Burden Hours: 470.

Needs and Uses: In accordance with 32 CFR 655.10, Army Radiation Permits (ARPs) are required for use, storage, or possession of ionizing radiation sources by non-Army entities on an Army installation. For the purpose of this information collection request and the authorizing regulation, ''ionizing radiation source'' means any source that, if held or owned by an Army organization, would require a specific Nuclear Regulatory Commission license or Army Radiation Authorization. Such use, storage, or possession of ionizing radiation sources must be in connection with an activity of the Department of Defense or in connection with a service to be performed on the installation for the benefit of the Department of Defense, in accordance with 10 U.S.C. 2692(b)(1). The information required to grant an ARP is necessary to protect the public, civilian employees, and military personnel on an installation from potential exposure to radioactive sources. The ARP allows the installation to maintain cognizance over the presence of radioactive sources on the installation. Cognizance is necessary to ensure emergency responders are properly notified and prepared to deal with the radioactive materials when necessary, ensure other proper protective controls are maintained, and to ensure proper removal of the radioactive materials from the installation when no longer required. Approval by the garrison commander is required to obtain an Army radiation permit. Additional implementing procedures are outlined in Department of the Army Pamphlet 385–24, ''Army Radiation Safety Program.''

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Deck 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: December 20, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–28022 Filed 12–22–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2022–HQ–0028]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personalized Recruiting for Immediate and Delayed Enlistment Modernization II (PRIDE Mod II); OMB Control Number 0703–0062.

Type of Request: Revision.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Annual Responses: 60,000.

Average Burden per Response: 1 hour.

Annual Burden Hours: 60,000.

Needs and Uses: The Personalized Recruiting for Immediate and Delayed Enlistment Modernization II (PRIDE Mod II) is needed to assess individuals who wish to be considered for accession into the U.S. Navy. The collected information is used to support the U.S. Navy's process to recruit qualified individuals for naval service. The information is used to support accession decisions, including the mental, physical, and financial fitness of the individual, potential qualification (or disqualification) of certain types of duty, the eligibility for special programs or jobs, and the awarding of the appropriate military pay and benefits.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any

personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

Dated: December 20, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–28030 Filed 12–22–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2022–HQ–0019]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMC Dependency Statement Child Born Out of Wedlock Under Age 21; NAVMC Form 1750/13; OMB Control Number 0703–DEPE.

Type of Request: New.

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden per Response: 75 minutes.

Annual Burden Hours: 25.

Needs and Uses: The NAVMC Form 1750/13, ''USMC Dependency Statement Child Born Out of Wedlock Under Age 21,'' is necessary to assist USMC Installation command representatives and the Marine and Family Programs Division Dependency Determination Section (MFP–1) in properly making informed Basic Allowance for Housing (BAH) entitlement determinations for claimed children under the age of 21 who are born out of wedlock to non-service member partners and do not reside within the household of the service member. The collection provides formal documentation and respondent attestation of overall financial support case facts, which is a particularly critical piece of documentation in cases where the legitimacy of primary dependency status or service member BAH entitlement claim is deemed questionable to the USMC.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

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: December 20, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–28032 Filed 12–22–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under Article 6 paragraph 2 of the Agreement for Cooperation Between the Government of the United States of America and the Government of the Kingdom of Norway Concerning Peaceful Uses of Nuclear Energy.

DATES: This subsequent arrangement will take effect no sooner than January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Ferkile, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–8868 or email: *andrea.ferkile@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the alteration in form or content of U.S.-obligated nuclear material: (A) unirradiated uranium in the form of fuel pellets and grinding discharges in the amount and composition of 321.5 grams of U–235 in unirradiated highly enriched uranium (HEU) between 90–93 percent enrichment, and 143.8 grams of plutonium; and (B) irradiated uranium in the form of spent fuel rods in the amount and composition of 2,935 grams irradiated HEU (containing a total of 1,838.4 grams of U–235 and 625.2 grams of U–233 and whose pre-irradiation U–235 enrichments were between 90–93 percent) that is combined with 98,371 grams of thorium and 0.5 grams of plutonium. The Institute for Energy Technology (IFE), located in Kjeller, Norway, will downblend the irradiated HEU-containing material identified above so as to result in an enrichment level of 3.5% in the isotope U–235 and in the combined isotopes U–235 plus U–233. The remainder of the HEU (along with other U.S.-obligated nuclear materials, including 9,809 grams of unirradiated low-enriched uranium, 256 grams of natural uranium, 77 grams of depleted uranium, 7,886 grams of thorium, and the 143.8 g of unirradiated plutonium) contained in unirradiated scrap material and grinding discards also will be processed in the same manner. The final form of the U.S.-obligated nuclear material will be a metallic alloy, comprising the uranium, plutonium, and thorium together with additives such as stainless steel, depleted uranium, and reductants, in the form of cylindrical ingots, and will be stored at IFE. The processed U.S.-obligated nuclear material will remain subject to the Agreement for Cooperation Between the Government of

the United States of America and the Government of the Kingdom of Norway Concerning Peaceful Uses of Nuclear Energy until Norway and the United States have agreed it is no longer useable for any nuclear activity relevant from the point of view of safeguards and it is finally disposed at a national disposal facility for radioactive waste.

Pursuant to the authority in section 131a. of the Atomic Energy Act of 1954, as delegated, I have determined that this proposed subsequent arrangement concerning the alteration in form or content of the U.S.-obligated nuclear material will not be inimical to the common defense and security.

Signing Authority

This document of the Department of Energy was signed on December 19, 2022, by Corey Hinderstein, Deputy Administrator for Defense Nuclear Nonproliferation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 19, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–27899 Filed 12–22–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–200–000]

Daggett Solar Power 1 LLC; Supplemental Notice That Filing Includes Request for Blanket Section 204 Authorization

This supplemental notice in the above-referenced proceeding of Daggett Solar Power 1 LLC's filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2022.

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: December 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27962 Filed 12–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–203–000]

Daggett Solar Power 2 LLC; Supplemental Notice That Filing Includes Request for Blanket Section 204 Authorization

This supplemental notice in the above-referenced proceeding of Daggett Solar Power 2 LLC's filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2022.

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: December 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27961 Filed 12–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–24–000]

Double E Pipeline, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 9, 2022, Double E Pipeline, LLC (Double E), 910 Louisiana Street, Suite 4200, Houston, Texas 77002–2700, filed in above referenced docket a prior notice request pursuant to sections 157.205, and 157.208 of the Commission's regulations under the Natural Gas Act (NGA) and Double E blanket certificate issued in Docket No. CP19–495–000, for authorization to construct and operate its Red Hills Lateral project consisting of 20 miles of 24-inch lateral pipeline connecting its existing Poker Lake Meter station to the proposed Red Hill meter station located in Eddy and Lea Counties, New Mexico. Double E states that the construction is necessary to provide access to additional growing supplies of natural gas in the Delaware Basin. Double E estimates the cost of the project to be approximately $35.8 million, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Any questions concerning this request should be directed to John E. Griffin, Vice President, Deputy Counsel, Double E Pipeline, LLC, 910 Louisiana Street, Suite 4200, Houston, Texas 77002–2700, by phone at (832) 930–7820, or by email at *John.Griffin@summitmidstream.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 17, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is February 17, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is February 17, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/how-guides.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 17, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–24–000 in your submission. The

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

Commission encourages electronic filing of submissions.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing.''

The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP23–24–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail to John E. Griffin, Vice President, Deputy Counsel, Double E Pipeline, LLC, 910 Louisiana Street, Suite 4200, Houston, Texas 77002–2700 or by email (with a link to the document) at: *John.Griffin@summitmidstream.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *https://www.ferc.gov/ferc-online/overview.*

Dated: December 19, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27975 Filed 12–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–18–000.
Applicants: Worsham-Steed Gas Storage, LLC.
Description: § 284.123 Rate Filing: Updated Market Power Study—Compliance Filing to be effective N/A.
Filed Date: 12/16/22.
Accession Number: 20221216–5201.
Comment Date: 5 p.m. ET 1/6/23

Docket Numbers: PR23–19–000.
Applicants: Hill-Lake Gas Storage, LLC.
Description: § 284.123 Rate Filing: Updated Market Power Study—Compliance Filing to be effective N/A.
Filed Date: 12/16/22.
Accession Number: 20221216–5204.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: RP23–290–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Compliance filing: Penalty Revenue Crediting Report 2022 to be effective N/A..
Filed Date: 12/16/22.
Accession Number: 20221216–5093.
Comment Date: 5 p.m. ET 12/28/22.

Docket Numbers: RP23–292–000.
Applicants: Crossroads Pipeline Company.
Description: Compliance filing: Penalty Revenue Crediting Report 2022 to be effective N/A.
Filed Date: 12/16/22.
Accession Number: 20221216–5151.
Comment Date: 5 p.m. ET 12/28/22.

Docket Numbers: RP23–293–000.
Applicants: Golden Triangle Storage, LLC.
Description: § 4(d) Rate Filing: Name Change to be effective December 16, 2022 to be effective 12/16/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5203.
Comment Date: 5 p.m. ET 12/28/22.

Docket Numbers: RP23–294–000.
Applicants: Portland Natural Gas Transmission System.
Description: § 4(d) Rate Filing: Negotiated Rate and Non-Conforming Agreement Clean Up to be effective 1/16/2023.
Filed Date: 12/16/22.
Accession Number: 20221216–5235.
Comment Date: 5 p.m. ET 12/28/22.

Docket Numbers: RP23–295–000.
Applicants: ANR Pipeline Company.
Description: Compliance filing: CP20–484—AXP Compliance Filing to be effective 1/6/2023.
Filed Date: 12/16/22.
Accession Number: 20221216–5252.
Comment Date: 5 p.m. ET 12/28/22.

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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27963 Filed 12–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–41–000.
Applicants: Rhode Island State Energy Center, LP, EGCO RISEC II, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Rhode Island State Energy Center, LP.
Filed Date: 12/14/22.
Accession Number: 20221214–5243.
Comment Date: 5 p.m. ET 1/30/23.

Docket Numbers: EC23–42–000.
Applicants: Talen Energy Supply, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Talen Energy Supply, LLC.
Filed Date: 12/15/22.
Accession Number: 20221215–5225.
Comment Date: 5 p.m. ET 1/30/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2435–021.
Applicants: Camden Plant Holdings, L.L.C.
Description: Compliance filing: Camden Plant Holding, L.L.C. submits tariff filing per 35: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5057.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER15–704–028.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: CCSF Compliance Filing October 2022 Order on Remand (SA 275) to be effective 7/1/2015.
Filed Date: 12/19/22.
Accession Number: 20221219–5154.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER15–704–029.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: CCSF Compliance Filing October 2022 Order on Remand (SA 275) to be effective 7/23/2015.
Filed Date: 12/19/22.
Accession Number: 20221219–5187.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER15–1872–002.
Applicants: Montour, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5098.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER16–2440–004.
Applicants: Brandon Shores LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5050.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER17–1972–001; ER23–246–002; ER23–256–002; ER12–2337–001; ER12–2338–001; ER12–2349–001; ER18–1343–014; ER19–2684–002; ER22–2042–001.
Applicants: Jackpot Holdings, LLC, Palmer Solar, LLC, Carolina Solar Power, LLC, Kit Carson Windpower, LLC, Top of the World Wind Energy, LLC, Three Buttes Windpower, LLC, Silver Sage Windpower, LLC, Happy Jack Windpower, LLC, Duke Energy Renewable Services, LLC.
Description: Triennial Market Power Analysis for Northwest Region of Duke Energy Renewable Services, LLC, et al.
Filed Date: 12/15/22.
Accession Number: 20221215–5229.
Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: ER17–2175–002.
Applicants: Susquehanna Nuclear, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5073.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER18–406–003.
Applicants: Brunner Island, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5051.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER19–378–001.
Applicants: Montour, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5068.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER19–482–002.
Applicants: LMBE Project Company LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5062.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER20–681–008.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Compliance filing: Application for Reauthorization of MBR Authority to be effective 12/17/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5242.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER20–1140–002.
Applicants: H.A. Wagner LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5060.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER20–1298–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2022–12–19_MidAmerican Order 864 Substitute Compliance to be effective 1/27/2020.
Filed Date: 12/19/22.
Accession Number: 20221219–5170.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER20–2642–001.
Applicants: Montour, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5072.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER22–1365–001.
Applicants: MC Project Company LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 12/19/22.
Accession Number: 20221219–5064.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER22–2110–003.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Interconnection Reform Compliance to be effective 1/3/2023.
Filed Date: 12/19/22.
Accession Number: 20221219–5105.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER23–660–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Gilroy Energy Center LLC (Lambie) LGIA (TO SA 453) to be effective 12/18/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5232.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–661–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Goose Haven Energy Center LLC LGIA (TO SA 454) to be effective 12/18/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5234.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–662–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Creed Energy Center LLC LGIA (TO SA 455) to be effective 12/18/2022.
Filed Date: 12/16/22.
Accession Number: 20221216–5240.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER23–663–000.

Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–12–19_Revisions to broaden scope of Dispute and Resettlement Time Limits to be effective 2/18/2023.
Filed Date: 12/19/22.
Accession Number: 20221219–5044.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER23–664–000.
Applicants: NTUA Generation-Utah, LLC.
Description: Baseline eTariff Filing: Market Based Rate Application with Requests for Status, Waivers, and Expedition to be effective 2/3/2023.
Filed Date: 12/19/22.
Accession Number: 20221219–5104.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER23–665–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–12–19_SA 2928 ITCTransmission-Pegasus Wind 4th Rev GIA (J301 J701) to be effective 12/6/2022.
Filed Date: 12/19/22.
Accession Number: 20221219–5119.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER23–666–000.
Applicants: Foxhound Solar, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 2/18/2023.
Filed Date: 12/19/22.
Accession Number: 20221219–5146.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER23–667–000.
Applicants: Mesquite Solar 1, LLC.
Description: Tariff Amendment: Notices of Cancellation to be effective 2/17/2023.
Filed Date: 12/19/22.
Accession Number: 20221219–5151.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER23–668–000.
Applicants: Copper Mountain Solar 1, LLC.
Description: Tariff Amendment: Notices of Cancellation to be effective 2/17/2023.
Filed Date: 12/19/22.
Accession Number: 20221219–5152.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER23–669–000.
Applicants: Copper Mountain Solar 2, LLC.
Description: Tariff Amendment: Notices of Cancellation to be effective 2/17/2023.
Filed Date: 12/19/22.
Accession Number: 20221219–5153.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: ER23–670–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2022–12–19 Filing of HANA with El Paso Electric Company to be effective 3/1/2023.
Filed Date: 12/19/22.
Accession Number: 20221219–5226.
Comment Date: 5 p.m. ET 1/9/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–18–000.
Applicants: Consumers Energy Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Consumers Energy Company.
Filed Date: 12/16/22.
Accession Number: 20221216–5307.
Comment Date: 5 p.m. ET 1/6/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene 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: December 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27964 Filed 12–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–652–000]

Happy Solar 1, 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 Happy Solar 1, 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 January 9, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27966 Filed 12–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–12–000]

Joint FERC–DOE Supply Chain Risk Management Technical Conference; Notice Inviting Post-Technical Conference Comments

On Wednesday, December 7, 2022, the Federal Energy Regulatory Commission (Commission) and the U.S. Department of Energy (DOE) convened a Joint Supply Chain Risk Management Technical Conference to discuss supply chain security challenges related to the Bulk-Power System, ongoing supply chain-related activities, and potential measures to secure the supply chain for the grid's hardware, software, computer, and networking equipment.

All interested persons are invited to file post-technical conference comments to address issues raised during the technical conference identified in the Supplemental Notice of Technical Conference issued on December 6, 2022. For reference, the questions included in the Supplemental Notice are included below. Commenters need not answer all of the questions, but are encouraged to organize responses using the numbering and order in the below questions. Commenters are also invited to reference material previously filed in this docket but are encouraged to avoid repetition or replication of their previous comments. Comments must be submitted on or before 60 days from the date of this Notice.

Comments, identified by docket number, may be filed electronically or paper-filed. Electronic filing through *https://www.ferc.gov* is preferred. Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format. Instructions are available on the Commission's website: *http://www.ferc.gov/docs-filing/efiling.asp.*

Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this Notice, please contact:

Simon Slobodnik (Technical Information) Office of Energy Reliability, (202) 502–6707, *Simon.Slobodnik@ferc.gov*

Alan J. Rukin (Legal Information) Office of General Counsel, (202) 502–8502, *Alan.Rukin@ferc.gov*

Dated: December 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

Post Technical Conference Questions

I. Supply Chain Risks Facing the Bulk-Power System

The U.S. energy sector procures products and services from a globally distributed, highly complex, and increasingly interconnected set of supply chains. Information Technology (IT) and Operational Technology (OT) systems enable increased interconnectivity, process automation, and remote control. As a result, supply chain risks will continue to evolve and likely increase. This panel discussed the state of supply chain risks from a national and geopolitical perspective. Specifically, the panel explored current supply chain risks to the security of grid's hardware, software, computer, and networking equipment and how well-resourced campaigns perpetrated by nation states, such as the SolarWinds incident, affect supply chain risk for the electric sector. Panelists discussed the origins of these risks, their pervasiveness, the possible impacts they could have on Bulk-Power System reliability, and approaches to mitigating them. The panelists also discussed challenges associated with supply chain visibility and covert embedded spyware or other compromising software or hardware in suppliers' products, parts, or services.

Please address the following questions:

1. Describe the types of challenges and risks associated with globally distributed, highly complex, and increasingly interconnected supply chains.

2. Describe the difficulties associated with supply chain visibility and how origins of products or components may be obscured.

3. How are foreign-supplied Bulk-Power System components being manipulated and is there a particular phase in the product lifecycle where the product is manipulated for nefarious intent?

4. How are these supply chain challenges and risks currently being managed?

5. How has the current geopolitical landscape impacted the energy sector's ability to manage supply chain challenges and risks?

6. How can Sector Risk Management Agencies and Regulators promote and/or incentivize supply chain transparency at the earlier stages of product development and manufacturing?

7. Discuss the pathways (*e.g.,* voluntary best practices and guidelines, mandatory standards) that together could address the current supply chain challenges and risks?

8. What actions can government take, both formal regulatory actions and coordination, to help identify and mitigate risks from the global supply chain for the energy sector?

II. Current Supply Chain Risk Management (SCRM) Reliability Standards, Implementation Challenges, Gaps, and Opportunities for Improvement

It has now been more than six years since the Commission directed the development of mandatory Reliability Standards to address supply chain risks, and more than two years since the first set of those tandards became effective.[1] As discussed in Panel 1, supply chain risks have continued to grow in that time. In light of that evolving threat, panelists discussed the existing SCRM Reliability Standards, including: (1) their effectiveness in securing the Bulk-Power System; (2) lessons learned from implementation of the current SCRM Reliability Standards; and (3) possible gaps in the currently effective SCRM Reliability Standards. This panel provided an opportunity to discuss any Reliability Standards in development, and how these new standards will help enhance security and help address some of the emerging supply chain threats.

Please address the following questions:

1. Are the currently effective SCRM Reliability Standards sufficient to successfully ensure Bulk-Power System reliability and security in light of existing and emerging risks?

2. What requirements in the SCRM Reliability Standards present implementation challenges for registered entities and for vendors?

3. How are implementation challenges being addressed for utilities and for vendors?

4. Are there alternative methods for implementing the SCRM Reliability Standards that could eliminate

[1] The SCRM Reliability Standards include: Reliability Standards CIP–005–7 (Cyber Security—Electronic Security Perimeter(s)), Requirements R2.4, R2.5, R3; CIP–010–4 (Cyber Security—Configuration Change Management and Vulnerability Assessments) Requirement R1.6; CIP–013–2 (Cyber Security—Supply Chain Risk Management).

challenges or enhance effectiveness moving forward?

5. Based on the current and evolving threat landscape, would the currently effective SCRM Reliability Standards benefit from additional mandatory security control requirements and how would these additional controls improve the security of the Bulk-Power System?

6. Are there currently effective SCRM criteria or standards that manufacturers must adhere to in foreign countries that may be prudent to adopt in the U.S.?

III. The U.S. Department of Energy's Energy Cyber Sense Program

Through the Energy Cyber Sense Program, DOE will provide a comprehensive approach to securing the nation's critical energy infrastructure and supply chains from cyber threats with this voluntary program. The Energy Cyber Sense Program will build upon direction in Section 40122 of the Bipartisan Infrastructure Law, as well as multiple requests from industry, leveraging existing programs and technologies, while also initiating new efforts. Through Energy Cyber Sense, DOE aims to work with manufacturers and asset owners to discover, mitigate, and engineer out cyber vulnerabilities in digital components in the Energy Sector Industrial Base critical supply chains. This program will provide a better understanding of the impacts and dependencies of software and systems used in the energy sector; illuminate the digital provenance of subcomponents in energy systems, hardware, and software; apply best-in-class testing to discover and address common mode vulnerabilities; and provide education and awareness, across the sector and the broader supply chain community to optimize management of supply chain risks. This panel discussed specific supply chain risks that Energy Cyber Sense will address, as well as some of the programs and technologies DOE will bring to bear under the program to address the risks.

Please address the following questions:

1. How are emerging orders, standards, and process guidance, such as Executive Order 14017, Executive Order 14028, NIST Special Publication 800–161r1, ISA 62443, Reliability Standard CIP–013–2, and others, changing how we assess our digital supply chain?

2. Given the dependence of OT on application-specific hardware, how could the inclusion and linkage of Hardware Bill of Materials (HBOMs) with Software Bill of Materials (SBOMs) increase our ability to accurately and effectively assess and mitigate supply chain risk? To what degree is this inclusion and linkage of HBOMs with SBOMs taking place today and what steps should be taken to fill any remaining gaps?

3. Given that much of the critical technology used in the energy sector is considered legacy technology, how can manufacturers, vendors, asset owners and operators, aided by the federal government, national laboratories, and other organizations, manage the supply chain risk from legacy technology? How can this risk management be coordinated with newer technologies that are more likely to receive SBOMs, HBOMs, and attestations?

4. Where does testing, for example Cyber Testing for Resilient Industrial Control Systems (CyTRICS) and third-party testing, fit in the universe of ''rigorous and predictable mechanisms for ensuring that products function securely, and as intended?'' [2]

5. More than ever, developers are building applications on open-source software libraries. How can developers address the risks inherent with open-source software and how can asset owners work with vendors to validate that appropriate open-source risk management measures have been taken?

6. U.S. energy systems have significant dependencies on hardware components, including integrated circuits and semiconductors, most of which are manufactured outside of the US. What tools and technologies are needed to understand the provenance of hardware components used in U.S. energy systems and the risks from foreign manufacture? How will the newly passed CHIPS and Science Act change the risk landscape? What is needed in terms of regulation, standards, and other guidance to strengthen the security of the hardware component supply chain from cyber and other risks?

IV. Enhancing the Supply Chain Security Posture of the Bulk-Power System

This panel discussed forward-looking initiatives that can be used to improve the supply chain security posture of the Bulk-Power System. These initiatives could include vendor accreditation programs, product and service verification, improved internal supply chain security capability, third party services, and private and public partnerships.

Vendor accreditation can be established in various ways. One of the more prominent ways is currently being explored by the North American Transmission Forum through its Supply Chain Security Assessment model and the associated questionnaire.[3] The panel also explored certain programs and practices used by utilities to verify the authenticity and effectiveness of products and services. Internal supply chain security capabilities include hiring people with the appropriate background and knowledge, while also developing relevant skills internally, through training on broad supply chain topics and applying them to the specific needs of the organization. Finally, this panel addressed private and public partnerships on supply chain security and how they can facilitate timely access to information that will help better identify current and future supply chain threats to the Bulk-Power System and best practices to address those risks.

Please address the following questions:

1. What vendor accreditation programs currently exist or are in development? How can entities vet a vendor in the absence of a vendor accreditation program?

2. What are the challenges, benefits, and risks associated with utilizing third-party services for maintaining a supply chain risk management program?

3. What are the best practices and other guidance for security evaluation of vendors?

4. What programs and practices are currently in use to ensure product and service integrity?

5. What processes are used to test products prior to implementation?

6. What is the right balance between vendor and product security and cost? Is there a point of diminishing returns?

7. What are effective strategies for recruiting personnel with the appropriate background and SCRM skills to strengthen internal security practices? How do you provide the training necessary to further develop the skills specific to your unique organizational challenges?

8. What are the best ways to meaningfully assimilate SBOM information and what subsequent analyses can be done to strengthen internal security practices?

[2] See Exec. Order No. 14028, 86 FR 26633, 26646 (May 12, 2021) (The Executive Order declared that the security of software used by the Federal Government is ''vital to the Federal Government's ability to perform its critical functions.'' The Executive Order further cited a ''pressing need to implement more rigorous and predictable mechanisms for ensuring that products function securely, and as intended.'')

[3] North American Transmission Forum, *Supply Chain Cyber Security Industry Coordination, https://www.natf.net/industry-initiatives/supply-chain-industry-coordination.*

9. How can the industry keep informed of the latest supply chain compromises? How do entities currently respond to these compromises to keep their systems secure? Are there ways to improve these responses? What actions can government take, both formal regulatory actions and coordination, to help keep industry informed of supply chain compromises and to facilitate effective responses?

10. What key risk factors do entities need to consider prior to leveraging third party services and how should those risk factors be balanced with an entity's organizational policy? What SCRM controls do you have in place to ensure your systems and products have a reduced risk of compromise? Please discuss any challenges that you have experienced as well as successes.

11. How should government and industry prioritize and coordinate federal cross-agency and private sector collaboration and activities regarding SCRM?

[FR Doc. 2022–27965 Filed 12–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD23–4–000]

Town of Carbondale, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On December 15, 2022, the Town of Carbondale, Colorado, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Town of Carbondale Nettle Creek Water Distribution Pump Back Hydro Project would have an installed capacity of 7.6 kilowatts (kW), and would be located along a pipeline within the applicant's municipal water supply system near the Town of Carbondale, Pitkin County, Colorado.

Applicant Contact: Mark O'Meara, Utility Director, Town of Carbondale, 511 Colorado Avenue, Carbondale, CO 81623, 970–963–3140, *momeara@carbondaleco.net.*

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The project would consist of: (1) a 7.6-kW pump as turbine generating unit to be installed within an existing vault, (2) intake and discharge pipes connecting to the existing water supply pipeline, and (3) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 66,500 kilowatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Town of Carbondale Nettle Creek Water Distribution Pump Back Hydro Project will not alter the primary purpose of the conduit, which is for municipal water supply. Therefore, based upon the above criteria, Commission staff preliminarily determines that the operation of the project described above satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions To Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

[1] 18 CFR 385.2001–2005 (2021).

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may 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, MD 20852. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Locations of Notice of Intent: 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD23–4) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: December 19, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27974 Filed 12–22–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–10275–01–OCSPP]

Pesticide Registration Review; Proposed Interim Decisions for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 75-day public comment period on the proposed interim decisions for the following pesticides: 1,3-Propanediamine, N-(3-aminopropyl)-N-dodecyl-(1,3–PAD); DCNA; Etofenprox; Lavandulyl Senecioate; Norflurazon; Oregano Oil; Penta-termanone; Plant Extract 620; and Thiophanate-methyl and Carbendazim.

DATES: Comments must be received on or before March 8, 2023.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in Table 1 in Unit IV., through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at: *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary

risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in Table 1 and opens a 75-day public comment period on the proposed interim registration review decisions.

TABLE 1—PESTICIDES WITH PROPOSED INTERIM DECISIONS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
1,3-Propanediamine, N-(3-aminopropyl)-N-dodecyl-(1,3–PAD), Case Number 5109.	EPA–HQ–OPP–2014–0406	Jessie Bailey, *bailey.jessica@epa.gov*, (202) 566–0605.
DCNA, Case Number 0113	EPA–HQ–OPP–2016–0141	Kent Fothergill, *fothergill.kent@epa.gov*, (202) 566–1943.
Etofenprox, Case Number 7407	EPA–HQ–OPP–2007–0804	DeMariah Koger, *koger.demariah@epa.gov*, (202) 566–2288.
Lavandulyl Senecioate, Case Number 6307	EPA–HQ–OPP–2022–0356	Andrew Queen, *queen.andrew@epa.gov*, (202) 566–1539.
Norflurazon, Case Number 0229	EPA–HQ–OPP–2012–0565	James Douglass, *douglass.james@epa.gov*, (202) 566–2343.
Oregano Oil, Case Number 6342	EPA–HQ–OPP–2022–0641	Hannah Dean, *dean.hannah@epa.gov*, (202) 566–2969.
Penta-termanone, Case Number 6313	EPA–HQ–OPP–2022–0657	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, (202) 566–1516.
Plant Extract 620 * (* Derived from Quercus falcata, Opuntia lindheimeri, Rhus aromatica, and Rhizophoria mangle tissues), Case Number 6071.	EPA–HQ–OPP–2013–0587	Joseph Mabon, *mabon.joseph@epa.gov*, (202) 566–1535.
Thiophanate-methyl and Carbendazim, Case Number 2680.	EPA–HQ–OPP–2014–0004	Alexandra Feitel, *feitel.alexandra@epa.gov*, (202) 566–1939.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in Table 1 in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in Table 1 in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. EPA is allowing a 75-day public comment period for all the proposed interim decisions in this notice.

All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Tables in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 19, 2022.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–27936 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2022–0969; FRL–10517–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Center for Biological Diversity, et al.* v. *Regan,* No. 3:22-cv-00052–WHO (N.D. Cal.). On January 5, 2022, Plaintiffs Center for Biological Diversity and Center for Environmental Health filed a complaint in the United States District Court for the Northern District of California. On April 22, 2022, Plaintiffs filed an amended complaint. Plaintiffs alleged that the Environmental Protection Agency (EPA or the Agency) failed to perform certain non-discretionary duties in accordance with the Act to timely determine the attainment status of certain areas with respect to the 2008 ozone National Ambient Air Quality Standards (NAAQS). The proposed consent decree would establish deadlines for EPA to sign notices of final rulemaking.

DATES: Written comments on the proposed consent decree must be received by *January 23, 2023.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2022–0969, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information

on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Pettit, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 566–2879; email address *pettit.elizabetha@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2022–0969) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree, and is available through *https://www.regulations.gov*. You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would establish deadlines for EPA to take action pursuant to CAA section 110(k) on certain state implementation plan (SIP) submissions by the State of California and the State of Texas. First, on September 23, 2021, the State of California failed to make a SIP submission for the San Diego County area for Reasonably Available Control Technology (RACT) measures not tied to attainment for the 2008 ozone NAAQS. The proposed consent decree would require EPA to sign a notice issuing a finding of failure to submit for this SIP submission no later than April 30, 2023.

Second, on November 13, 2020, EPA determined that submittals for the Dallas-Fort Worth area containing the SIP elements required for the ''Serious'' nonattainment classification with respect to the 2008 ozone NAAQS were administratively complete. Thus, EPA had a duty to take final action to approve, disapprove, or conditionally approve or disapprove, in whole or in part, the SIP submittals by November 13, 2021. On September 16, 2022, and October 3, 2022, EPA approved Texas' SIP revisions for the emissions inventory and nonattainment new source review elements. (87 FR 56891; 87 FR 59697). The proposed consent decree would require EPA to sign a notice of final rulemaking on the remaining SIP elements by September 30, 2023.

Third, on February 22, 2019, EPA determined that submittal for the Eastern Kern area containing the SIP element, Rule 425.3, Portland cement kilns, was administratively complete. Thus, EPA had a duty to take final action to approve, disapprove, or conditionally approve or disapprove, in whole or in part, the SIP submittal by February 22, 2020. The proposed consent decree would require EPA to sign a notice of final rulemaking on the remaining SIP element by June 30, 2023.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information about Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2022–0969, via *https://www.regulations.gov*. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. 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.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2022–27940 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2021–11; FRL–10424–01–R4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for University of North Carolina at Chapel Hill (Orange County, North Carolina)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order, dated November 8, 2022, denying the petition submitted by the Center for Biological Diversity, Sierra Club, and the Town of Carrboro, North Carolina (Petitioners), objecting to a proposed Clean Air Act (CAA) title V operating permit issued to the University of North Carolina at Chapel Hill (Permittee) located in Orange County, North Carolina. The Order responds to an October 1, 2021, petition requesting that the EPA object to the final operating permit no. 03069T36. The title V permit was issued by the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ). The Order constitutes a final action on the petition addressed therein.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4; Air and Radiation Division; 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *https://www.epa.gov/system/files/documents/202211/UNC%20Cogeneration%20Order_11-8-22.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice is published in the **Federal Register**.

Petitioners submitted a petition requesting that the EPA object to the proposed CAA title V operating permit no. 03069T36 issued by DAQ to the Permittee. Petitioners' claims include that the permit: fails to include emission limits that assure compliance with the national ambient air quality standards for sulfur dioxide (SO_2) and nitrogen dioxide; and fails to include monitoring, recordkeeping, and reporting provisions to assure compliance with SO_2, particulate matter, and visible emissions limits.

On November 8, 2022, the Administrator issued an Order denying the petition. The Order explains the EPA's bases for denying the petition.

Dated: December 16, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–27900 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10488–01–OA]

Farm, Ranch, and Rural Communities Advisory Committee (FRRCC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given that the next meeting of the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) will be held virtually and in-person on January 17 and 18, 2023, at the U.S. Environmental Protection Agency (EPA) Headquarters located at 1200 Pennsylvania Avenue NW, Washington, DC 20460. The FRRCC provides independent policy advice, information, and recommendations to the Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

DATES: This public meeting will be held from Tuesday, January 17, 2023, through Wednesday, January 18, 2023, from approximately 10:00 a.m. to 5:00 p.m. ET.

ADDRESSES: This meeting will take place virtually and in-person. To register and receive information on how to listen to the meeting and to provide comments, please visit: *www.epa.gov/faca/frrcc.* Attendees must register online to receive instructions for virtual attendance. To attend in-person, attendees are encouraged to register online and may also register at the door.

FOR FURTHER INFORMATION CONTACT: Venus Welch-White, Designated Federal Officer (DFO), at *FRRCC@epa.gov* or 202–566–2369. General information regarding the FRRCC can be found on the EPA website at: *www.epa.gov/faca/frrcc.*

SUPPLEMENTARY INFORMATION: Meetings of the FRRCC are open to the public. An agenda will be posted at *www.epa.gov/faca/frrcc.*

Access and Accommodations: For information on access or services for individuals with disabilities, please visit: *www.epa.gov/faca/frrcc.*

Rodney Snyder,

Senior Advisor for Agriculture, U.S. Environmental Protection Agency.

[FR Doc. 2022–27859 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–049]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed December 12, 2022 10 a.m. EST Through December 19, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20220189, Final, USACE, CA, Thousand Palms Flood Control Project, *Review Period Ends:* 01/23/2023, *Contact:* Michael Langley 602–230–6953.

EIS No. 20220190, Final, FERC, VA, Virginia Electrification Project,

Review Period Ends: 01/23/2023, *Contact:* Office of External Affairs 866–208–3372.

EIS No. 20220191, Draft Supplement, USFS, VA, Mountain Valley Pipeline and Equitrans Expansion Project, *Comment Period Ends:* 02/06/2023, *Contact:* Joby Timm, Forest Supervisor 888–603–0261.

EIS No. 20220192, Draft, BOEM, MA, New England Wind Project, *Comment Period Ends:* 02/21/2023, *Contact:* Jessica Stromberg 703–787–1722.

Amended Notice

EIS No. 20220165, Draft, USFWS, OR, Elliott State Research Forest Habitat Conservation Plan, *Comment Period Ends:* 01/10/2023, *Contact:* Shauna Everett 503–231–6949. Revision to FR Notice Published 11/18/2022; Extending the Comment Period from 01/03/2023 to 01/10/2023.

Dated: December 20, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–27982 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1053; FR ID 119762]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before January 23, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1053.

Title: Misuse of internet Protocol Captioned Telephone Service (IP CTS); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13–24 and 03–123.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 186,012 respondents; 672,819 responses.

Estimated Time per Response: 0.1 hours (6 minutes) to 40 hours.

Frequency of Response: Annual, every five years, monthly and ongoing reporting requirements; Recordkeeping requirements; Third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at Sec. 225 [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired Individuals; The Americans with Disabilities Act of 1990, (ADA), Public Law 101–336, 104 Stat. 327, 366–69, enacted on July 26, 1990.

Total Annual Burden: 339,781 hours.

Total Annual Cost: $72,000.

Needs and Uses: On August 1, 2003, the Commission released Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, Declaratory Ruling, 68 FR 55898, September 28, 2003, clarifying that one-line captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs from the Interstate TRS Fund (Fund) in accordance with section 225 of the Communications Act.

On July 19, 2005, the Commission released Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67 and CG Docket No. 03–123, Order, 70 FR 54294, September 14, 2005, clarifying that two-line captioned telephone VCO service, like one-line captioned telephone VCO service, is a

type of TRS eligible for compensation from the Fund.

On January 11, 2007, the Commission released Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, Declaratory Ruling, 72 FR 6960, February 14, 2007, granting a request for clarification that internet Protocol (IP) captioned telephone relay service (IP CTS) is a type of TRS eligible for compensation from the Fund.

On August 26, 2013, the Commission issued Misuse of internet Protocol Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13–24 and 03–123, Report and Order, 78 FR 53684, August 30, 2013, to regulate practices relating to the marketing of IP CTS, impose certain requirements for the provision of this service, and mandate registration and certification of IP CTS users.

On June 8, 2018, the Commission issued Misuse of internet Protocol Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13–24 and 03–123, Report and Order and Declaratory Ruling, 83 FR 30082, June 27, 2018 (2018 IP CTS Modernization Order), to facilitate the Commission's efforts to reduce waste, fraud, and abuse and improve its ability to efficiently manage the IP CTS program through regulating practices related to the marketing of IP CTS, generally prohibiting the provision of IP CTS to consumers who do not genuinely need the service, permitting the provision of IP CTS in emergency shelters, and approving the use of automatic speech recognition to generate captions without the assistance of a communications assistant.

On February 15, 2019, the Commission issued Misuse of internet Protocol Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13–24 and 03–123, Report and Order, and Order, 84 FR 8457, March 8, 2019 (2019 IP CTS Program Management Order), requiring the submission of IP CTS user registration information to the telecommunications relay service (TRS) User Registration Database (Database) so that the Database administrator can verify IP CTS users to reduce the risk of waste, fraud, and abuse in the IP CTS program.

On June 30, 2022, the Commission issued Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of internet Protocol Captioned Telephone Service, CG Docket Nos. 03–123, 10–51, and 13–24, Report and Order, FCC 22–51, published at 87 FR 57645, September 21, 2022 (Registration Grace Period Order), allowing IP CTS and Video Relay Service (VRS) providers to provide compensable service to a new user for up to two weeks after submitting the user's information to the Database if the user's identity is verified within that period, in order to offer more efficient service to IP CTS and VRS users without risk of waste, fraud, and abuse to the Fund. The programmatic changes in information collection burdens that apply to VRS due to the Registration and Grace Period Order will be addressed separately in modifications to information collection No. 3060–1089.

This notice and request for comments pertains to the programmatic changes in information collection burdens that apply to IP CTS due to the Registration Grace Period Order, the extension of the currently approved information collection requirements for CTS and IP CTS rules, and updates to the estimates of existing burdens that were included in the November 2019 PRA submission to OMB.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–27909 Filed 12–22–22; 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 January 9, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Ray V. Hewitt By-Pass Trust f/b/o Julie Stauffacher, the Ray V. Hewitt By-Pass Trust f/b/o Mark Hewitt, both of Mason City, Iowa, and the Ray V. Hewitt By-Pass Trust f/b/o Carrie Nicols, Iowa City, Iowa, with Mark Hewitt as trustee of the aforementioned trusts, Mason City, Iowa;* to join the Hewitt Family Control Group, a group acting in concert, to acquire voting shares of Arneson Bancshares, Inc., and thereby indirectly acquire voting shares of Clear Lake Bank & Trust, both of Clear Lake, Iowa.

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–27950 Filed 12–22–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Federal Reserve Membership Application (FR 2083, FR 2083A, FR 2083B, and FR 2083C; OMB No. 7100–0046) and the Federal Reserve Bank Stock Applications (FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087; OMB No. 7100–0042).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve

System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collections [1]

Collection title: Federal Reserve Membership Application.

Collection identifier: FR 2083, FR 2083A, FR 2083B, and FR 2083C.

OMB control number: 7100–0046.

Effective date: January 23, 2023.

General description of collection: Any state-chartered bank (or national bank converting to become a state-chartered bank) applying for membership in the Federal Reserve System must file an application with the appropriate Federal Reserve Bank. The four individual application forms in the FR 2083/A/B/C series (membership application and relevant attachments) are all one-time submissions that are used by new or existing state-chartered banks to apply for membership in the Federal Reserve System:

- FR 2083—Cover sheet, with general information and instructions detailing the information to be submitted according to the type of applicant bank,
- FR 2083A—Application form for the purchase of Federal Reserve Bank stock by state banks (except mutual savings banks) and by national banks converting into state member banks,
- FR 2083B—Application form for the purchase of Federal Reserve Bank stock by mutual savings banks, and
- FR 2083C—Certificate of Organizers or Directors certifying that the information being submitted is true and complete, and the proposed capital is not impaired.

Frequency: On occasion.

Respondents: State-chartered banks (or national banks converting to become state-chartered banks) applying for membership in the Federal Reserve System.

Total estimated number of respondents: 13.[2]

Total estimated change in burden: 13 hours.

Total estimated annual burden hours: 65.

Collection title: Federal Reserve Bank Stock Applications.

Collection identifier: FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087.

OMB control number: 7100–0042.

Effective date: January 23, 2023.

General description of collection: Any national bank seeking to purchase stock in the Federal Reserve System, any member bank seeking to increase or decrease its Federal Reserve Bank stock holdings, or any member bank seeking to cancel its stock holdings must file an application with the appropriate Federal Reserve Bank. The application forms for the initial subscription of Federal Reserve Bank stock filed by organizing national banks and nonmember state banks converting to national banks or federal savings associations electing to operate as a covered savings association (CSA) (FR 2030 and 2030a, respectively) and the application forms for the cancellation of Federal Reserve Bank stock filed by liquidating member banks, member banks merging or consolidating with nonmember banks or CSAs terminating an election to operate as a CSA, and insolvent member banks (FR 2086, FR 2086a, and FR 2087, respectively) may require one or more of the following: a resolution by the applying bank's board of directors authorizing the transaction, an indication of the capital and surplus of the bank as of the date of application, a certification (by official signatures) of the resolution, and/or an indication of the number of shares and dollar amount of the Federal Reserve Bank stock to be purchased or canceled.

The application form for an adjustment in a member bank's holdings of Federal Reserve Bank stock (FR 2056) requires an indication of the capital and surplus of the bank as of the date of application and an indication of the number of shares held and the number of shares to be acquired or canceled. A completed application form must be submitted for each required adjustment by the survivor member bank due to legal merger or other consolidation as a result of Regulation I. The amount of Federal Reserve Bank stock actually held by the member bank is determined by the Reserve Bank through its monitoring of the member bank's capital accounts reported quarterly on the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 7100 0036). The Federal Reserve Bank stock applications are distributed by the Federal Reserve Banks and the information collected enables them to account for required subscription, adjustment, or cancellation payments to and from the System and for dividends paid by the System on any outstanding stock.

Frequency: On occasion.

Respondents: Banks seeking to become state member banks, existing banks or savings institutions seeking to convert to state member bank status, national banks seeking to purchase stock in the Federal Reserve System, and member banks seeking to increase, decrease, or cancel their Federal Reserve Bank stock holdings.

Total estimated number of respondents: 90.

Total estimated annual burden hours: 47.

Current actions: On September 14, 2022, the Board published a notice in the **Federal Register** (87 FR 56421) requesting public comment for 60 days on the extension, with revision, of the FR 2083, FR 2083A, FR 2083B, FR 2083C, FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087. The Board revised the FR 2083, FR 2056, FR

[1] As part of this clearance, the Board will clear the FR 2083, FR 2083A, FR 2083B, and FR 2083C (FR 2083/A/B/C) under the FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087 OMB control number (7100–0042), and then discontinue the FR 2083/A/B/C's separate OMB control number (7100–0046). This change is aimed at simplifying the tracking and clearance process for the two related sets of forms. This change would not modify the reporting requirements of the forms in any way. The collection will then be titled ''The Federal Reserve Membership and Bank Stock Applications'' (FR 2030, FR 2030a, FR 2056, FR 2083, FR 2083A, FR 2083B, FR 2083C, FR 2086, FR 2086a, and FR 2087; 7100–0042).

[2] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 2030 et al or FR 2083.

2086, FR 2086a, and FR 2087 by aligning the Applicant's Interagency Biographical and Financial Report (FR 2081c; OMB No. 7100–0134) requirements with Federal Reserve internal guidance, requiring updated shareholder records if changes are proposed, updating the total consolidated assets threshold for the purchase of Federal Reserve bank stock to conform with the Board's Regulation I—Issue and Cancellation of Federal Reserve Bank Capital Stock (12 CFR 209), and removing items that are no longer required in the application process. These revisions are intended to improve the clarity of the information requests. There were no proposed revisions to the FR 2030, FR 2030a, FR 2083A, FR 2083B, or FR 2083C as part of this clearance.

The comment period for this notice expired on November 14, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, December 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–27920 Filed 12–22–22; 8:45 am]

BILLING CODE 6210–01–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 January 23, 2023.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *Citizens Bancorp, Inc., Cadott, Wisconsin;* to acquire Community Financial Bank, Prentice, Wisconsin.

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–27948 Filed 12–22–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Payment Systems Surveys (FR 3054; OMB No. 7100–0332).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Payment Systems Surveys.

Collection identifier: FR 3054.

OMB control number: 7100–0332.

Effective date: January 23, 2023.

General description of collection: The Payment Systems Surveys are used to obtain information specifically tailored to the Federal Reserve's operational and fiscal agency responsibilities. The Payment Systems Surveys family of surveys is currently comprised of the following: Ad Hoc Payment Systems Surveys (FR 3054a), Currency Quality Sampling Survey (FR 3054b), Currency Quality Survey (FR 3054c), Currency Functionality and Perception Survey (FR 3054d), and Currency Education Usability Survey (FR 3045e). These surveys help the Board obtain information about currency demand, quality, functionality, perception, usage patterns and other useful information about banknotes.

Frequency: FR 3054a, five times per year; FR 3054b, annually; FR 3054c, semi-annually; FR 3054d, five times per year; and FR 3054e, ten times per year.

Respondents: The FR 3054 panel comprises financial institutions (including depository institutions), law enforcement, nonfinancial businesses (retailers, banknote equipment manufacturers, or global wholesale bank note dealers), and individuals within the general public.

Total estimated number of respondents: FR 3054a, 4,000; FR 3054b, 500; FR 3054c, 25; FR 3054d, 250; and FR 3054e, 250.

Estimated average hours per response: FR 3054a, 0.75; FR 3054b, 0.50; FR 3054c, 30; FR 3054d, 2.5; and FR 3054e, 0.50.

Total estimated change in burden: 725 hours.

Total estimated annual burden hours: 21,125.[1]

[1] More detailed information regarding this collection, including more detailed burden

Current actions: On September 13, 2022, the Board published a notice in the **Federal Register** (87 FR 56053) requesting public comment for 60 days on the extension, with revision, of the FR 3054. The Board proposed to increase the estimated respondents for the FR 3054b from 300 to 500, increase the estimated frequency for the FR 3054d from four times a year to five times a year, and increase the estimated frequency from five times a year to ten times a year and decrease the estimated number of respondents from 500 to 250 for the FR 3054e. The increase in the frequency of surveys allows the Federal Reserve System flexibility to respond to diverse needs for data by surveying groups of respondents multiple times throughout a year. Increasing the number of estimated respondents of the FR 3054b will help ensure statistical significance of the sample pool and decreasing the estimated number of respondents while increasing the frequency of the FR 3054e will facilitate more survey agility. Additionally, the FR 3054c has not changed since 2018 and no changes are anticipated during the current clearance cycle. The FR 3054c is therefore being transitioned from an ad hoc to an established collection.

The comment period for this notice expired on November 14, 2022. The Board did not receive any comments relevant to this information collection.

Board of Governors of the Federal Reserve System, December 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–27919 Filed 12–22–22; 8:45 am]

BILLING CODE 6210–01–P

estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 3054.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012; Docket No. 2022–0053; Sequence No. 20]

Submission for OMB Review; Termination Settlement Proposal Forms (SFs 1435–1440)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding termination settlement proposal forms (SFs 1435–1440).

DATES: Submit comments on or before January 23, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms (SFs 1435–1440). Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0012, Termination Settlement Proposal Forms (SFs 1435–1440).

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation requirements:

Standard Forms (SFs) 1435 through 1440. These termination settlement proposal forms are used by all Executive agencies, including DoD, for settling terminated prime contracts and subcontracts per FAR subpart 49.6, Contract Termination Forms and Formats. The forms provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiated position.

The contracting officer uses the collected information to determine or support reimbursement costs upon settlement of a terminated contract.

C. Annual Burden

Respondents: 4,862.
Total Annual Responses: 38,059.
Total Burden Hours: 91,342.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 87 FR 63072, on October 18, 2022. 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. 9000–0012, Termination Settlement Proposal Forms (SFs 1435–1440).

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–27998 Filed 12–22–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0095; Docket No. 2022–0053; Sequence No. 21]

Submission for OMB Review; Federal Acquisition Regulation Part 27 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Federal Acquisition Regulation (FAR) part 27 requirements.

DATES: Submit comments on or before January 23, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0095, Federal Acquisition Regulation Part 27 Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. 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)

9000–0095, Federal Acquisition Regulation Part 27 Requirements.

B. Need and Uses

The Department of Defense, General Services Administration, and National Aeronautics and Space Administration are combining OMB Control Nos. by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. This review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the extension of OMB Control No. 9000–0095 and combines it with the previously approved information collections under OMB Control Nos. 9000–0090 and 0096, with the new title ''Federal Acquisition Regulation Part 27 Requirements''. Upon approval of this consolidated information collection, OMB Control Nos. 9000–0090 and 9000–0096 will be discontinued. The burden requirements previously approved under the discontinued numbers will be covered under OMB Control No. 9000–0095.

This clearance covers the information that offerors and contractors must submit to comply with the following FAR requirements:

FAR 52.227–2, Notice and Assistance Regarding Patent and Copyright Infringement. This clause requires contractors to notify the Government of any allegations of patent or copyright infringement arising during the performance of the contract. The clause requires contractors to furnish, when requested by the contracting officer, all evidence and information in the contractor's possession regarding such a claim or suit. This clause flows down to subcontracts that are expected to exceed the simplified acquisition threshold (SAT—currently $250,000).

FAR 52.227–6, Royalty Information. This provision requires offerors to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

Also, the contracting officer may ask the offeror to provide a copy of the current license agreement identifying claims to specific patents.

FAR 52.227–9, Refund of Royalties. This clause requires contractors to furnish to the contracting officer, before final payment under a contract, a statement of royalties paid or required to be paid in connection with performing the contract. The clause requires contractors to notify the contracting officer if the contractor is relieved, within three years after final payment under the contract, from payment of royalties included in the final contract price. This clause flows down to subcontracts in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

FAR 52.227–11, Patent Rights—Ownership by the Contractor, or 52.227–13, Patent Rights—Ownership by the Government—Commerce Patent Regulations. These FAR clauses require a Government contractor to report all inventions made in the performance of work under a Government contract or subcontract for experimental, developmental, or research work to the contracting officer, submit a disclosure of the invention, and identify any publication, sale, or public use of the invention (52.227–11(c), 52.227–13(e)(1)). The contracting officer may modify 52.227–11(e) or otherwise supplement the clause to require contractors to submit periodic or interim and final reports listing subject inventions (27.303(b)(2)(i) and (ii)). The contracting officer may also require a contractor, under FAR 52.227–11, to: provide the filing date, serial number, title, patent number and issue date for any patent application filed on any subject invention in any country or, upon request, copies of any patent application so identified; and furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Government employee is a co-inventor. (27.303(b)(2)(iv) and (v). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227–11, Alternate IV; 52.227–13(e)(1)). In addition, the contractor must require its employees, by written agreements, to disclose subject inventions (52.227–11(e)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(f)).

FAR 52.227–14, Rights in Data–General. This clause enables the contractor to protect qualifying limited rights data and restricted computer software by withholding the data from the Government and instead delivering form, fit, and function data. For unauthorized marking of data, the contractor may provide written justification to substantiate the propriety of the markings for the contracting officer to consider whether or not the markings are to be canceled or ignored. For omitted or incorrect markings of data that has not been disclosed without restriction outside the Government, the contractor may request, within 6 months (or a longer time approved by the contracting officer) after delivery of the data,

permission to have authorized notices placed on the data at the contractor's expense. Contractors shall obtain from their subcontractors all data and rights necessary to fulfill the contractor's obligations to the Government under the contract. If a subcontractor refuses to accept terms affording the Government those rights, the contractor shall notify the contracting officer of the refusal.

FAR 52.227–15, Representation of Limited Rights Data and Restricted Computer Software. This provision requires an offeror to represent that it has reviewed the requirements for the delivery of technical data or computer software and state, in response to a solicitation, whether data proposed for fulfilling the data delivery requirements qualifies as limited rights data or restricted computer software. If the Government does not receive unlimited rights, the offeror must provide a list of the data that qualify as limited rights data or restricted computer software. The offeror would identify any proprietary data it would use during contract performance, in order that the contracting officer might ascertain if such proprietary data should be delivered.

FAR 52.227–16, Additional Data Requirements. This clause requires contractors to keep, for possible delivery to the Government, any data, in addition to data already required to be delivered under the contract, first produced or specifically used in performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. The data delivered under this clause may be in the form of computations, preliminary data, records of experiments, etc. For any data to be delivered under this clause, the Government will pay the contractor for converting the data into a specific form, and for reproducing and delivering the data. The purpose of such recordkeeping requirements is to ensure that, if all data requirements are not known prior to contract award, the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information.

FAR 52.227–17, Rights in Data-Special Works. This clause is included in solicitations and contracts primarily for production or compilation of data. It is used in rare and exceptional circumstances to permit the Government to limit the contractor's rights in data by preventing the release, distribution, and publication of any data first produced in the performance of the contract. This clause may also be limited to particular items and not the entire contract. This clause requires contractors to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

FAR 52.227–18, Rights in Data-Existing Works. This clause is used when the Government is acquiring existing audiovisual or similar works, such as books, without modification. This clause requires contractors to obtain a license for the Government to reproduce, prepare derivative works, and perform and display publicly the materials.

FAR 52.227–19, Commercial Computer Software License. This clause requires contractors to affix a notice on any commercial software delivered under the contract that provides notice that the Government's rights regarding the data are set forth in the contract.

FAR 52.227–20, Rights in Data–SBIR Program. This clause authorizes contractors under Small Business Innovation Research (SBIR) contracts to affix a notice to SBIR data delivered under the contract to limit the Government's rights to disclose data first produced under the contract. For omitted or incorrect markings of data that has not been disclosed without restriction outside the Government, the contractor may request, within 6 months (or a longer time approved by the contracting officer) after delivery of the data, permission to have authorized notices placed on the data at the contractor's expense. Contractors shall obtain from their subcontractors all data and rights necessary to fulfill the contractor's obligations to the Government under the contract. If a subcontractor refuses to accept terms affording the Government those rights, the contractor shall notify the contracting officer of the refusal.

FAR 52.227–21, Technical Data Declaration, Revision, and Withholding of Payment–Major Systems. This clause requires major systems contractors to certify that the data delivered under the contract is complete, accurate, and compliant with the requirements of the contract.

FAR 52.227–23, Rights to Proposal Data (Technical). This clause allows the Government to identify pages of a proposal that would not be subject to unlimited rights in the technical data.

The information collected is used to protect the Government's rights and interests.

C. Annual Burden

Respondents/Recordkeepers: 1,121.
Total Annual Responses: 14,965.
Total Burden Hours: 54,633. (53,268 reporting hours + 1,365 recordkeeping hours)

D. Public Comment

A 60-day notice was published in the **Federal Register** at 87 FR 63070, on October 18, 2022. 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. 9000–0095, Federal Acquisition Regulation Part 27 Requirements.

Janet Fry,
Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–27999 Filed 12–22–22; 8:45 am]
BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice BSC–RPM–2022–02; Docket No. BSC–RPM–2022–0004; Sequence 1]

Business Standards Council Review of Real Property Management Federal Integrated Business Framework Draft Business Data Elements: Request for Public Comment

AGENCY: Office of Government-wide Policy; General Services Administration, (GSA).

ACTION: Request for public comment.

SUMMARY: This notice informs the public of the opportunity to provide input on the proposed real property management business data elements that have been created in support of Federal shared services. This input will be used in the formulation of business standards for Federal real property management.

DATES: *Comments due:* Interested parties should submit comments by the method outlined in the **ADDRESSES** section immediately below on or before January 23, 2023.

ADDRESSES: Submit comments in response to Notice BSC–RPM–2022–02 by *Regulations.gov: http://www.regulations.gov.* Submit comments using the Federal eRulemaking portal by searching for ''Notice BSC–RPM–2022–02.'' Select the link ''Comment Now'' that corresponds with ''Notice BSC–RPM–2022–02.'' Follow the instructions provided at the screen. Please include your name, company name (if any), and ''Notice BSC–RPM–2022–02'' on your attached document.

• *Instructions:* Please submit comments only and cite ''Notice BSC–RPM–2022–02'' in all correspondence related to this notice. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal or business confidential information, or both, provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three business days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Chris Coneeney, Director, Real Property Policy Division, at 202–208–2956, or by email at *chris.coneeney@gsa.gov.*

SUPPLEMENTARY INFORMATION: On April 26, 2019, the Office of Management and Budget (OMB) published OMB memorandum M–19–16, ''Centralized Mission Support Capabilities for the Federal Government'' (available at *https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-16.pdf*). Mission support business standards, established and agreed to by the CFO Act agencies, using the Federal Integrated Business Framework website at *https://ussm.gsa.gov/fibf/,* enable the Federal Government to better coordinate on the decision-making needed to determine what mission support services can be adopted and commonly shared. These business standards are an essential first step towards agreement on outcomes, data, and cross-functional end-to-end processes that will drive economies of scale and leverage the government's buying power. The business standards will be used as the foundation for common mission support services shared by the CFO Act agencies.

GSA serves as the real property management business standards lead on the Business Standards Council. The goal of the real property management business standards is to drive real estate management consistency, equity, and standardization across the Federal Government.

GSA is seeking public feedback on these draft business data elements, including comments on the understandability of the standards, suggested changes, and usefulness of the draft standards to industry and agencies.

Guiding questions in the standards development include:

• Do the draft business standards appropriately document the business processes covered?

• Are the draft business standards easy to understand?

• Will your organization be able to show how your solutions or services, or both, can meet these draft business standards?

• What would you change about the draft business standards? Is there anything missing?

Comments will be used in the formulation of the final real property management business standards.

Saul Japson,

Acting Associate Administrator, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2022–27954 Filed 12–22–22; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DD23–001, Birth Defects Study To Evaluate Pregnancy exposureS (BD–STEPS).

Dates: March 28–29, 2023.

Times: 10 a.m.–5 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Catherine Barrett Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–3, Atlanta, Georgia 30341–3717; Telephone: (404) 718–7664; Email: *CBarrett@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–28002 Filed 12–22–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–23–002, Understanding Adult Immunization Quality Improvement Approaches Among Adult HCP and Health Departments; and RFA–IP–23–003, Programmatic Interventions To Increase Uptake of Influenza and COVID–19 Vaccination Among Students Attending Institutions of Higher Education; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–23–002, Understanding Adult Immunization Quality Improvement Approaches Among Adult HCP and Health Departments; and RFA–IP–23–003, Programmatic Interventions to Increase Uptake of Influenza and COVID–19 Vaccination Among Students Attending Institutions of Higher Education; March 29, 2023, 10:00 a.m.–5:00 p.m., EDT, Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Boulevard, Atlanta, Georgia 30329, in the original FRN.

The meeting was published in the **Federal Register** on November 15, 2022, Volume 87, Number 219, pages 68498–68499.

The meeting is being amended to change the meeting date and the room number and should read as follows:

Dates: March 29–30, 2023.

Times: 10 a.m.–5 p.m., EDT.

Place: Teleconference, Centers for Disease Control and Prevention, Room 1077, 8 Corporate Boulevard, Atlanta, Georgia 30329.

The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD,

and TB Prevention, CDC, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia 30329–4027; Telephone: (404) 718–8833; Email: *GAnderson@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–28000 Filed 12–22–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–23–0666]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Healthcare Safety Network (NHSN)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 26, 2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666, Exp. 1/31/2025)—Revision—National Center for Emerging and Zoonotic Infection Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC) collects data from healthcare facilities in the National Healthcare Safety Network (NHSN) under OMB Control No. 0920–0666. NHSN provides facilities, states, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide. NHSN allows healthcare facilities to track blood safety errors and various healthcare-associated infection prevention practice methods such as healthcare personnel influenza vaccine status and corresponding infection control adherence rates.

NHSN currently has seven components: Patient Safety (PS); Healthcare Personnel Safety (HPS); Biovigilance (BV); Long-Term Care Facility (LTCF); Outpatient Procedure (OPC); Dialysis Component; and the Neonatal Component. NHSN has increasingly served as the operating system for HAI reporting compliance through legislation established by the states. As of April 2020, 36 states, the District of Columbia and the City of Philadelphia, Pennsylvania have opted to use NHSN as their primary system for mandated reporting. Reporting compliance is completed by healthcare facilities in their respective jurisdictions, with emphasis on those states and municipalities acquiring varying consequences for failure to use NHSN. Additionally, healthcare facilities in five U.S. territories (Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands) are voluntarily reporting to NHSN. Additional territories are projected to follow with similar use of NHSN for reporting purposes. NHSN's data is used to aid in the tracking of HAIs and guide infection prevention activities/practices that protect patients. The Centers for Medicare and Medicaid Services (CMS)and other payers use these data to determine incentives for performance at healthcare facilities across the US and surrounding territories, and members of the public may use some protected data to inform their selection among available providers. Each of these parties is dependent on the completeness and accuracy of the data. CDC and CMS work closely and are fully committed to ensuring complete and accurate reporting, which are critical for protecting patients and guiding national, state, and local prevention priorities.

CMS collects some HAI data and healthcare personnel influenza vaccination summary data, which is done on a voluntary basis as part of its Fee-for-Service Medicare quality reporting programs, while others may report data required by a federal mandate. Facilities that fail to report quality measure data are subject to partial payment reduction in the applicable Medicare Fee-for-Service payment system. CMS links their quality reporting to payment for Medicare-eligible acute care hospitals, inpatient rehabilitation facilities, long-term acute care facilities, oncology hospitals, inpatient psychiatric facilities, dialysis facilities, and ambulatory surgery centers. Facilities report HAI data and healthcare personnel influenza vaccination summary data to CMS via NHSN as part of CMS's quality reporting programs to

receive full payment. Still, many healthcare facilities, even in states without HAI reporting legislation, submit limited HAI data to NHSN voluntarily. NHSN's data collection updates continue to support the incentive programs managed by CMS. For example, survey questions support requirements for CMS' quality reporting programs. Additionally, CDC has collaborated with CMS on a voluntary National Nursing Home Quality Collaborative, which focuses on recruiting nursing homes to report HAI data to NHSN and to retain their continued participation.

The NHSN collection was previously approved in January of 2022 for 1,321,991 burden hours. The proposed changes to NHSN include revisions to 41 existing data collection forms. CDC requests OMB approval for an estimated 1,614,651 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form No. & name	Number of respondents	Number of responses per respondent (in hours)	Average burden per response (in hours)
NHSN Participant ...	57.100 NHSN Registration Form	2,000	1	5/60
	57.101 Facility Contact Information	2,000	1	10/60
	57.103 Patient Safety Component—Annual Hospital Survey	6765	1	90/60
	57.104 Facility Administrator Change Request Form	800	1	5/60
	57.105 Group Contact Information	1,000	1	5/60
	57.106 Patient Safety Monthly Reporting Plan	7,821	12	15/60
	57.108 Primary Bloodstream Infection (BSI)	5,775	5	38/60
	57.111 Pneumonia (PNEU)	1,800	2	30/60
	57.112 Ventilator-Associated Event	5,463	8	28/60
	57.113 Pediatric Ventilator-Associated Event (PedVAE)	334	1	30/60
	57.114 Urinary Tract Infection (UTI)	6,000	5	20/60
	57.115 Custom Event	600	91	35/60
	57.116 Denominators for Neonatal Intensive Care Unit (NICU)	1,100	12	4/60
	57.117 Denominators for Specialty Care Area (SCA)/Oncology (ONC)	500	12	5/60
	57.118 Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA).	5,500	60	5/60
	57.120 Surgical Site Infection (SSI)	6,000	9	35/60
	57.121 Denominator for Procedure	6,000	602	10/60
	57.122 HAI Progress Report State Health Department Survey	55	1	28/60
	57.123 Antimicrobial Use and Resistance (AUR)-Microbiology Data Electronic Upload Specification Tables.	2,500	12	5/60
	57.124 Antimicrobial Use and Resistance (AUR)-Pharmacy Data Electronic Upload Specification Tables.	2,500	12	5/60
	57.125 Central Line Insertion Practices Adherence Monitoring	500	213	25/60
	57.126 MDRO or CDI Infection Form	720	11	30/60
	57.127 MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring.	5,500	29	15/60
	57.128 Laboratory-identified MDRO or CDI Event	4,800	79	20/60
	57.129 Adult Sepsis	50	250	25/60
	57.135 Late Onset Sepsis/Meningitis Denominator Form: Data Table for monthly electronic upload.	300	6	5/60
	57.136 Late Onset Sepsis/Meningitis Event Form: Data Table for Monthly Electronic Upload.	300	6	5/60
	57.137 Long-Term Care Facility Component—Annual Facility Survey	17,700	1	120/60
	57.138 Laboratory-identified MDRO or CDI Event for LTCF	1998	24	20/60
	57.139 MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF.	1998	12	20/60
	57.140 Urinary Tract Infection (UTI) for LTCF	339	36	35/60
	57.141 Monthly Reporting Plan for LTCF	2011	12	5/60
	57.142 Denominators for LTCF Locations	339	12	35/60
	57.143 Prevention Process Measures Monthly Monitoring for LTCF	130	12	5/60
	57.150 LTAC Annual Survey	620	1	82/60
	57.151 Rehab Annual Survey	1,340	1	82/60
	57.200 Healthcare Personnel Safety Component Annual Facility Survey.	50	1	480/60
	57.204 Healthcare Worker Demographic Data	50	200	20/60
	57.205 Exposure to Blood/Body Fluids	50	50	60/60
	57.206 Healthcare Worker Prophylaxis/Treatment	50	30	15/60
	57.207 Follow-Up Laboratory Testing	50	50	15/60
	57.210 Healthcare Worker Prophylaxis/Treatment-Influenza	50	50	10/60
	57.300 Hemovigilance Module Annual Survey	500	1	85/60
	57.301 Hemovigilance Module Monthly Reporting Plan	500	12	60/60
	57.303 Hemovigilance Module Monthly Reporting Denominators	500	12	70/60
	57.305 Hemovigilance Incident	500	10	10/60
	57.306 Hemovigilance Module Annual Survey—Non-acute care facility	500	1	35/60
	57.307 Hemovigilance Adverse Reaction—Acute Hemolytic Transfusion Reaction.	500	4	20/60
	57.308 Hemovigilance Adverse Reaction—Allergic Transfusion Reaction.	500	4	20/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form No. & name	Number of respondents	Number of responses per respondent (in hours)	Average burden per response (in hours)
	57.309 Hemovigilance Adverse Reaction—Delayed Hemolytic Transfusion Reaction.	500	1	20/60
	57.310 Hemovigilance Adverse Reaction—Delayed Serologic Transfusion Reaction.	500	2	20/60
	57.311 Hemovigilance Adverse Reaction—Febrile Non-hemolytic Transfusion Reaction.	500	4	20/60
	57.312 Hemovigilance Adverse Reaction—Hypotensive Transfusion Reaction.	500	1	20/60
	57.313 Hemovigilance Adverse Reaction—Infection	500	1	20/60
	57.314 Hemovigilance Adverse Reaction—Post Transfusion Purpura	500	1	20/60
	57.315 Hemovigilance Adverse Reaction—Transfusion Associated Dyspnea.	500	1	20/60
	57.316 Hemovigilance Adverse Reaction—Transfusion Associated Graft vs. Host Disease.	500	1	20/60
	57.317 Hemovigilance Adverse Reaction—Transfusion Related Acute Lung Injury.	500	1	20/60
	57.318 Hemovigilance Adverse Reaction—Transfusion Associated Circulatory Overload.	500	2	20/60
	57.319 Hemovigilance Adverse Reaction—Unknown Transfusion Reaction.	500	1	20/60
	57.320 Hemovigilance Adverse Reaction—Other Transfusion Reaction	500	1	20/60
	57.400 Outpatient Procedure Component—Annual Facility Survey	700	1	10/60
	57.401 Outpatient Procedure Component—Monthly Reporting Plan	700	12	15/60
	57.402 Outpatient Procedure Component Same Day Outcome Measures.	200	1	40/60
	57.403 Outpatient Procedure Component—Monthly Denominators for Same Day Outcome Measures.	200	400	40/60
	57.404 Outpatient Procedure Component—SSI Denominator	700	100	40/60
	57.405 Outpatient Procedure Component—Surgical Site (SSI) Event	700	5	40/60
	57.500 Outpatient Dialysis Center Practices Survey	7,200	1	12/60
	57.501 Dialysis Monthly Reporting Plan	7,200	12	5/60
	57.502 Dialysis Event	7,200	30	25/60
	57.503 Denominator for Outpatient Dialysis	7,200	30	10/60
	57.504 Prevention Process Measures Monthly Monitoring for Dialysis	1,730	12	75/60
	57.505 Dialysis Patient Influenza Vaccination	615	50	10/60
	57.506 Dialysis Patient Influenza Vaccination Denominator	615	5	10/60
	57.507 Home Dialysis Center Practices Survey	430	1	30/60
	Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Non-Long-Term Care Facilities.	125	52	60/60
	Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Long-Term Care Facilities.	1,200	52	60/60
	Weekly Resident Influenza Vaccination Cumulative Summary for Long-Term Care Facilities.	2,500	52	60/60
	Annual Healthcare Personnel Influenza Vaccination Summary	5,000	1	120/60
	Monthly Survey Patient Days & Nurse Staffing	2,500	12	60/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–28004 Filed 12–22–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–23–1318]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Requirement for Proof of COVID–19 Vaccination for Noncitizen, Nonimmigrant Air Passengers Arriving into the United States from a Foreign Country'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 5, 2022 to obtain comments from the public and affected agencies. CDC received 5,935 comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Requirement for Proof of COVID–19 Vaccination for Noncitizen, Nonimmigrant Air Passengers Arriving into the United States from a Foreign Country (OMB Control No. 0920–1318, Exp. 12/31/2022)—Extension—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ) requests a two-year Extension for the information collection: Requirement for Proof of COVID–19 Vaccination for Noncitizen, Nonimmigrant Air Passengers Arriving into the United States from a Foreign Country. This information collection is necessary to implement the Presidential Proclamation Advancing Safe Resumption of Global Travel During the COVID–19 Pandemic and CDC's Amended Order Implementing Presidential Proclamation on Advancing Safe Resumption of Global Travel During the COVID–19 Pandemic.

Pursuant to Sections 1182(f) and 1185(a)(1) of Title 8, and Section 301 of Title 3, United States Code, on October 25, 2021, the President issued a Proclamation (''the Proclamation'') titled, ''Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic.'' With this Proclamation, the President implemented a global suspension and limitation on entry for noncitizens who are nonimmigrants (''noncitizen nonimmigrants'') seeking to enter the United States by air travel and who are not fully vaccinated against COVID–19. The Proclamation directs, in part, the Secretary of Health and Human Services (HHS), through the Director of the Centers for Disease Control and Prevention (CDC), to implement the Proclamation as it applies to public health in accordance with appropriate public health protocols and consistent with CDC's independent public health judgment.

CDC issued the Order Implementing the Presidential Proclamation on Advancing Safe Resumption of Global Travel During the COVID–19 Pandemic on October 25, 2021. Beginning on November 8, 2021, CDC's Order required noncitizen nonimmigrants to show proof of being fully vaccinated against COVID–19 with: (1) one of the vaccines approved (or authorized for emergency use) by the U.S. Food and Drug Administration (FDA); (2) a vaccine listed for emergency use by the World Health Organization (WHO); or (3) a combination of vaccines as specified in CDC Technical Instructions.

Air passengers who are noncitizen nonimmigrants must provide proof of COVID–19 vaccination and attest to the truthfulness of the proof of vaccination. Airlines must also confirm that the proof of vaccination matches the passengers' identity, as instructed by the airline before being allowed to board a flight to the United States. The Order allows some exceptions to this requirement. Most categories of exceptions require the individual to attest to taking certain measures after U.S. arrival, specifically, getting tested 3–5 days after arrival and isolating if they test positive or develop symptoms. An additional category of exceptions requires the individual to attest to getting fully vaccinated against COVID–19 if staying more than 60 days.

CDC issued an amended Order on October 30, 2021, and on April 4, 2022. The Amended Vaccination Order signed on April 4, 2022 superseded the previous Order signed by the CDC Director on October 30, 2021, and continues to implement the President's direction. CDC requests OMB approval for an estimated 68,005,000 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Noncitizen Nonimmigrant Air Passenger	Section 2 of Combined Passenger Disclosure and Attestation to the United States of America.	60,000,000	1	1
Airline Desk Agent	Combined Passenger Disclosure and Attestation to the United States of America.	60,000,000	1	8/60
Noncitizen Nonimmigrant Air Passenger	Request Humanitarian or Emergency Exception to Proof of Vaccination Requirement—(No form).	1,290	1	2
Air Traveler (for illness or death investigation)	Air Travel Illness or Death Investigation or Traveler Follow-up Form.	10,000	1	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–28005 Filed 12–22–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Center for Preparedness and Response

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR). This is a virtual meeting that is open to the public. The number of attendees is limited only by the number of internet conference accesses available, which is 500. Pre-registration is required by accessing the link in the addresses section below. Time will be available for public comment.

DATES: The meeting will be held on January 23, 2023, from 1 p.m. to 3 p.m., EST.

ADDRESSES: Zoom virtual meeting. If you wish to attend the virtual meeting, please pre-register by accessing the link at: *https://cdc.zoomgov.com/webinar/register/WN_KQGdJ4e4TYWCBzedl1omJg.* Instructions to access the meeting will be provided in the link following registration.

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Management Analyst, Office of Science and Public Health Practice, Center for Preparedness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–6, Atlanta, Georgia 30329–4027; Telephone: (404) 639–7450; Facsimile: (678) 669–1667; Email: *DOuisley@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR) is charged with providing advice and guidance to the Secretary, Department of Health and Human Services; the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; and the Director, Center for Preparedness and Response, concerning strategies and goals for the programs and research within the agency and CPR, monitoring the overall strategic direction and focus of the CPR Divisions and Offices, and administration and oversight of peer review for CPR scientific programs. For additional information about the Board, please visit: *https://www.cdc.gov/cpr/bsc/index.htm.*

Matters to be Considered: The agenda will include: (1) an update on the CDC Moving Forward initiative; and (2) a BSC, CPR health equity discussion. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–28001 Filed 12–22–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Placement and Transfer of Unaccompanied Children Into Office of Refugee Resettlement Care Provider Facilities (OMB #: 0970–0554)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on revisions to an approved information collection. The request will allow the Unaccompanied Children (UC) Program to ensure that UC are placed in foster homes that meet their individual needs and ensure continuity of services.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ORR is proposing the following revisions to its Long-Term Foster Care Placement Memo (Form P–5):

- Change the title to ''Community-Based Care Placement Memo'' and update the term ''long-term foster care'' to ''community-based care'' throughout the memo. This term is more in line with terminology currently used in domestic child welfare programs and will be inclusive of ORR long-term foster care and transitional foster care programs.
- Increase the number of respondents and number of responses per respondent to include transitional foster care programs (in addition to long-term foster care programs).
- Update instructions on which fields are completed for initial placements and which are completed for transfers within the community-based care program.
- Reword some fields and instructions for clarity.
- Add field to capture the facility name for children placed in an out-of-network community-based care program.
- Separate fields that capture contact information for the foster family or group home into separate subsections and expand the fields to capture additional contact information (*e.g.,* phone or email) in addition to name and address.

For information about all currently approved forms under this OMB number, see: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202210-0970-008.*

Respondents: ORR grantee and contractor staff, UC, and other federal agencies.

Annual Burden Estimates

Note: These burden estimates include burden related to the revisions to Form P–5 described above and currently approved forms for which we are not proposing any changes.

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Placement Authorization (Form P–1)	262	536	0.08	11,235
Authorization for Medical, Dental, and Mental Health Care (Form P–2)	262	536	0.08	11,235
Notice of Placement in a Restrictive Setting (Form P–4/4s)	15	114	0.33	564
Community-Based Care Placement Memo (Form P–5)	110	337	0.25	9,268
UC Referral (Form P–7)	25	4,909	1.00	122,725
Care Provider Checklist for Transfers to Influx Care Facilities (Form P–8)	262	19	0.25	1,245
Medical Checklist for Transfers (Form P–9A)	262	49	0.08	1,027
Medical Checklist for Influx Transfers (Form P–9B)	262	96	0.17	4,276
Transfer Request (Form P–10A)	262	67	0.42	7,373
Transfer Request (Form P–10A)	275	67	0.33	6,080
Influx Transfer Request (Form P–10B)	262	96	0.42	10,564
Transfer Summary and Tracking (Form P–11)	262	67	0.17	2,984
Program Entity (Form P–12)	262	12	0.50	1,572
UC Profile (Form P–13)	262	468	0.75	91,962
ORR Transfer Notification—ORR Notification to Immigration and Customs Enforcement Chief Counsel of Transfer of UC and Request to Change Address/Venue (Form P–14)	262	67	0.17	2,984
Family Group Entity (Form P–15)	25	120	0.08	240
Influx Transfer Manifest (Form P–16)	3	12	0.33	12
Influx Transfer Manual and Prescreen Criteria Review (Form P–17)	262	56,213	0.50	7,363,903
Notice of Administrative Review (Form P–18)	200	1	0.83	166

Estimated Annual Burden Hours Total: 7,649,415.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno* Settlement Agreement, No. CV85–4544–RJK (C.D. Cal. 1996).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–27908 Filed 12–22–22; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Amendment

ACTION: Notice of amendment.

SUMMARY: The Secretary is amending the Declaration issued in the **Federal Register** of April 11, 2017, pursuant to section 319F–3 of the Public Health Service Act to extend the effective time period of the Declaration.

DATES: This amendment of the April 11, 2017 Declaration is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, Administration for Strategic Preparedness and Response, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; 202–260–0365, *paige.ezernack@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, through publication in the **Federal Register**, amend any portion of a Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding Section 319F–3, which addresses liability immunity, and Section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. Section 319F–3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, enacted on March 13, 2013, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, enacted on March 27, 2020, to expand Covered Countermeasures under the PREP Act.

This Secretary is now amending the Declaration to extend the time period for which liability immunity is in effect for all of the Covered Countermeasures to December 31, 2027.

Renewal of PREP Act declaration for nerve agent and insecticide threats is requested due to the continued national security threat posed by these chemical threats. Nerve agent and insecticide threats have the potential to cause significant morbidity and mortality in the event of large-scale exposures. PREP Act coverage of countermeasures is critical to the engagement with potential product sponsors due to the limited commercial market of products in this threat space. Covered countermeasures for nerve agents and insecticides will continue to be a part of the preparedness posture for the United States, both in terms of stockpiling current products and development next-generation candidates. Extension of the PREP Act declaration for countermeasures against nerve agents and insecticides is essential.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Republished Declaration

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Nerve Agents and Certain Insecticides (Organophosphorus and/or Carbamate) Countermeasures

This Declaration amends the April 11, 2017, Declaration under the Public Readiness and Emergency Preparedness Act. To the extent any term of the prior Declaration is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the release of nerve agents or organophosphorus insecticides and the resulting organophosphorus poisoning or release of carbamate insecticides and the resulting carbamate poisoning may, in the future, constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, or use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the Public Readiness and Emergency Preparedness (PREP) Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are manufacturers, distributors, program planners, ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency; (b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act, and; (c) Any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are any antidote; any other drug; all components and constituent materials of these antidotes and other drugs; all devices and their constituent components used in the administration of these antidotes and other drugs; any diagnostic; or any other device to identify, prevent, or treat organophosphorus or carbamate poisoning or adverse events from such countermeasures.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other Federal agreements, or activities directly conducted by the Federal Government; or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following a declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or Federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A declaration of emergency means any declaration by any authorized local, regional, state, or Federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a Federal Declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such Declaration specifies otherwise;

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is organophosphorus or carbamate poisoning.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in these geographic areas; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in these geographic areas, or the program planner or qualified person reasonably could have believed the recipient was in these geographic areas.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction extends through December 31, 2027.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect or (2) December 31, 2027, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional twelve (12) months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take other appropriate actions to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the Strategic National Stockpile (SNS) during the effective period of this Declaration for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C. 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a serious physical covered injury as the direct result of the administration or use of the Covered Countermeasures and/or benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical, and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *https://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

The April 11, 2017, Declaration Under the Public Readiness and Emergency Preparedness Act for Nerve Agents and Insecticides Countermeasures was first published on April 11, 2017. This is the first amendment to that Declaration.

Further amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2022–28013 Filed 12–22–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Amendment

ACTION: Notice of amendment.

SUMMARY: The Secretary is amending the Declaration issued in the **Federal Register** of August 1, 2016 as amended and republished August 1, 2018, pursuant to section 319F–3 of the Public Health Service Act, to extend the effective time period of the Republished Declaration, as amended.

DATES: This Amendment of the August 1, 2018 Republished Declaration is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, Administration for Strategic Preparedness and Response, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; 202–260–0365, *paige.ezernack@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, through publication in the **Federal Register**, amend any portion of a Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding Section 319F–3, which addresses liability immunity, and Section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. Section 319F–3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, enacted on March 13, 2013, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, enacted on March 27, 2020, to expand Covered Countermeasures under the PREP Act.

The Secretary is now amending the Republished Declaration to extend the time period for which liability immunity is in effect for all of the

Covered Countermeasures to December 31, 2027.

Zika Virus continues to pose a public health threat. Current epidemiologic data indicates that despite the steep decline in cases since the 2016 peak in Brazil, the virus is circulating in low levels in Latin America and South and Southeast Asia. Notably, India had an outbreak of Zika in late 2021 that largely went unreported because COVID–19 stressed the country's public health systems and currently the virus may be spreading across the country undetected. PREP Act coverage of Zika Virus vaccines is critical to enable continuation of ongoing programs for development of these products and accomplish established preparedness goals.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Republished Declaration

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Zika Virus Vaccines

This Declaration amends and republishes the August 1, 2018 Republished Declaration under the Public Readiness and Emergency Preparedness Act. To the extent any term of the prior Republished Declaration is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the spread of Zika Virus and the resulting disease or conditions may in the future constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, or use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the Public Readiness and Emergency Preparedness (PREP) Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are manufacturers, distributors, program planners, ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency; (b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act, and; (c) Any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are the following Zika Virus vaccines, all components and constituent materials of these vaccines, and all devices and their constituent components used in the administration of these vaccines:

(1) Inactivated virus vaccines
(2) Live-attenuated vaccines
(3) mRNA vaccines
(4) DNA vaccines
(5) Subunit vaccines
(6) Peptide and/or polysaccharide and/or conjugate vaccines
(7) Virus-like particles vaccines
(8) Nanoparticle vaccines
(9) Recombinant vaccines

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other Federal agreements, or activities directly conducted by the Federal Government; or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following a declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or Federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A declaration of emergency means any declaration by any authorized local, regional, state, or Federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a Federal Declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such Declaration specifies otherwise;

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of

the Covered Countermeasures is Zika Virus.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in these geographic areas; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in these geographic areas, or the program planner or qualified person reasonably could have believed the recipient was in these geographic areas.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction extends through December 31, 2027.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect or (2) December 31, 2027, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional twelve (12) months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take other appropriate actions to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the Strategic National Stockpile (SNS) during the effective period of this Declaration for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C. 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a serious physical covered injury as the direct result of the administration or use of the Covered Countermeasures and/or benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical, and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *https://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

The August 1, 2016, Declaration Under the Public Readiness and Emergency Preparedness Act for Zika Virus Vaccines was first issued on August 1, 2016 and amended and republished on August 1, 2018. This is the second amendment to the Declaration.

Further amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2022–28015 Filed 12–22–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of amendment

ACTION: Notice of amendment.

SUMMARY: The Secretary is amending the Declaration issued in the **Federal Register** of October 10, 2008, as amended April 26, 2009; December 17, 2008; February 29, 2012; and as amended and republished January 1, 2016, pursuant to section 319F–3 of the Public Health Service Act to extend the effective time period of the Republished Declaration, as amended.

DATES: This amendment of the January 1, 2016 Republished Declaration is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, Administration for Strategic Preparedness and Response, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; 202–260–0365, *paige.ezernack@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, through publication in the **Federal Register**, amend any portion of a Declaration. Using this authority, the

Secretary issued several Declarations for countermeasures against pandemic influenza: (1) An October 10, 2008, Declaration covering the neuraminidase class of antivirals Oseltamivir Phosphate (*e.g.,* Tamiflu) and Zanamivir (*e.g.,* Relenza) (hereinafter, ''antivirals Declaration''); (2) a December 17, 2008, Declaration covering pandemic influenza diagnostics, personal respiratory protection devices, and respiratory support devices (hereinafter ''diagnostics and other devices Declaration''); (3) a February 29, 2012, amended Declaration covering pandemic influenza vaccines (hereinafter, ''vaccines Declaration''); and (4) a January 1, 2016, amendment republishing the prior Declarations as a single Declaration in its entirety, as amended (hereinafter, ''Declaration''); and is amending the Republished Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding Section 319F–3, which addresses liability immunity, and Section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. Section 319F–3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, enacted on March 13, 2013, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, enacted on March 27, 2020, to expand Covered Countermeasures under the PREP Act.

This Secretary is now amending the Republished Declaration to extend the time period for which liability immunity is in effect for all of the Covered Countermeasures to December 31, 2027. Pandemic influenza A viruses and influenza A viruses with pandemic potential continue to pose a public health threat to the United States. These Influenza A viruses have the potential to become highly transmissible in the U.S. population, causing significant morbidity and mortality. PREP Act coverage of Influenza A countermeasures is critical to enable continuity of ongoing programs for development of critical diagnostics, vaccines, and therapeutics, and accomplish national pandemic preparedness goals. In addition, PREP Act declaration renewal is essential to support uninterrupted readiness and access to stockpiled pre-pandemic influenza vaccines to mitigate an emerging pandemic.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Republished Declaration

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Pandemic Influenza Countermeasures

This Declaration amends the October 17, 2008, Declaration under the Public Readiness and Emergency Preparedness Act, as amended on April 26, 2009; the December 17, 2008, Declaration under the Public Readiness and Emergency Preparedness Act; the February 29, 2012, Declaration under the Public Readiness and Emergency Preparedness Act; and the January 1, 2016 Republished Declaration under the Public Readiness and Emergency Preparedness Act. To the extent any term of the prior Declarations is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined there is a credible risk that pandemic influenza A viruses and influenza A viruses with pandemic potential could cause an influenza pandemic with resulting disease that may constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, or use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the Public Readiness and Emergency Preparedness (PREP) Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are manufacturers, distributors, program planners, ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency; (b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act, and; (c) Any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are any antiviral, any other drug, any biological product, any diagnostic, any respiratory protective device, any other device, or any vaccine used against pandemic influenza A viruses and influenza A viruses with pandemic potential, all components and constituent materials of vaccines, and all devices and their constituent components used in the administration of vaccines, except that vaccines against influenza A and their associated components, constituent materials and devices covered under the National Vaccine Injury Compensation Program are not Covered Countermeasures.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other Federal agreements, or activities directly conducted by the Federal Government;

or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following a declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or Federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A declaration of emergency means any declaration by any authorized local, regional, state, or Federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a Federal Declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such Declaration specifies otherwise;

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is the threat of or actual human influenza that results from the infection of humans following exposure to pandemic influenza A viruses or influenza A viruses with pandemic potential.

Pandemic influenza A viruses and influenza A viruses with pandemic potential mean: Animal viruses and/or human influenza A viruses circulating in wild birds, domestic animals and/or humans that cause or have significant potential to cause sporadic or ongoing human infections, or historically have caused pandemics in humans, or have mutated to cause pandemics in humans, and for which the majority of the population is immunologically naive.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in these geographic areas; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in these geographic areas, or the program planner or qualified person reasonably could have believed the recipient was in these geographic areas.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

For any Covered Countermeasure subsequently covered under the National Vaccine Injury Compensation Program, liability immunity under this Declaration expires immediately upon such coverage.

Liability immunity for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction extends through December 31, 2027, or until a Covered Countermeasure is covered under the National Vaccine Injury Compensation Program, as applicable, whichever occurs first.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect; (2) December 31, 2027; or (3) until a Covered Countermeasure is covered under the National Vaccine Injury Compensation Program, as applicable, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional twelve (12) months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take other appropriate actions to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the Strategic National Stockpile (SNS) during the effective period of this Declaration for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction are covered through the date of administration or use pursuant to a distribution or release from the SNS

XIV. Countermeasures Injury Compensation Program

42 U.S.C. 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation

Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a serious physical covered injury as the direct result of the administration or use of the Covered Countermeasures and/or benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical, and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *https://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

The October 10, 2008, Declaration Under the Public Readiness and Emergency Preparedness Act for pandemic influenza antivirals was first published on October 17, 2008, and amended effective April 26, 2009.

The December 17, 2008, Declaration Under the Public Readiness and Emergency Preparedness Act for diagnostics and other devices was first published on December 22, 2008.

The Declaration for the Use of the Public Readiness and Emergency Preparedness Act for H5N1 vaccines was first published on January 26, 2007. The Declaration was amended on November 30, 2007, to add H7 and H9 vaccines; amended on October 17, 2008, to add H2 and H6 vaccines; amended on June 15, 2009, to add 2009 H1N1 vaccines and republished in its entirety; amended on September 28, 2009, to provide targeted liability protections for pandemic countermeasures to enhance distribution and to add provisions consistent with other Declarations and republished in its entirety; amended on March 1, 2010, to revise the Covered Countermeasures to include countermeasures against pandemic influenza A viruses, extend the effective date and republished in its entirety; and amended on February 29, 2012, to extend the effective time period, reformat the Declaration, and republish the Declaration.

The January 1, 2016, Republished Declaration Under the Public Readiness and Emergency Preparedness Act amended all Declarations and amendments prior to the date of its publication in the Federal Register and republished the prior Declarations in the Federal Register as a single Declaration in its entirety, as amended.

This Declaration republishes the January 1, 2016 Declaration to extend the effect time period. Further amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2022–28014 Filed 12–22–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Amendment

ACTION: Notice of amendment.

SUMMARY: The Secretary is amending the Declaration issued in the **Federal Register** of October 1, 2008, and as amended and republished January 1, 2016, pursuant to section 319F–3 of the Public Health Service Act, to extend the effective time period of the Republished Declaration, as amended.

DATES: This amendment of the January 1, 2016, Republished Declaration is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, Administration for Strategic Preparedness and Response, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; 202–260–0365, *paige.ezernack@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, through publication in the **Federal Register**, amend any portion of a Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding section 319F–3, which addresses liability immunity, and section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. Section 319F–3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, enacted on March 13, 2013, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, enacted on March 27, 2020, to expand Covered Countermeasures under the PREP Act. The Secretary is now amending the Republished Declaration to extend the time period for which liability immunity is in effect for all of the Covered Countermeasures to December 31, 2027.

Renewal of the PREP Act Declaration for anthrax is essential due to the continued national security threat posed by potential exposure to anthrax. An anthrax event, whether natural or man-made in origin, has potential to cause significant mortality and disrupt daily functions within the United States. PREP Act coverage of countermeasures is critical to the engagement with potential product sponsors in the anthrax space. Vaccines, antibiotics, antitoxins, and diagnostics for anthrax will continue to be a part of the preparedness posture in terms of stockpiling current products and development next-generation candidates. Extension of the PREP Act Declaration including vaccines, therapeutics, and diagnostics for anthrax is therefore deemed essential.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Republished Declaration

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Anthrax Countermeasures.

This Declaration amends the January 1, 2016, Republished Declaration under the Public Readiness and Emergency Preparedness Act. To the extent any term of the prior Declaration is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the spread of *Bacillus anthracis* and/or the spores of *Bacillus anthracis* and the resulting disease or conditions may in the future constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, or use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the Public Readiness and Emergency Preparedness (PREP) Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are manufacturers, distributors, program planners, ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency; (b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act); and (c) Any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are any vaccine, including all components and constituent materials of these vaccines, and all devices and their constituent components used in the administration of these vaccines; any antimicrobial/antibiotic; any other drug or biologic; or any diagnostic or other device to identify, prevent, or treat anthrax or adverse events from such countermeasures.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the PHS Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other Federal agreements, or activities directly conducted by the Federal Government; or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or Federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A declaration of emergency means any declaration by any authorized local, regional, state, or Federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a Federal Declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such Declaration specifies otherwise.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is anthrax, which may result from exposure to *Bacillus anthracis* and/or to *Bacillus anthracis* spores.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasures means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution, and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for the purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in these geographic areas; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in these geographic areas, or the program planner or qualified person reasonably could have believed the recipient was in these geographic areas.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction extends through December 31, 2027.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect or (2) December 31, 2027, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional twelve (12) months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasures, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take other appropriate actions to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the Strategic National Stockpile (SNS) during the effective period of this Declaration for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction are covered through the date of administration or use pursuant to a distribution or release from the SNS.

Further, as to doses shipped by the Centers for Disease Control and Prevention (CDC) to the Department of Defense (DoD) pursuant to the DoD/CDC Interagency Agreement (IAA) dated March 10, 2008, an additional period of time of liability protection shall extend for as long as the SNS or its successor exists and the IAA remains in effect, plus, if the additional twelve (12) months following the time period in paragraph 1 of this section has expired, an additional twelve (12) months upon expiration of the IAA.

XIV. Countermeasures Injury Compensation Program

42 U.S.C. 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a serious physical covered injury as the direct result of the administration or use of the Covered Countermeasures and/or benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical, and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *https://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

The October 1, 2008, Declaration Under the Public Readiness and Emergency Preparedness Act for Anthrax Countermeasures was first published on October 6, 2008, and amended and republished on January 1, 2016. This is the second amendment to the Declaration.

Further amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2022–28010 Filed 12–22–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Amendment

ACTION: Notice of amendment.

SUMMARY: The Secretary is amending the Declaration issued in the **Federal Register** of October 10, 2008, and as amended and republished January 1, 2016, pursuant to section 319F–3 of the Public Health Service Act, to extend the effective time period of the Republished Declaration, as amended.

DATES: This Amendment of the January 1, 2016, Republished Declaration is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, Administration for Strategic Preparedness and Response, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; 202–260–0365, *paige.ezernack@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, through publication in the **Federal Register**, amend any portion of a Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding Section 319F–3, which addresses liability immunity, and Section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. Section 319F–3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, enacted on March 13, 2013, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, enacted on March 27, 2020, to expand Covered Countermeasures under the PREP Act.

The Secretary is now amending the Republished Declaration to extend the time period for which liability immunity is in effect for all of the Covered Countermeasures to December 31, 2027. Botulinum Toxin continues to pose a national security threat to the United States and has the potential to cause significant morbidity and mortality in the event of large-scale exposures. There is a lack of a commercial market for countermeasures against Botulinum Toxin, making PREP Act coverage critical to the engagement with potential product sponsors. Vaccines, therapeutics, and diagnostics

for Botulinum Toxin will continue to be a part of the preparedness posture for the United States, both in terms of stockpiling current products and developing next-generation candidates. Extension of the PREP Act Declaration including vaccines, therapeutics, and diagnostics for Botulinum Toxin is essential.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Republished Declaration

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Botulinum Toxin Countermeasures

This Declaration amends and republishes the October 10, 2008, Declaration under the Public Readiness and Emergency Preparedness Act, as amended and republished under the January 1, 2016, Republished Declaration under the Public Readiness and Emergency Preparedness Act. To the extent any term of the prior Declarations is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that exposure to botulinum toxin(s) and the resulting diseases or conditions from manmade or natural sources may in the future constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, or use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the Public Readiness and Emergency Preparedness (PREP) Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are manufacturers, distributors, program planners, ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency; (b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act, and; (c) Any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are any vaccine, including all components and constituent materials of these vaccines, and all devices and their constituent components used in the administration of these vaccines; any antimicrobial/antibiotic; any other drug or antitoxin; any biologic; or any diagnostic or other device to identify, prevent or treat botulinum toxin or adverse events from such countermeasures.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other Federal agreements, or activities directly conducted by the Federal Government; or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following a declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or Federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A declaration of emergency means any declaration by any authorized local, regional, state, or Federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a Federal Declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such Declaration specifies otherwise;

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is botulism resulting from exposure to botulinum toxin(s).

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions

directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in these geographic areas; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in these geographic areas, or the program planner or qualified person reasonably could have believed the recipient was in these geographic areas.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction extends through December 31, 2027.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect or (2) December 31, 2027, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional twelve (12) months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take other appropriate actions to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the Strategic National Stockpile (SNS) during the effective period of this Declaration for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C. 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a serious physical covered injury as the direct result of the administration or use of the Covered Countermeasures and/or benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical, and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *https://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

The October 10, 2008, Declaration Under the Public Readiness and Emergency Preparedness Act for Botulinum Toxin Countermeasures was first published on October 17, 2008, and amended on January 1, 2016. This is the second amendment to that Declaration.

Further amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2022–28011 Filed 12–22–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience and Behavior Study Section.

Date: March 6, 2023.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, 6700B Rockledge Drive, Room 2116, MSC 6902, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: December 19, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27918 Filed 12–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below and held as a virtual meeting. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 1–2, 2023.

Open: February 1, 2023, 1:00 p.m. to 5:30 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments.

Open session will be videocast from this link: https://videocast.nih.gov/.

Closed: February 2, 2023, 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Virtual Meeting).

Contact Person: Robert Finkelstein, Ph.D. Director of Extramural Research, National Institute of Neurological, Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 19, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27958 Filed 12–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meeting will be open to the public. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*). Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Allergy and Infectious Diseases Council.

Date: January 30, 2023.

Open: 10:30 a.m. to 11:30 a.m.

Agenda: Report of Institute Acting Director.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Closed: 11:45 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Room 4F30, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: January 30, 2023.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50 Bethesda, MD 20892, 301–496–7291, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: January 30, 2023.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 30, 2023.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of

Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *poeky@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.niaid.nih.gov/about/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 19, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27955 Filed 12–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: National Institute on Drug Abuse (NIDA) Summer Research Internship Program

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Wilson Compton, Acting Director, Office of Research Training, Diversity and Disparities, 3WFN, 11601 Landsdown St., Room 09D18, North Bethesda, Maryland, 20892 or call non-toll-free number (301) 443–6480 or Email your request, including your address, to: *Wilson.Compton@nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on October 21, 2022, page 64068 (87 FR 64068) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institute on Drug Abuse (NIDA), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: National Institute on Drug Abuse (NIDA) Summer Research Internship Program—0925–0738—expiration date, 12/31/2022, EXTENSION, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the proposed information is for the selection of interns for the continuing NIDA Summer Research Internship Program. This request is to allow NIDA to collect information from applicants in order to meet the goals of the program and IC mission. Applicant eligibility for this program is open to those 18 and over in the year of application per NIH policy document 2022 Summer Research Internship Program (NIDA–SRIP) Policy. NIDA will request clearance for any additional forms should new programs be introduced in the future.

The information ensures that students applying to this program meet basic eligibility requirements; indicates their interest in substance abuse research, future career goals, and, if selected for the program, what research they prefer to conduct. The information also enables decision-making regarding which applicants will be selected for internships. In each case, completing the application is voluntary, but in order to receive due consideration, the prospective applicant must complete all fields required by the program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 300.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Summer Internship	Individuals—household	300	1	1	300
Total			300		300

Dated: December 20, 2022.

Lanette A. Palmquist,

Project Clearance Liaison, National Institute on Drug Abuse, National Institutes of Health.

[FR Doc. 2022–27990 Filed 12–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Advancing Technologies to Improve Delivery of Pharmacological, Gene Editing, and Other Cargoes for HIV and SUD Mechanistic or Therapeutic Research.

Date: January 25, 2023.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Caitlin Elizabeth Angela Moyer, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577 *caitlin.moyer@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 19, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27956 Filed 12–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Request for comments on the initial revised draft of the Update to the Certified Community Behavioral Health Clinics certification criteria

AGENCY: Substance Abuse and Mental Health Services Administration.

ACTION: Request for Comments on the Initial Revised Draft of the Update to the Certified Community Behavioral Health Clinics Certification Criteria.

SAMHSA is seeking public comment on the initial revised draft of the update to the Certification Criteria for Certified Community Behavioral Health Clinics (CCBHCs). CCBHCs were established under the Section 223 of the Protecting Access to Medicare Act of 2014 (PAMA, Pub. L. 113–93). Section 223 of PAMA requires the establishment of Medicaid demonstration programs to improve community behavioral health services through the development of CCBHCs. CCBHCs are required to provide a comprehensive array of coordinated services to anyone who requests care for mental health or substance use, regardless of ability to pay, place of residence, or age—including developmentally appropriate care for children. PAMA required the Department of Health and Human Services (HHS) to develop criteria for states to use when certifying clinics to participate in their demonstration programs. These criteria include six areas: (1) staffing, (2) availability and accessibility of services, (3) care coordination, (4) scope of services, (5) quality and other reporting, and (6) organizational authority. The current Certification Criteria can be found at: *https://www.samhsa.gov/sites/default/files/programs_campaigns/ccbhc-criteria.pdf.*

There have been significant developments in the CCBHC program and in the broader mental health and substance use disorder field since the development of the existing Certification Criteria. States and providers now have six years of experience with the CCBHC model and lessons learned related to the implementation of the Certification Criteria. SAMHSA is seeking to make minor revisions to the Criteria to respond to these developments and lessons learned, while still maintaining the overarching requirements for program areas and scope of services outlined in PAMA.

To develop the initial draft of the updated CCBHC Criteria, SAMHSA gathered input in several ways. Public opportunities for input were posted on *https://www.samhsa.gov/certified-community-behavioral-health-clinics/ccbhc-criteria-update-announcements.* Public meeting dates and virtual locations were disseminated through SAMHSA listservs. On November 17, 2022, SAMHSA held a virtual public listening session open to the public to provide input on the existing CCBHC Criteria. SAMHSA also accepted written input from the public and stakeholders sent to *ccbhccriteria@samhsa.hhs.gov* by November 21, 2022. In addition to public outreach, SAMHSA also received feedback on potential revisions to the existing CCBHC Criteria from key stakeholders and federal partners.

The initial draft of the updated CCBHC Criteria will be available for public comment before the end of December 2022 and will be open to mid-January 2023. Information on CCBHC Criteria updates and the process to support them is available at: *https://www.samhsa.gov/certified-community-behavioral-health-clinics/ccbhc-criteria-update-announcements.* The posting of the initial draft of the updated CCBHC Criteria will also be announced through SAMHSA's listserv, CCBHC Training and Technical Assistance grant program, and CCBHC State Technical Assistance contract. SAMHSA requests all comments to the initial draft of the updated CCBHC Criteria be sent to *ccbhccriteria@samhsa.hhs.gov.*

Authority: Section 223 of the Protecting Access to Medicare Act (2014), as amended.

Contact: Mary Blake, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276–1747; email: *mary.blake@samhsa.hhs.gov.*

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2022–28028 Filed 12–22–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0025]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Waiver of Rights, Privileges, Exemptions and Immunities

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 21, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0025 in the body of the letter, the agency name and Docket ID USCIS–2008–0015. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0015.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0015 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–508; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected on Form I–508 to determine whether or not a nonimmigrant under section 101(a)(15)(A), (E), or (G) of the Act is eligible to retain his or her status as an immigrant, adjust status to an LPR, or obtain a reentry permit. The I–508F is no longer required to be submitted by French Nationals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–508 is 1,928 and the estimated hour burden per response is .617 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,189 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $15,424.

Dated: December 19, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–27972 Filed 12–22–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0027]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Interagency Record of Request A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the

respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 21, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0027 in the body of the letter, the agency name and Docket ID USCIS–2007–0041. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2007–0041.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2007–0041 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Interagency Record of Request A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–566; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data on this form is used by Department of State (DOS) to certify to USCIS the eligibility of dependents of A or G principals requesting employment authorization, as well as for NATO/Headquarters, Supreme Allied Commander Transformation (NATO/HQ SACT) to certify to USCIS similar eligibility for dependents of NATO principals. DOS also uses this form to certify to USCIS that certain A, G or NATO nonimmigrants may change their status to another nonimmigrant status. USCIS uses data collected on this form in the adjudication of change or adjustment of status applications from aliens in A, G, or NATO classifications. USCIS also uses Form I–566 to notify DOS of the results of these adjudications.

The information provided on this form continues to ensure effective interagency communication among the three governmental departments—the Department of Homeland Security (DHS), DOS, and the Department of Defense (DOD)—as well as with NATO/HQ SACT. These departments and organizations utilize this form to facilitate the uniform collection and review of information necessary to determine an alien's eligibility for the requested immigration benefit. This form also ensures that the information regarding findings or actions is communicated among DHS, DOS, DOD, and NATO/HQ SACT.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–566 is 5,800 and the estimated hour burden per response is 1.283 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 7,441 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $746,750.00.

Dated: December 19, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–27970 Filed 12–22–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0026]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Immigrant Petition by Standalone Investor; Immigrant Petition by Regional Center Investor

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting 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. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 23, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking

Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0021. All submissions received must include the OMB Control Number 1615–0026 in the body of the letter, the agency name and Docket ID USCIS–2007–0021.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2022, President Biden signed the EB–5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) into law, which revised INA 203(b)(5). The law immediately repealed the former Regional Center (RC) Program statute at Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993, Public Law 102–395, 106 Stat. 1828, § 610(b).

The law also reauthorized a substantially reformed EB–5 Regional Center (RC) Program which became effective on May 14, 2022. Though USCIS will continue to provide similar services for the newly reformed RC program as it did under the former RC program (such as initial designations, petition adjudications, etc.), the newly authorized RC program has a different legal framework and requirements from the previously authorized program. Consequently, the current form I–526, Immigrant Petition by Alien Entrepreneur, associated with the EB–5 Program, would not gather sufficient information to adjudicate investor petitions under the new program.

Accordingly, USCIS split the former Form I–526, Immigrant Petition by Alien Entrepreneur, into two versions: Form I–526, Immigrant Petition by Standalone Investor, and Form I–526E, Immigrant Petition by Regional Center Investor. The revision of Form I–526 resulted in creating two separate forms to better streamline the adjudication process for Standalone Investors and Regional Center Investors; specifically, Form I–526 will be used by a Standalone Investor and Form I–526E will be used by an investor pooling their investment with one or more qualified immigrants under the new EB–5 Regional Center Program to petition for status as an immigrant to the United States under section 203(b)(5) of the Immigration Nationality Act (INA), as amended. USCIS began accepting the new Form I–526 and Form I–526E starting on July 12, 2022. USCIS will continue to adjudicate all Forms I–526 filed before March 15, 2022 (the date of the enactment of the EB–5 Reform and Integrity Act of 2022), according to the applicable eligibility requirements at the time the petition was filed.

On June 24, 2022, the U.S. District Court for the Northern District of California preliminarily enjoined USCIS from ''treating as deauthorized the previously designated regional centers'' including ''processing new I–526 petitions from immigrants investing through previously authorized regional centers . . . just as the agency would do for a newly approved regional center.'' *Behring* v. *Mayorkas,* Order Granting Plaintiff's Motion for a Preliminary Injunction, Case No. 22–cv–02487–VC (N.D. Cal. Jun 24, 2022). On September 1, 2022, the U.S. District Court in *Behring* approved a settlement between the parties. Under the terms of the settlement, previously designated regional centers did not lose their designation as a result of the EB–5 Reform and Integrity Act of 2022. As USCIS is working to implement the settlement, if it determines changes to the Forms I–526 and I–526E are necessary, it will pursue such changes through either this form revision process or other appropriate mechanism.

Comments

The information collection notice was previously published in the **Federal Register** on August 23, 2022 at 87 FR 51696, allowing for a 60-day public comment period. USCIS received three comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0021 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Standalone Investor; Immigrant Petition by Regional Center Investor.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–526; I–526E; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The form I–526 is used by a standalone investor to petition USCIS for status as an immigrant to the United States under section 203(b)(5) of the Immigration and Nationality Act (INA), as amended. The form I–526E is used by an investor pooling their investment with one or more qualified immigrants participating in the Regional Center Program to petition USCIS for status as

an immigrant to the United Stated under section 203(b)(5) of the Immigration Nationality Act (INA), as amended. A regional center investor may also use Form I–526E to report any amendments necessary to establish ongoing eligibility if the regional center, new commercial enterprise, or job-creating entity in which the investor has invested is terminated or debarred from participation in the Regional Center Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–526 is 504 and the estimated hour burden per response is 1 hour and 50 minutes; the estimated total number of respondents for the information collection I–526E is 3,980 and the estimated hour burden per response is 1 hour and 50 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 8,219 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $4,932,400.

Dated: December 19, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–27973 Filed 12–22–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0187; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Project Planning for the Use of Outer Continental Shelf Sand, Gravel, and Shell Resources in Construction Projects That Qualify for Negotiated Noncompetitive Agreement

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing this information collection request (ICR) to renew Office of Management and Budget (OMB) Control Number 1010–0187.

DATES: Comments must be received by BOEM no later than February 21, 2023.

ADDRESSES: Send your comments on this ICR by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0187 in the subject line of your comments. You may also view the ICR and its related documents by searching the docket number BOEM–2017–0016 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov,* or by telephone at 703–787–1025. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside of the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

BOEM is soliciting comments on this proposed ICR. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM? (2) what can BOEM do to ensure that this information is processed and used in a timely manner? (3) is the burden estimate accurate? (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected? and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection, and comments will be posted on *www.reginfo.gov.* You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available at any time.

Please be aware that BOEM's practice is to make all comments, including the names and addresses of individuals, available for public inspection on *www.reginfo.gov.* Even if BOEM withholds your personally identifiable information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552). If your comment is requested under FOIA, your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

In order for BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

BOEM will make available for public inspection, in their entirety, all comments (except proprietary information as discussed in the next paragraph) submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations or businesses.

BOEM protects proprietary information in accordance with FOIA and the Department's implementing regulations (43 CFR part 2).

Title of Collection: ''Project Planning for the Use of Outer Continental Shelf Sand, Gravel, and Shell Resources in Construction Projects that Qualify for Negotiated Noncompetitive Agreement.''

Abstract: Under the authority delegated by the Secretary of the Interior, BOEM is authorized, pursuant to section 8(k)(2) of the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1337(k)(2)), to convey rights to OCS sand, gravel, and shell resources by negotiated noncompetitive agreement (NNA) for use in shore protection and beach and coastal restoration projects, or for use in construction projects funded in whole or part by, or authorized by, the Federal Government.

This ICR does not significantly change the 2020 OMB approved information collection.

Since the beginning of 2020, BOEM has processed eight NNAs and amendments to existing agreements. In order for BOEM to continue to meet the needs of local and State governments, information must be acquired to plan for future projects and anticipated workloads. Therefore, BOEM will issue calls for information about needed resources and locations from interested parties to develop and maintain a project schedule. BOEM also requires information to quickly respond to short-notice requests such as during an emergency declaration in the aftermath of a hurricane or tropical storm.

BOEM will publish all ongoing projects on the website *http://www.boem.gov/Request-and-Active-Leases/.*

OMB Control Number: 1010–0187.

Form Number: None.

Type of Review: Extension of a currently approved information collection.

Respondents/Affected Public: Potential respondents comprise States, counties, localities, and Tribes.

Total Estimated Number of Annual Responses: 80 responses.

Total Estimated Number of Annual Burden Hours: 200 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion or annually.

Total Estimated Annual Non-Hour Burden Cost: None.

Estimated Reporting and Recordkeeping Hour Burden: BOEM estimates that the annual reporting burden for this collection is about 200 hours, assuming an emergency declaration is made each year.

Local Government Compilation: 25 local governments × 1 hour per information collection response × 2 responses annually = 50 hours.

State Government Compilation: 15 State governments × 5 hours per information collection response × 2 responses annually = 150 hours (50 local government hours + 150 State hours = 200 total burden hours).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2022–27905 Filed 12–22–22; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2022–0070]

Notice of Availability of a Draft Environmental Impact Statement for Park City Wind, LLC's Proposed Wind Energy Facility Offshore Massachusetts

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: BOEM announces the availability of the draft environmental impact statement (DEIS) for the construction and operations plan (COP) submitted by Park City Wind LLC (Park City) for its proposed New England Wind Project (Project) offshore Massachusetts. The DEIS analyzes the potential environmental impacts of the Project as described in the COP (the proposed action) and the alternatives to the proposed action. This notice of availability (NOA) announces the start of the public review and comment period, as well as the dates and times for public hearings on the DEIS. After BOEM holds the public hearings and addresses comments provided, BOEM will publish a final environmental impact statement (EIS). The EIS will inform BOEM's decision whether to approve, approve with modifications, or disapprove the COP.

DATES: Comments must be received no later than February 21, 2023. BOEM will conduct three virtual public hearings. BOEM's virtual public hearings will be held at the following times (eastern time).

- Friday, January 27, 2023; 1:00 p.m.
- Wednesday, February 1, 2023; 5:00 p.m.
- Monday, February 6, 2023; 5:00 p.m.

Registration for the virtual public hearings is required and may be completed here: *https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south* or by calling (703) 787–1520. Meeting information will be sent to registrants via their email address provided during registration.

ADDRESSES: The DEIS and detailed information about the Project, including the COP, can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south.* Comments can be submitted in any of the following ways:

- Orally or in written form during any of the virtual public hearings identified in this NOA.
- In written form by mail or any other delivery service, enclosed in an envelope labeled ''New England Wind COP DEIS'' and addressed to Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.
- Through the *regulations.gov* web portal: Navigate to *http://www.regulations.gov* and search for Docket No. BOEM–2022–0070. Click on the ''Comment'' button below the document link. Enter your information and comment, then click ''Submit Comment.''

For more information about submitting comments, please see ''*Information on Submitting Comments*'' under the **SUPPLEMENTARY INFORMATION** heading below.

FOR FURTHER INFORMATION CONTACT: Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1722 or *jessica.stromberg@boem.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: Park City seeks approval to construct, operate, and maintain the Project: a wind energy facility and its associated export cables on the Outer Continental Shelf (OCS) offshore Massachusetts. The New England Wind Project would be developed within the range of design parameters outlined in the New England Wind COP, subject to applicable mitigation measures. Park City proposes to develop the lease area in two phases, known as Park City Wind (Phase 1) and Commonwealth Wind (Phase 2) (collectively, the New England Wind Project or Project). Park City proposes constructing and operating up to 129 wind turbines and up to 5 offshore electrical service platforms with a total of 5 offshore export cables under the terms of Renewable Energy Lease OCS–A 0534. The Project is located about 20 miles southwest of Martha's Vineyard, about 24 miles south of Nantucket, and adjacent to the southwest boundary of the BOEM-approved Vineyard Wind 1 energy project (Renewable Energy Lease OCS–A 0501). The onshore components of the Project will include up to three export cable landfalls in Massachusetts (one for Phase 1 and up to two for Phase 2) and up to three onshore substations: one in Barnstable County, Massachusetts, for Phase 1 and up to two in Barnstable or Bristol County, Massachusetts, for Phase 2.[1]

[1] As part of the proposed action, Park City proposes two offshore export cable routes should technical, logistical, grid interconnection, or other

Continued

Alternatives: BOEM considered 15 alternatives when preparing the DEIS and carried forward 3 alternatives for further analysis in the DEIS. These three alternatives include two action alternatives and the no action alternative. BOEM did not analyze in detail 12 of the alternatives because they did not meet the purpose and need for the proposed action or did not meet screening criteria, which are presented in chapter 2 of the DEIS. The screening criteria included consistency with law and regulations; technical and economic feasibility; environmental impact; and geographic considerations.

Availability of the DEIS: The DEIS, New England Wind COP, and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south.* BOEM has distributed digital copies of the DEIS to all parties listed in the DEIS appendix N, which also includes the location of all libraries receiving a copy. If you require a flash drive or paper copy, BOEM will provide one upon request, as long as supplies are available. You may request a flash drive or paper copy of the DEIS by calling (703) 787–1520.

Cooperating Agencies: The following 18 Federal agencies, Tribal Nations, and State governmental entities participated as cooperating agencies in the preparation of the DEIS: Bureau of Safety and Environmental Enforcement; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Army Corps of Engineers; U.S. Coast Guard; U.S. Department of Defense; U.S. Department of the Navy; U.S. Fish and Wildlife Service; Wampanoag Tribe of Gay Head (Aquinnah); Mashpee Wampanoag Tribe; Mohegan Tribe of Connecticut; Mashantucket Pequot Tribal Nation; The Narragansett Indian Tribe; The Shinnecock Indian Nation; Delaware Tribe of Indians; Massachusetts Office of Coastal Zone Management; Rhode Island Coastal Resources Management Council; and New York State Department of State.

Information on Submitting Comments: BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes your comment, including your name and address, available for public review online and during regular business hours. You may request that BOEM withhold your name, address, or any other personally identifiable information (PII) included in your comment from the public record; however, BOEM cannot guarantee that it will be able to do so. If you wish your name, address, or other PII to be withheld, you must state your request prominently in a cover letter and explain the harm that you fear from its disclosure such as unwarranted privacy invasion, embarrassment, or injury. Even if BOEM withholds your information in the context of this notice, your comment is subject to the Freedom of Information Act (FOIA) and any relevant court orders. If your comment is requested under FOIA or a relevant court order, your information will only be withheld if a determination is made that one of the FOIA's exemptions to disclosure applies or if the relevant court order is challenged. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

Please label privileged or confidential information as ''Contains Confidential Information,'' and consider submitting such information as a separate attachment. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2022–27826 Filed 12–22–22; 8:45 am]

BILLING CODE 4340–98–P

unforeseen issues arise during the COP review and engineering processes that preclude use of its preferred route. If the route known as the South Coast Variant is used, an onshore substation and landfall would be located in Bristol County. Both proposed cable routes are included in the DEIS analysis.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–382 and 731–TA–800, 801, and 803 (Fourth Review)]

Stainless Steel Sheet and Strip From Japan, South Korea, and Taiwan; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the countervailing duty order on stainless steel sheet and strip (SSSS) from South Korea, and the antidumping duty orders on SSSS from Japan, South Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: December 5, 2022.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–3029), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On December 5, 2022, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses from Japan to its notice of institution (87 FR 53780, September 1, 2022) were adequate, and determined to conduct a full review of the antidumping duty order on imports from Japan. The Commission also found that the respondent interested party group responses from South Korea and Taiwan were inadequate but determined to conduct full reviews of the orders on imports from those countries in order to promote administrative efficiency in light of its determinations to conduct a full review of the order with respect to Japan. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under authority of title VII of

the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 19, 2022.

Katherine Hiner,

Acting Supervisory Attorney.

[FR Doc. 2022–27983 Filed 12–22–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Fifth Review)]

Gray Portland Cement and Cement Clinker From Japan; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 6, 2022.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 6, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 33210, June 1, 2022) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on December 21, 2022. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 3, 2023 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 3, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–28006 Filed 12–22–22; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the joint response submitted on behalf of the Committee for Fairly Traded Japanese Cement, an *ad hoc* association of two domestic producers of gray portland cement and clinker (Cemex, Inc. and National Cement Company of California, Inc.), as well as two labor unions representing workers producing cement in California: the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union and the International Union of Operating Engineers, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1299, 1300, and 1302 (Review)]

Circular Welded Carbon-Quality Steel Pipe From Oman, Pakistan, and the United Arab Emirates; 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 orders on circular welded carbon-quality steel pipe from Oman, Pakistan, and the United Arab Emirates 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 1, 2021 (86 FR 60289) and determined on February 4,

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

2022 that it would conduct full reviews (87 FR 9641, February 22, 2022). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 21, 2022 (87 FR 36881). Since no party to the investigation requested a hearing, the public hearing in connection with the reviews, originally scheduled for October 13, 2022, was cancelled (87 FR 62890, October 17, 2022).

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 December 16, 2022. The views of the Commission are contained in USITC Publication 5390 (December 2022), entitled *Circular Welded Carbon-Quality Steel Pipe from Oman, Pakistan, and the United Arab Emirates (Inv. Nos. 731–TA–1299–1300, and 1302 (Review)).*

By order of the Commission.

Issued: December 16, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–27880 Filed 12–22–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 20, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *United States* v. *Buckhorn, Inc.,* Civil Action No. 22–8989. In the filed Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), alleges that the Defendant is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), for the response costs EPA incurred responding to the New Idria Mercury Mine Site, located near the abandoned town of Idria in San Benito County, California. The Defendant is a successor in interest to New Idria Quicksilver Mining Company, a Nevada Corporation, which owned and operated the New Idria Mercury Mine. The Consent Decree requires the Defendants to pay $1,855,500.00 million in a lump sum to the United States for the settlement of the allegations in the filed Complaint.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Buckhorn, Inc.,* D.J. Ref. No. 90–11–3–11969. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.75 (25 cents per page reproduction cost), payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2022–27984 Filed 12–22–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0031]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office on Violence Against Women (OVW), Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until January 23, 2023.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Campus Program Grantee Needs and Progress Assessment Tool.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0031. Component Sponsor: Office on Violence Against Women, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes current grantees under the Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking

on Campus Program. The Campus Program strengthens the response of institutions of higher education to the crimes of sexual assault, domestic violence, dating violence and stalking on campuses and enhances collaboration among campuses, local law enforcement, and victim advocacy organizations. Eligible applicants are institutions of higher education. The affected public includes the approximately 100 institutions of higher education currently funded through the Campus program.

Abstract: The Grantee Needs and Progress Assessment Tool will be used to determine the training and technical assistance needs of Campus Program grantees—both new and continuation grantees—throughout the life of the grant award as well measure the development of the capacity of grantees to respond and prevent violence against women on their campuses. In addition, the tool will help campuses and OVW document the impact of their grant-funded work, promote sustainability of important intervention and prevention activities, and provide outcome-based information throughout the life of the grant to help OVW –funded technical assistance providers and grantees make changes to the goals and objectives necessary to achieve the Congressional purpose of the Campus Program.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 100 respondents (Campus Program grantees) approximately 2 hours to complete the assessment tool.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the assessment form is 200 hours, that is 100 grantees completing a form once a year with an estimated completion time for the form being two hours.

If additional information is required contact: Robert Houser, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: December 19, 2022.

Robert Houser,

Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–27929 Filed 12–22–22; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0032]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Progress Report for Justice for Families Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 21, 2023.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Semi-Annual Progress Report for Justice for Families Program.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0032. Component Sponsor: U.S. Department of Justice, Office on Violence Against Women.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the current grantees under the Justice for Families Program. The Justice for Families Program improves the response of all aspects of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault and stalking, or in cases involving allegations of child sexual abuse. Eligible applicants are states, units of local government, courts, Indian tribal governments, nonprofit organizations, legal service providers, and victim services providers. The affected public includes the approximately 70 Justice for Families Program grantees.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 70 respondents (Justice for Families Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Justice for Families Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 140 hours, that is 70 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E206, Washington, DC 20530.

Dated: December 20, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–27968 Filed 12–22–22; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collection implements sections 102 and 103 of the Workforce Innovation and Opportunity Act (WIOA). WIOA requires that each State, at a minimum, submit a Unified State Plan as a condition of receiving funds for core programs subject to the Unified State Plan requirements. In the alternative, States may submit a Combined State Plan as a condition of receiving funds under certain named programs subject to the Combined State Plan provisions. The Unified or Combined State Plan requirements are designed to improve service integration and ensure that the publicly funded workforce system provides a range of employment, education, training, and related services and supports to help all jobseekers secure good jobs while providing businesses with the skilled workers they need to compete in the global economy. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 19, 2022 (87 FR 51144).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act.

OMB Control Number: 1205–0522.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 38.

Total Estimated Number of Responses: 38.

Total Estimated Annual Time Burden: 8,174 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: December 19, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–27946 Filed 12–22–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

Agency Information Collection Activities; Comment Request; Federal Transit Act Urban Program Transit Worker Protections

ACTION: Notice; request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), the DOL is soliciting public comments regarding the extension of this Office of Labor-Management Standards (OLMS)-sponsored information collection for the authority to continue the information collection request (ICR) titled, ''Protections for Transit Workers under Section 5333(b) Urban Program,'' currently approved under OMB Control Number 1245–0006.

DATES: Consideration will be given to all written comments received by February 21, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Karen Torre, Chief of the Division of Interpretations and Regulations, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

Electronic submission: You may submit comments and attachments electronically at *olms-public@dol.gov,* identified by OMB Control Number 1245–0006.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the

collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget (OMB) approval of the information collection request; they will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Karen Torre by telephone at 202–693–0123, or by email at *olms-public@dol.gov.*

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 5333(b), when Federal funds are used to acquire, improve, or operate a transit system, the Department must ensure that the recipient of those funds establishes arrangements to protect the rights of affected transit employees. Federal law requires such arrangements to be ''fair and equitable,'' and the Department of Labor (DOL or ''the Department'') must certify the arrangements before the U.S. Department of Transportation's Federal Transit Administration (FTA) can award certain funds to grantees. These employee protective arrangements must include provisions that may be necessary for the preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise; the continuation of collective bargaining rights; the protection of individual employees against a worsening of their positions related to employment; assurances of employment to employees of acquired transportation systems; assurances of priority of reemployment of employees whose employment is ended or who are laid off; and paid training or retraining programs. 49 U.S.C. 5333(b)(2). Pursuant to 29 CFR part 215, upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b) from the FTA, together with a request for the certification of employee protective arrangements from the Department of Labor, DOL will process those applications. The FTA will provide the Department with the information necessary to enable the Department to process employee protections for certification of the project.

DOL Procedural Guidelines (29 CFR part 215), encourage the development of employee protections through local negotiations, but establish time frames for certification to expedite the process and make it more predictable, while assuring that the required protections are in place.

Pursuant to the Guidelines, DOL refers for review the grant application and the proposed terms and conditions to unions representing transit employees in the service area of the project and to the applicant and/or sub-recipient. No referral is made if the application falls under one of the following exceptions: (1) employees in the service area are not represented by a union; (2) the grant is for routine replacement items; (3) the grant is for a Job Access project serving populations less than 200,000. (29 CFR 215.3). Grants where employees in the service area are not represented by a union will be certified without referral based on protective terms and conditions set forth by DOL.

When a grant application is referred to the parties, DOL recommends the terms and conditions to serve as the basis for certification. The parties have 15 days to inform DOL of any objections to the recommended terms including reasons for such objections. If no objections are registered and no circumstances exist inconsistent with the statue, or if objections are found not sufficient, DOL certifies the project on the basis of the recommended terms.

If DOL determines that the objections are sufficient, the Department, as appropriate, will direct the parties to negotiate for up to 30 days, limited to issues defined by DOL.

If the parties are unable to reach agreement within 30 days, DOL will review the final proposals and where no circumstances exist inconsistent with the statute, issue an interim certification permitting FTA to release funds, provided that no action is taken relating to the issues in dispute that would irreparably harm employees.

Following the interim certification, the parties may continue negotiations. If they are unable to reach agreement, DOL sets the terms for Final Certification within 60 days. DOL may request briefs on the issues in dispute before issuing the final certification.

Notwithstanding the above, the Department retains the right to withhold certification where circumstances inconsistent with the statue so warrant until such circumstances have been resolved.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OLMS.

Type of Review: Extension.

Title of Collection: Protections for Transit Workers under Section 5333(b) Urban Program.

OMB Control Number: 1245–0006.

Form: N/A.

Affected Public: State, Local, and Tribal Governments; Labor Organizations; Transit Workers.

Total Estimated Number of Respondents: 1,500.

Frequency: Varies.

Total Estimated Number of Responses: 1,500.

Estimated Average Time per Response: 4 hours.

Total Estimated Annual Time Burden: 6,000 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3506(c)(2)(A)).

Karen Torre,

Chief of the Division of Interpretations and Regulations, Office of Labor-Management Standards, U.S. Department of Labor.

[FR Doc. 2022–27947 Filed 12–22–22; 8:45 am]

BILLING CODE 4510–86–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, 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 of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement with change of the ''Contingent Worker Supplement (CWS) to the Current Population Survey (CPS)'' to be conducted in July 2023. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before February 21, 2023.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this request for review is for the Bureau of Labor Statistics (BLS) to obtain clearance for a reinstatement with change for the Contingent Worker Supplement (CWS) to the Current Population Survey (CPS), which was last conducted in May 2017. The proposed CWS questions focus on contingent workers—those who do not expect their jobs to last or who report that their jobs are temporary—and workers in alternative employment arrangements, such as independent contractors, on-call workers, temporary help agency workers, and workers provided by contract firms.

Because this supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the supplement. Comparisons will be possible across characteristics such as sex, race and ethnicity, age, and educational attainment of the respondent.

The CWS will provide information on the number and characteristics of workers in contingent jobs and alternative employment arrangements. Although the CWS was fielded 5 times from 1995 to 2005 and then in May 2017, there have been no comparable and reliable statistics in recent years to show how the number and characteristics of these workers are changing over time. The July 2023 CWS will allow researchers and policy makers to evaluate how the number and characteristics of these workers has evolved. Policy makers also can use these data to inform the design of regulations for different types of workers.

BLS is proposing to add new questions and remove outdated questions to the CWS. New questions on task-based and app-based work are designed to provide insight into additional work arrangements like digital labor platform work. (This new content replaces the 2017 items on electronically-mediated employment.) The 2023 supplement will also ask about work arrangements on second jobs for multiple jobholders. Our data users noted the absence of information about second jobs as a particular shortcoming of prior supplements.

II. Current Action

Office of Management and Budget clearance is being sought for the CPS Contingent Worker Supplement to the CPS. A reinstatement with change of this previously approved collection, for which approval has expired, is needed to provide the Nation with timely information about contingent and alternative work arrangements.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Title of Collection: Contingent Worker Supplement (CWS) to the Current Population Survey (CPS).

OMB Number: 1220–0153.

Type of Review: Reinstatement, with change.

Affected Public: Households.

Total Respondents: 47,000.

Frequency: Once.

Total Responses: 47,000.

Average Time per Response: 6 minutes.

Estimated Total Burden Hours: 4,700 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on December 16, 2022.

Leslie A. Bennett,

Chief, Division of Management Systems.

[FR Doc. 2022–27949 Filed 12–22–22; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–18 and 50–185; NRC–2022–0210]

GE-Hitachi Nuclear Energy Americas, LLC; Vallecitos Boiling Water Reactor and the Empire State Atomic Development Agency Vallecitos Experimental Superheat Reactor; Limited Post-Shutdown Decommissioning Activities Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt; availability; request for comment.

SUMMARY: By letter dated September 21, 2022, as supplemented by letter dated November 22, 2022, GE-Hitachi Nuclear Energy Americas, LLC (GEH, the licensee) submitted to the U.S. Nuclear Regulatory Commission (NRC) a ''limited'' post-shutdown decommissioning activities report (LPSDAR) for the Vallecitos Boiling Water Reactor (VBWR) and the Empire State Atomic Development Agency Vallecitos Experimental Superheat Reactor (EVESR). The LPSDAR provides an overview of GEH's planned activities, schedule, projected costs, and environmental impacts for the decommissioning of the VBWR and EVESR. Accordingly, the NRC is noticing receipt of the LPSDAR and making it available for public comment.

DATES: Submit comments by April 24, 2023. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. See section III, ''Request for Comment,'' of this document for additional information.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0210. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jack D. Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone: 301–415–6634; email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0210 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0210.

• *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 PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0210 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

The VBWR, NRC License No. DPR–1, and EVESR, NRC License No. DR–10, are licensed as nuclear power reactors under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities.'' The reactors are located at the GEH Vallecitos Nuclear Center (VNC) in Alameda County, California. The VBWR is considered to have permanently ceased operations on September 9, 1965, upon issuance of a possession-only license by NRC. Likewise, EVESR was considered permanently shut-down upon issuance of its possession-only license on April 15, 1970. The spent nuclear fuel from each reactor has been permanently removed from the VNC site.

The regulations in 10 CFR 50.82, ''Termination of license,'' govern the decommissioning of nuclear reactor facilities licensed by the NRC. Documents equivalent to decommissioning plans for the VBWR and EVESR were submitted to the NRC on March 21, 1991 (ADAMS Accession Nos. ML20021A155 and ML20021A144, respectively). Paragraph (a)(4)(i) of 10 CFR 50.82, ''Termination of license,'' states that a Post-Shutdown Decommissioning Activities Report (PSDAR) shall be submitted prior to or within 2 years following permanent cessation of operations. However, since the decommissioning plans for the VBWR and EVESR were submitted before the regulations in 10 CFR 50.82 were first promulgated in 1996, the licensee was exempted from submitting PSDARs. The first paragraph of 10 CFR 50.82 describes that decommissioning plans submitted before the effective date of the rule, August 28, 1996 (61 FR 39278), are considered to be the PSDAR submittals for those reactors.

However, on September 21, 2022, as supplemented on November 22, 2022 (ADAMS Package Accession No. ML22326A351), GEH submitted a LPSDAR, for the VBWR and EVESR. A PSDAR is a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements, and a site-specific decommissioning cost estimate. Although not required to submit PSDARs for the VBWR and EVESR because of the previously submitted decommissioning plans, GEH prepared a LPSDAR according to the requirements of 10 CFR 50.82(a)(4)(i) and the NRC's guidance for PSDARs in Regulatory Guide 1.185, Revision 1, ''Standard Format and Content for Post-Shutdown Decommissioning Activities Report,'' (ADAMS Accession No. ML13140A038) and submitted to the NRC on September 21, 2022. This was done to demonstrate how GEH would comply with the requirements of 10 CFR 50.82(a)(6) and 10 CFR 50.82(a)(7) which do apply to the decommissioning of the VBWR and EVESR. The requirements of 10 CFR 50.82(a)(6) and 10 CFR 50.82(a)(7) restrict the decommissioning activities that can be performed and require GEH to notify NRC of any changes to the decommissioning activities that are inconsistent with those described in the PSDAR.

While the requirements of a PSDAR submittal do not apply to the LPSDAR submittal for the VBWR and EVESR, including the requirements for NRC to notice receipt of the PSDAR, make it available for public comment, and to hold a public meeting in the vicinity of

the site, NRC is noticing receipt of the LPSDAR and making it available for public comment to enhance transparency and provide for public participation in our regulatory activities in accordance with NRC's approach to open government. While NRC will not be holding a public meeting in conjunction with this LPSDAR submittal, there will be public meetings held when GEH submits a License Termination Plan (LTP) for the VBWR by September 8, 2023, and by April 15, 2028, for the EVESR in accordance with 10 CFR 50.82(a)(9)(i) which requires LTPs to be submitted at least 2 years before termination of the license, and 10 CFR 50.82(a)(3) which requires that power reactor decommissioning be complete within 60 years of the permanent cessation of operations. An LTP must include a site characterization, identification of remaining dismantlement activities, plans for site remediation and the final radiation survey, an updated site-specific estimate of remaining decommissioning costs, a supplement to the environmental report describing any new information or significant environmental change associated with the proposed license termination activities, and identification of any parts of the site that were released for use before approval of the LTP.

III. Request for Comment

The VBWR and EVESR LPSDAR is available in ADAMS under Package Accession No. ML22264A324. The NRC is requesting public comments on the LPSDAR for the VBWR and EVESR by April 24, 2023. The NRC will review the LPSDAR to the requirements of a PSDAR and send a letter to GEH with the results of our evaluation, and the consideration of any public comments.

Dated: December 20, 2022.

For the Nuclear Regulatory Commission.

Shaun M. Anderson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–27987 Filed 12–22–22; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; Systems of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Pension Benefit Guaranty Corporation (PBGC) is proposing changes to a system of records notice (SORN). PBGC is updating the Official Address to reflect PBGC's new headquarters location, adding a routine use and modifying other routine uses, updating categories of records, sources of records, and other administrative changes.

DATES: The new routine use and modifications of other routine uses described herein will become effective January 23, 2023, without further notice, unless comments result in a contrary determination and a notice is published to that effect. Comments must be received on or before January 23, 2023 to be assured of consideration.

ADDRESSES: You may submit written comments to PBGC by any of the following methods:

- *Federal eRulemaking Portal:* Follow the website instructions for submitting comments at *http://www.regulations.gov.*
- *Email: reg.comments@pbgc.gov.* Refer to SORN in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through U.S. mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and reference this notice. Comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–326–4040 during normal business hours. (If you are deaf, or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.)

FOR FURTHER INFORMATION CONTACT: Shawn Hartley, Chief Privacy Officer, Pension Benefit Guaranty Corporation, Office of the General Counsel, 445 12th Street SW, Washington, DC 20024–2101, 202–229–6321. For access to any of PBGC's systems of records, contact D. Camilla Perry, Disclosure Officer, Office of the General Counsel, Disclosure Division, 445 12th Street SW, Washington, DC 20024–2101, or by calling 202–229–4040, or go to *https://www.pbgc.gov/about/policies/pg/privacy-at-pbgc/system-of-records-notices.* If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

(1) PBGC is proposing to update the Official Addresses, the citation to the Contesting Records Procedures section, and to clarify the Policies and Practices for Retention and Disposal of Records section.

PBGC is updating the Official Address to reflect PBGC's new headquarters location. When PBGC reviewed and revised its system of records notices in 2018, it inadvertently dropped the citation to its regulations that explain the process to contest information contained in records maintained by PBGC. PBGC is adding the citation to 29 CFR 4902.5 to the Contesting Records Procedures section of this SORN. Additionally, upon review, it was noticed that the Routine Uses section contained a typographical error. PBGC is amending the Privacy Act citation, changing it from 5 U.S.C. 522a(b) to 5 U.S.C. 552a(b).

PBGC is also clarifying the procedures outlined in Policies and Practices for Retention and Disposal of Records in accordance with NARA (44 U.S.C. 3301, *et seq.*). Finally, PBGC is updating the citation to the last time PBGC published this SORN.

(2) PBGC is proposing to amend the purpose of the system, categories of records contained in the system, amend the record source categories, amend one routine use, and add one routine use to PBGC–6: Plan Participant and Beneficiary Data.

PBGC is proposing the following revisions to PBGC–6: Plan Participant and Beneficiary Data (last published at 83 FR 6256 (February 13, 2018)): Amend the purpose of the system of records; categories of records contained in the system; amend the record source categories; amend one routine use; and add one new routine use.

PBGC is proposing to amend the purpose of the system of records to include ''providing routine customer service; verifying the identity of participants, alternate payees, beneficiaries, spouses and authorized agents,'' which will permit PBGC to use

the information contained within the system of records to verify an individual's identity to determine whether they are authorized to access or modify records within the system or records.

PBGC is proposing to amend the categories of records contained in the system of records by adding ''tax identification numbers'' and clarifying that debts owed are those debts owed to the Federal Government.

PBGC is proposing the amendment of Routine Use 17, which currently permits disclosure to third parties that provide locator services when PBGC has no address on file or mail has been returned as undeliverable. After review of the routine use and agency practices, PBGC is clarifying that other Federal agencies may be one of the third parties that provide locator services to PBGC and that PBGC may need to use locator services when it is unable to make benefit payments because the agency is unable to confirm that an address is current or correct. The amended portions of Routine Use 17 will indicate that ''other Federal agencies'' may provide locator services and that PBGC may use these services if it has been ''unable to make benefit payments to those participants, beneficiaries, and alternate payees because the address on file is unable to be confirmed as current or correct.''

PBGC is proposing the addition of a Routine Use 20, which will read, ''Names and addresses may be disclosed to licensees of the United States Postal Service (USPS) to obtain current addresses under the USPS's National Change of Address Linkage System (NCOA). Disclosure will be made only under a contract that binds the licensee of the USPS and its employees to the civil and criminal penalties of the Privacy Act. The contract must provide that the records disclosed by PBGC are used exclusively for updating addresses under NCOA and must be returned to PBGC or destroyed when the process is completed. The records will be exchanged electronically in an encrypted format.'' This routine use is necessary as it allows PBGC to use the USPS records to locate participants and beneficiaries it might not otherwise be able to locate.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on the proposed changes described in this notice. A report has been sent to Congress and the Office of Management and Budget for their evaluation.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

SYSTEM NAME AND NUMBER:

PBGC–6: Plan Participant and Beneficiary Data—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 445 12th Street SW, Washington, DC 20024–2101, and/or PBGC Field Offices (Field Benefit Administration), plan administrator worksites, and paying agent worksites. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Benefits Administration, Office of Benefits Administration, PBGC, 445 12th Street SW, Washington, DC 20024–2101.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1341, 1342, and 1350; 26 U.S.C. 6103; 44 U.S.C. 3101; 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for use in determining whether participants, alternate payees, beneficiaries, spouses and domestic partners are eligible for benefits under plans covered by *the Employee Retirement Income Security Act (*ERISA*);* determining supplemental payments to be paid to those persons by a party other than PBGC; determining the amounts of benefits to be paid, making benefit payments; *providing routine customer service, verifying the identity of participants, alternate payees, beneficiaries, spouses and authorized agents;* collecting benefit overpayments; and complying with statutory and regulatory mandates.

Names, addresses, and telephone numbers are used to survey customers to measure their satisfaction with PBGC's benefit payment services and to track (for follow-up) those who do not respond to surveys.

*De-identified, aggregated i*nformation from this system may be used for research into, and statistical information about, benefit determinations for actuaries and publications.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, beneficiaries, spouses and domestic partners in terminated and non-terminated retirement plans covered by ERISA, and other individuals who contact PBGC regarding benefits they may be owed from PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; addresses; telephone numbers; email addresses; gender; social security numbers and other Social Security Administration information; *tax identification numbers;* dates of birth and death; dates of hire, termination, and retirement; salary; employment history; marital status; domestic relations orders; time of plan participation; eligibility status; pay status; benefit data, including records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated retirement plans; powers of attorney; insurance information where plan benefits are provided by private insurers; medical records; disability information; retirement plan names and numbers; correspondence; initial and final PBGC determinations (see, 29 CFR 4003.21 and 4003.59); and other records relating to debts owed to *the Federal Government.*

RECORD SOURCE CATEGORIES:

Plan administrators; participants, spouses, alternate payees, beneficiaries, and other individuals who contact PBGC regarding benefits they may be owed from PBGC; *collectively bargained labor organizations; insurance companies; locator services (such as credit reporting agencies and debt collection firms or agencies, to locate participants, beneficiaries, and alternate payees);* agents listed on release forms or power of attorneys; PBGC Field Office; the Social Security Administration (SSA); the Federal Aviation Administration (FAA); *and other Federal agencies.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. *552a*(b), and:

1. General Routine Uses G1, G2, G4 through G7, *and* G9 through *G*14, apply to this system of records (see Prefatory Statement of General Routine Uses *at 83 FR 6247, 6252 (February 13, 2018)*).

2. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, *collectively bargained labor organizations,* or trustees:

a. To enable these third parties to make or determine benefit payments, or

b. To report to the Internal Revenue Service (IRS) the amounts of benefits

paid (or required to be paid) and taxes withheld.

3. A record from this system may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same control group.

4. A record from this system may be disclosed, upon request, for a purpose authorized under ERISA, to an official of a labor organization recognized as the current or former collective bargaining representative of the individual about whom a request is made.

5. Payees' names, addresses, telephone numbers, and information related to how PBGC determined that a debt was owed by such payees to PBGC may be disclosed to the Department of the Treasury or a debt collection agency or to collect a claim. Disclosure to a debt collection agency may be made only under a contract issued by the Federal government that binds any such contractor or employee of such contractor to the penalties of the Privacy Act. The information so disclosed will be used exclusively pursuant to the terms and conditions of such contract and will be used solely for the purposes prescribed therein. The contract must provide that the information so disclosed will be returned at the conclusion of the debt collection effort.

6. The name and social security number of a participant employed or formerly employed as a pilot by a commercial airline may be disclosed to the Federal Aviation Administration to obtain information relevant to the participant's eligibility or continued eligibility for disability benefits.

7. The name of a participant's plan, the actual or estimated amount of a participant's benefit under ERISA, the form(s) in which the benefit is payable, and whether the participant is currently receiving benefit payments under the plan or (if not) the earliest date(s) such payments could commence may be disclosed to the participant's spouse, domestic partner, former spouse, former domestic partner, child, or other dependent solely to obtain a qualified domestic relations order under 29 U.S.C. 1056(d) and 26 U.S.C. 414(p). PBGC will disclose the information only upon the receipt of a written request by a prospective alternate payee, or the alternate payee's representative, that describes the requester's relationship to the participant and states that the information will be used solely to obtain a qualified domestic relations order under state domestic relations law. PBGC will notify the participant of any information disclosed to a prospective alternate payee or their representative under this routine use.

8. Information from an initial benefit determination under 29 CFR 4003 (excluding the participant's address, telephone number, social security number, and any sensitive medical information) may be disclosed to an alternate payee, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414, *et seq.,* to explain how PBGC determined the benefit due the alternate payee so that the alternate payee can pursue an administrative appeal of the benefit determination under 29 CFR 4003, *et seq.* PBGC will notify the participant of the information disclosed to an alternate payee or their representative under this routine use.

9. Information from an alternate payee's initial benefit determination under 29 CFR 4003.1 (excluding the alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how PBGC determined the benefit due to the alternate payee so that the participant may pursue an administrative appeal of the benefit determination under 29 CFR 4003, *et seq.* PBGC will notify the alternate payee of the information disclosed to a participant or their representative under this routine use.

10. Information used in calculating the benefit, or share of the benefit, of a participant or alternate payee (excluding the participant's or alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant or an alternate payee, or their representative, when (a) a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) affects the calculation of the benefit, or share of the benefit, of the participant or alternate payee; and (b) the information is needed to explain to the participant or alternate payee how PBGC calculated the benefit, or share of the benefit, of the participant or alternate payee. PBGC will notify the participant or the alternate payee, or their representative, as appropriate, of the information disclosed to the participant or the alternate payee, or their representative, under this routine use.

11. The names, addresses, social security numbers, dates of birth, and the pension plan name and number of eligible PBGC pension recipients may be disclosed to the Department of the Treasury and the Department of Labor to implement the income tax credit for health insurance costs under 26 U.S.C. 35 and the program for advance payment of the tax credit under 26 U.S.C. 7527.

12. Names, addresses, social security numbers, and dates of birth of eligible PBGC pension recipients residing in a particular state may be disclosed to the state's workforce agency if the agency received a National Dislocated Worker Grant from the Department of Labor under the Workforce Innovation and Opportunity Act of 2014 to provide assistance and support services for state residents under 29 U.S.C. 3225.

13. Payees' names, social security numbers, and dates of birth may be provided to the Department of the Treasury's Bureau of the Fiscal Service, the Social Security Administration, the Internal Revenue Service, or a third party with whom PBGC has a contractual relationship, to verify payees' eligibility to receive payments.

14. Names and social security numbers of participants and beneficiaries may be provided to the Department of the Treasury, the Department of the Treasury's financial agent, and the Federal Reserve Bank for the purpose of learning which of PBGC's check payees have electronic debit card accounts used for the electronic deposit of Federal benefit payments, for establishing electronic debit card accounts for eligible participants and beneficiaries, and for administering payments to participants and beneficiaries who have selected this method of payment.

15. Information relating to revocation of a power of attorney may be disclosed to the former agent that was named in the revoked power of attorney.

16. With the exception of third-party social security numbers, all beneficiary information contained in the participant file (such as: names, addresses, phone numbers, email addresses and dates of birth) provided by the subject of the record may be disclosed to the subject of the record, upon written request to the Disclosure Officer in accordance with the Record Access Procedure outlined below.

17. Names, social security numbers, last known addresses, dates of birth and death, amount of benefit, plan name, plan EIN/PIN number, name of plan sponsor, and the city and state of the plan sponsor of plan participants and beneficiaries may be disclosed to third parties, with whom PBGC has a contractual relationship, that provide locator services (including credit reporting agencies, debt collection

firms, *or other Federal agencies*) to locate participants and beneficiaries. Such information will be disclosed only if PBGC has no address for an individual, if mail sent to the individual at the last known address is returned as undeliverable, *if PBGC has been unable to make benefit payments to those participants, beneficiaries, and alternate payees because the address on file is unable to be confirmed as current or correct or if PBGC has been otherwise unsuccessful at contacting the individual.* Disclosure may be made only under a contract that subjects the firm or agency providing the service and its employees to the *civil and* criminal penalties of the Privacy Act. The information so disclosed will be used exclusively pursuant to the terms and conditions of such contract and will be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed must be returned or destroyed at the conclusion of the locating effort.

18. Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.

19. A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

20. Names and addresses may be disclosed to licensees of the United States Postal Service (USPS) to obtain current addresses under the USPS's National Change of Address Linkage System (NCOA). Disclosure may be made only under a contract that binds the licensee of the USPS and its employees to the civil and criminal penalties of the Privacy Act. The contract must provide that the records disclosed by PBGC will be used exclusively for updating addresses under NCOA and must be returned to PBGC or destroyed when the process is completed. The records will be exchanged electronically in an encrypted format.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: name; social security number; customer identification number; address; date of birth; or date of death.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA. *Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media practice for participant systems and will be maintained in accordance with PBGC Records Schedule Item 2.1: Plan, Participant, and Insurance Records.*

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

Paper and electronic records that contain *Fed*eral *T*ax *I*nformation are stored under procedures that meet IRS safeguarding standards, as reflected in IRS Publication 1075, and are kept in file folders in areas of restricted access that are locked after office hours.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4 or to amend records pertaining to themselves in accordance with 29 CRF 4902.5, should submit a written request to the Disclosure Officer, PBGC, 445 12th Street SW, Washington, DC 20024–2101, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request, *in accordance with 29 CFR 4902.5,* identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 445 12th Street SW, Washington, DC 20024–2101, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC: 6, Plan Participant and Beneficiary Data (last published at *83 FR 6247, 6256* (*February 13, 2018*)).

[FR Doc. 2022–27986 Filed 12–22–22; 8:45 am]

BILLING CODE 7709–02–P

POSTAL SERVICE

Notice of New System of Records; Response to Comments

AGENCY: Postal Service®.

ACTION: Notice of new system of records; response to comments.

SUMMARY: The United States Postal Service® (USPS) is responding to public comments regarding the creation of a new Customer Privacy Act System of Records (SOR) 845.000, Commercial Mail Receiving Agency (CMRA) Records. This new SOR was created to consolidate all CMRA paper and electronic records under one new and dedicated SOR in support of a future planned initiative to centralize CMRA records into an electronic database and improve the security of the In-Person enrollment process. There will be no changes to the new system of records or to the effective date of September 30, 2022, in light of public comments received.

DATES: The new Customer Privacy Act SOR, USPS 845.000, Commercial Mail

Receiving Agency (CMRA) Records, Document Citation 87 FR 53512, was originally scheduled to be effective on September 30, 2022, without further notice. After review and evaluation of comments received, the Postal Service has found that no substantive changes to the system of records is required, and that the effective date for the new SOR should proceed as scheduled to meet Privacy Act requirements.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, via *uspsprivacyfedregnotice@usps.gov.*

SUPPLEMENTARY INFORMATION: On August 30, 2022, the Postal Service published a **Federal Register** notice about its intent to create a new system of records, USPS SOR 845.000, CMRA Records, to provide notice to the public and to support the future planned initiative to centralize CMRA records into an electronic database and improve the security of the In-Person enrollment process. The publication of an SOR in the **Federal Register** complies with Privacy Act requirements to promote transparency and provide notice to individuals about the maintenance of a System of Records by a Federal agency, including but not limited to information that will be collected and stored, what it will be used for, the authority for collection and usage of the information, how the information may be disclosed and how long it will be retained.

The Postal Service provides the following responses to the comments received pursuant to its **Federal Register** notice, Document Citation 87 FR 53512, for the creation of the new SOR, USPS 845.000, Commercial Mail Receiving Agency (CMRA) Records. The Postal Service is voluntarily responding to the questions below that are not directly related to the content or effective date of the CMRA SOR, but rather to the future implementation of the new CMRA Customer Registration Database (CRD) program initiative.

Question 1: What is the expected rollout time for implementation of the SOR, and what transition period will be granted to CMRAs to comply with the Notice?

Response: The effective date of the CMRA SOR is separate and distinct from the planned implementation and roll-out dates for the Commercial Mail Receiving Agency (CMRA) Customer Registration Database (CRD) program initiative. Due to the nature and context of the question, the Postal Service interprets this question to ask about the CMRA program. The Postal Service plans to launch the new Commercial Mail Receiving Agency (CMRA) Customer Registration Database (CRD) in the middle of calendar year 2023. The USPS anticipates a 9-month implementation period following an initial pilot.

Question 2: Is the Business Customer Gateway portal ready for usage?

Response: The Business Customer Gateway (BCG) is already an established application. The CMRA CRD is a new application that will launch in the middle of calendar year 2023.

Question 3: How will this (implementation plans) be communicated to the CMRA owners and managers?

Response: Each CMRA owner will receive mailed information from the Postal Service detailing the procedures for registration and access to the new CMRA CRD during the implementation period.

Question 4: We wish to clarify whether under the Notice, only the back end of the CMRA enrollment process will be enhanced by requiring the CMRA to upload the information stated on the USPS Form 1583 to the SOR via the BCG, or will walk-in and Remote Online Notary (RON) procedures be affected as well?

Response: The planned CMRA CRD program initiative does not eliminate the option for walk in or notary certification of PS Form 1583. Instead, the new process disclosed in the CMRA SOR supports the future initiative, which replaces the current paper-based system of record, with an online repository of the information contained on PS Form 1583.

Question 5: Is USPS 845.000 replacing the current notarized USPS Form 1583 process, or will it only enhance the alternative in-person option which shall continue to run alongside the current notarized USPS Form 1583 process?

Response: The CMRA CRD program initiative is replacing the current paper-based system at the Postal Service with an online repository of the information contained on PS Form 1583.

Question 6: Under the Notice, will notarization of the USPS Form 1583 continue to serve as the final requirement for approval of the CMRA account of the customer, or will the enhancement include the USPS applying further supervision for inspection/verification/validation purposes via the SOR to potentially reject enrolled customers who have submitted IDs and a notarized USPS Form 1583?

Response: Notarization of the USPS PS Form 1583 is not a requirement for approval of a CMRA customer account. The notarization of USPS Form 1583 is, and will remain, an option for an applicant of a CMRA customer account who is not able to sign their application in the presence of the CMRA owner/manager.

However, as part of the administration of the CMRA program, the Postal Service will periodically inspect and verify identification documents for accurate data entry and refer inaccurate entries back to the Commercial Mail Receiving Agency (CMRA) for correction. A Private Mailbox (PMB) may be closed for failure to provide accurate identification information or illegal activity.

Question 7: Once the SOR is established and CMRA customer data will be electronically accessible and verifiable to the USPS and CMRA via the SOR and BCG, will the SOR enhancement allow CMRA customers (*e.g.* people with multiple homes/businesses) to enroll for multiple CMRA accounts at different CMRA locations based upon the original (and valid) ID documentation already approved and uploaded to the SOR for the customer's initial enrollment, or will customers need to notarize a separate USPS Form 1583 and submit IDs for each CMRA account they wish to open?

Response: The CMRA program will require the completion of a separate PS Form 1583 for each rented PMB.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27992 Filed 12–22–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service® (USPS®) is proposing to revise one General Privacy Act Systems of Records (SOR) 500.000 Property Management Records and one Customer Privacy Act Systems of Records (SOR) 890.000 Sales, Marketing, Events, and Publications. These updates are being made to facilitate the implementation of enhanced functionality for web-based collaboration and communication applications.

DATES: These revisions will become effective without further notice on January 23, 2023, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*uspsprivacyfedregnotice@usps.gov*). Arrangements to view copies of any written comments received, to facilitate public inspection, will be made upon request.

SUPPLEMENTARY INFORMATION:

I. Background

The Postal Service is proposing to enhance the functionality of a web-based collaboration and communication application used enterprise wide for online web-based meetings through the implementation of software upgrades. Notice of proposed modifications to relevant SORs is being provided to meet Privacy Act requirements and promote transparency.

Notices for the original implementation of these applications were previously published in the **Federal Register** on June 1, 2020.

- *Document Citation:* 85 FR 33212 for SOR 500.000 Property Management Records
- *Document Citation:* 85 FR 33208 for SOR 890.000 Sales, Marketing, Events, and Publications

In addition, selected information is being deleted from SOR 500.000 Property Management Records, as it was previously incorporated into three new General Systems of Records:

USPS System of Records (SOR) 550.000 Commercial Information Technology Resources—Infrastructure May 10th, 2021; 86 FR 24907; January 31, 2022; Document Citation: 87 FR 4961

USPS System of Records (SOR) 550.100 Commercial Information Technology Resources—Applications May 11, 2021; 86 FR 25899; January 31, 2022; Document Citation: 87 FR 4957

USPS System of Records (SOR) 550.200 Commercial Information Technology Resources—Administrative May 10th, 2021; 86 FR 24902; January 31, 2022, Document Citation: 87 FR 4964

For further information contact, Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, *uspsprivacyfedregnotice@usps.gov.*

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing to modify SOR 500.000 as follows:

Existing purposes and categories of records will be deleted or modified from the existing SOR to eliminate duplication within the three separate SORs listed above.

The following purpose will be removed from this SOR:

To allow task allocation and tracking among team members.

The following purpose will strike ''by telephone and instant-messaging'' from its current language:

To allow users to communicate by telephone and instant-messaging through web-based applications.

The following categories of records will be modified to include new data elements:

Participant session data from web-based meetings and web conferences

Device data from web-based meetings and web conferences (formerly Historical device usage data from web-based meetings and web conferences)

One new purpose will be added to the existing SOR, appearing as purpose 12 within the revised list of purposes.

New categories of records will be added to the existing SOR, appearing as numbers 5. 7, 8, 9, 10, and 11.

The Postal Service is proposing to modify SOR 890.000 as follows:

Existing purposes and categories of records will be deleted or modified from the existing SOR to eliminate duplication within the three separate SORs listed above.

The following purpose will be removed from this SOR:

To allow task allocation and tracking among team members.

The following purpose will strike ''by telephone and instant-messaging'' from its current language:

To allow users to communicate by telephone and instant-messaging through web-based applications.

One new purpose has been added to the existing SOR appearing as purpose 10.

The following categories of records will be modified to include new data elements:

Participant session data from web-based meetings and web conferences

Device data from web-based meetings and web conferences (formerly Historical device usage data from web-based meetings and web conferences)

New categories of records will be added to the existing SOR, appearing as numbers 12, 13, 14, 15, and 16.

The following categories of records will be removed from this SOR:

Event session data from web-based meetings and web conferences

Historical application usage data from web-based meetings and web conferences

Web-based Public Switched Telephone Network data records

Web-based Direct Routing Public Switched Telephone Network records

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a (e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights.

The notices for modifications to USPS SOR 500.000, Property Management Records and USPS SOR 890.000, Sales, Marketing, Events, and Publications are provided below in their entirety, as follows:

SYSTEM NAME AND NUMBER:

USPS 500.000, Property Management Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and contractor sites.

SYSTEM MANAGER(S):

For records of accountable property, carpool membership, and use of USPS parking facilities: Vice President, Facilities, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

For records of building access and Postal Inspector computer access authorizations: Chief Postal Inspector, Inspection Service, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

For other records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S) OF THE SYSTEM:

1. To ensure personal and building safety and security by controlling access to USPS facilities.

2. To ensure accountability for property issued to persons.

3. To assign computer logon IDs; to identify USPS computer users to resolve their computer access problems by telephone; and to monitor and audit the use of USPS information resources as necessary to ensure compliance with USPS regulations.

4. To enable access to the USPS meeting and video web conferencing applications.

5. To enhance your online meeting experience by utilizing enhanced features and functionality, including voluntary polling to gather responses from attendees to generate reports or the interactive chat feature.

6. To facilitate team collaboration and communication through information sharing and cross-functional participation.

7. To allow users to communicate through web-based applications.

8. To facilitate and support cybersecurity investigations of detected or reported information security incidents.

9. To share your personal image via your device camera during meetings and web conferences,

if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.

10. To authenticate user identity for the purpose of accessing USPS information systems.

11. To provide parking and carpooling services to individuals who use USPS parking facilities.

12. To provide pre-registration for guest access to online meetings and web conferences

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals who are granted regular access to USPS facilities through the issuance of a building access badge, or who are assigned accountable property.

2. Individuals with authorized access to USPS computers and information resources, including USPS employees, contractors, and other individuals; Individuals participating in web-based meetings, video conferences, collaboration, and communication applications.

3. Individuals who are members of carpools with USPS employees or otherwise regularly use USPS parking facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Building access information:* Records related to issuance of building access badges, including name, Social Security Number, Employee Identification Number, date of birth, photograph, postal assignment information, work contact information, finance number(s), duty location, and pay location.

2. *Property issuance information:* Records related to issuance of accountable USPS property, equipment, and controlled documents, including name, Social Security Number, equipment description, equipment serial numbers, and issuance date.

3. *Computer access authorization information:* Records related to computer users, including logon ID, Social Security Number, Employee Identification Number, or other assigned identifier, employment status information or contractor status information, and extent of access granted.

4. *Participant session data* from *web-based meetings and web conferences:* Participant Name, Participant's Webcam-Generated Image (Including Presenters), Recorded Participant Audio, Video, And Shared Meeting Screen Content, Chat Interaction, Polling Questions And Associated Responses, Participant Join Time And Leave Time, Meeting Duration, Participant Location, Participant Media Hardware Information, Participant Job Information, Participant Stated Locale, Participant Connection Type, Participant Data Center, Participant Device Type, Participant Domain, Participant Full Data Center, Participant Hard Disk ID, Participant ID, Participant IP Address, Participant Join Time, Participant Camera Name, Participant MAC Address, Participant Microphone Name, Participant Network Type, Participant PC Name, Participant Role, Participant Share Settings, Participant Speaker Name, Participant Status, Participant User ID, Participant User Name, Participant Zoom, Participant SIP URL, Participant Leave Reason, Participant AS Input, Participant AS Output, Participant Audio Input, Participant Audio Output, Participant CPU Usage, Participant Video Input, Participant Video Output, Participant Quality, Participant Sharing Details, Participant Recording Details.

5. *Web-Based Meeting And Web Conference Application Data:* In-Meeting Messages, Meeting Transcriptions, Written Feedback Responses, Invitation Tails, Meeting Name, Chat Name, Meeting Agenda, Meeting Host, Meeting Department, Meeting Duration, Meeting Email, Meeting End Time, Meeting Media Settings, Meeting ID, Meeting Participants, Meeting Participants In Room, Meeting Start Time, Meeting Topic, Meeting Tracking Fields, Meeting User Type, Meeting UU ID, Meeting Audio Quality, Meeting Video Quality, Meeting Screen Share Quality, Meeting Duration, Meeting Contacts, Meeting Contact Email, Meeting Settings.

Web Conferences Custom Keys, Web Conferences Department, Web Conferences Duration, Web Conferences Email, Web Conferences End Time, Web Conferences Settings, Web Conferences ID, Web Conferences Participants, Web Conference Start Time, Web Conferences Topic, Web Conferences User Type, Web Conferences UU ID, Web Conferences Audio Quality, Web Conferences Video Quality, Web Conferences Screen Share Quality, Web Conferences Host Name, Web Conferences Participant Camera Name, Web Conferences Participant Connection Type, Web Conferences Participant Data Center, Web Conferences Participant Device Type, Web Conferences Participant Domain, Web Conferences Participant From SIP Uri, Web Conferences Participant Full Data Center, Web Conferences Participant Hard Disk ID, Web Conferences Participant ID, Web Conferences Participant IP Address, Web Conferences Participant Join Time, Web Conferences Participant Leave Reason, Web Conferences Participant Leave Time, Web Conferences Participant Location, Web Conferences Participant MAC Address, Web Conferences Participant Microphone Name, Web Conferences Participant Network Type, Web Conferences Participant PC Name, Web Conferences Participant Role, Web Conferences Participant Share Settings, Web Conferences Participant SIP URI, Web Conferences Participant Speaker Name, Web Conferences Participant Status, Web Conferences Participant User ID, Web Conferences Participant User Name, Web Conferences Participant Version, Web Conferences Participant AS Input, Web Conferences Participant AS Output, Web Conferences Participant Audio Input, Web Conferences Participant Audio Output, Web Conferences Participant CPU Usage, Web Conferences Participant Video Input, Web Conferences Participant Video Output, Web Conferences Participant Recording Details, Web Conferences Participant Sharing Details, Web Conferences Participant Customer Key, Web Conferences Poll Title, Web Conferences Poll Status, Web Conferences Poll Start Time, Web Conferences Q&A Question Email, Web Conferences Q&A Question Name, Web Conferences Q&A Question Details, Web Conferences Q&A Question Start Time, Web Conferences Registrant Address, Web Conferences Registrant City, Web Conferences Registrant Comments, Web Conferences Registrant Country, Web Conferences Registrant Create Time, Web Conferences Registrant Custom Questions, Web Conferences Registrant Email, Web Conferences Registrant Name, Web Conferences Registrant ID, Web Conferences Registrant Industry, Web Conferences Registrant Join URL, Web Conferences Registrant Job Title, Web Conferences Registrant Number Of Employees, Web Conferences Registrant

Organization, Web Conferences Registrant Phone, Web Conferences Registrant Purchasing Time Frame, Web Conferences Registrant State, Web Conferences Registrant Status, Web Conferences Registrant ZIP Code, Web Conferences Poll Results, Web Conferences Panelist Email, Web Conferences Panelist Name.

Meeting Registrant Name, Meeting Registrant Email, Meeting Invitation Text, Meeting Attendee Name, Meeting Attendee Join URL, Meeting Registrant Address, Meeting Registrant City, Meeting Registrant Comments, Meeting Registrant Country, Meeting Registrant Create Time, Meeting Registrant Custom Questions, Meeting Registrant Email, Meeting Registrant Name, Meeting Registrant ID, Meeting Registrant Industry, Meeting Registrant Job Title, Meeting Registrant Number Of Employees, Meeting Registrant Organization, Meeting Registrant Phone Number, Meeting Registrant Purchasing Time Frame, Meeting Registrant Role In Purchase Process, Meeting Registrant State, Meeting Registrant Status, Meeting Registrant ZIP Code, Meeting Registrant Language, Meeting Registrant Join URL, Meeting Attendee Poll Response, Meeting Attendee Department.

Cloud Recording Registrant City, Cloud Recording Registrant Comments, Cloud Recording Registrant Country, Cloud Recording Registrant Create Time, Cloud Recording Registrant Custom Questions, Cloud Recording Registrant Email, Cloud Recording Registrant Name, Cloud Recording Registrant ID, Cloud Recording Registrant Industry, Cloud Recording Registrant Job Title, Cloud Recording Registrant Number of Employees, Cloud Recording Registrant Organization, Cloud Recording Registrant Phone, Cloud Recording Registrant Purchasing Time Frame, Cloud Recording Registrant Role in Purchase Process, Cloud Recording Registrant Share URL, Cloud Recording Registrant Status, Cloud Recording Registrant ZIP Code, Cloud Recording Registrant Address, Cloud Recording Registrant State, Cloud Recording Registrant Meeting ID, Cloud Recording Registrant Field Name, Cloud Recording Registrant List of Registrants.

6. *Device Data From Web-Based Meetings And Web Conferences:* Device type (such as mobile, desktop, or tablet), Device Operating System, Number of users of related Operating Systems, Operating System Version, Operating System Type, MAC address, IP address, hard disk ID, PC Name, Bluetooth Information, Packet Loss, internet Connection Type, Bluetooth Device Name, Bluetooth Device Type, Device Architecture, Central Processing Unit (CPU) Core Type, CPU core frequency, CPU Brand, Available Memory, Total CPU Capacity, Total Capacity Utilized by Application, Memory Used by Application, API Permissions, API Authentication, Authentication Secret Key, Graphics Processing Unit (GPU) Brand, GPU Type, Custom Attributes Defined by Organization, Archived Meeting Files, Archive Meeting Account Name, Archived Meeting File Download User, Archived Meeting File Extension, Archived Meeting File Size, Archived Meeting File Type, Archived Meeting File ID, Archived Meeting File Participant Email, Archived Meeting Participant Join Time, Archived Meeting Participant Leave Time, Archived Meeting File Recording Type, Archived Meeting File Status, Archived Meeting Complete Time, Archived Meeting Complete Time Duration, Archived Meeting Duration, Archived Meeting Duration In Seconds, Archived Meeting Host ID, Archived Meeting ID, Archived Meeting Settings, Archived Meeting Type, Archived Meeting Recording Count, Archived Meeting Start Time, Archived Meeting Topic, Archived Meeting Total Size, Archived Meeting UU ID, Past Meeting Participant ID, Past Meeting Participant Name, Past Meeting Participant Email, SIP Phone Authorization Name, SIP Phone Domain, SIP Phone ID, SIP Phone Password, SIP Phone Proxy Servers, SIP Phone Register Servers, SIP Phone Registration Expire Time, SIP Phone Transport Protocols, SIP Phone User Email, SIP Phone User Name, SIP Phone Voice Voicemail.

7. *User Data From Web-Based Meetings And Web Conferences:* User Creation Date, User Department, User Email Address, User Employee ID, User Name, User System ID, User Chat Group Ids, User System Client Version, User Last Login Time, User Picture URL, User PMI, User Status, User Timezone, User Type, User Verified Status, User Password, User JID, User Language, User Manager, User Personal Meeting URL, User Role ID, User Role Name, User Use PMI Status, User Phone Country, User Company, User Custom Attributes, User CMS User ID, User Pronouns, User Vanity Name, User Assistant Email, User Assistant ID, User Permissions, User Presence Status, User Scheduler Email, User Scheduler ID, User Settings, User Token, User Meeting Minutes, User Number Of Meetings, User Participant Number, User's Web Conferences Template, User Scheduled Web Conferences, User Web Conferences Settings, User Web Conferences Recurrence Settings, User Web Conferences Password, User Web Conferences Agenda, User Web Conferences Duration, User Web Conferences Start Time, User Web Conferences Template ID, User Web Conferences Topic. User Web Conferences Tracking Fields, User Web Conferences Time zone User Web Conferences Created Date, User Web Conferences Host ID, User Web Conferences Type, User Web Conferences UU ID, User Web Conferences Start URL, User TSP Account Conference Code, User TSP Account Dial-In Numbers, User TSP Account ID, User TSP Account Leader PIN, User TSP account TSP Bridge, User TSP Audio URL, Chat Messaging Content.

8. *Web-Based Meeting And Web Conference Administration Data:* Account Administrator Name, Account Contact Information Account ID, Account Billing Information, Account Plan Information, Conference Room Account type, Conference Room calendar name, conference room camera name, conference room device IP address, conference room email address, conference room health, conference room ID, conference room issues, conference room last start time, conference room microphone name, conference room name, conference room speaker name, conference room status, Conference Room live meeting, Conference Room past meetings, conference room activation code, conference room support email, conference room support phone, conference room passcode, conference room settings, conference room location description, conference room location name, User Sign In And Sign Out Times, Group admin name, Group admin email, group admin ID, group member email, group member first name, group member last name, group member ID, group member type, chat group ID, chat group name, chat croup total members, chat group, Files sent through chat, GIPHYs sent through chat, groups sent through chat, p2p sent through chat, text sent through chat, total sent through chat, audio sent through chat, code snippet sent through chat, Operation Log action, operation log category type, operation log operation detail, operation log user, operation log time, Role member department, role member email, role member first name, role member ID, role member type, client feedback detail email, client feedback detail meeting ID, client feedback detail participant name, client feedback detail time.

9. *Web-Based Meeting And Web Conference Telemetry Data:* Event Time, Client Type, Event Location, Event,

Subevent, UUID, Client Version, UserID, Client OS, Meeting ID.

10. *Persistent Message Application Telemetry Data:* User Email, Group Chat, Message Type, In Meeting Message, Status, Do Not Disturb Time, Notification Setting, Show Group On Contact List, File Type, File Location, Link URL, Keywords, GIF Keywords, Emoji Code, Audio Setting, Video Setting, Is E2E Enabled, Message ID, IP Address.

11. *Communication Data:* Deleted Persistent Message Sender, Deleted Persistent Message Time, Deleted Persistent Message ID, Deleted Persistent Message Text, Deleted Persistent Message Main Message ID, Deleted Persistent Message Main Message Timestamp, Deleted Persistent Message File Name, Deleted Persistent Message File Size, Edited Persistent Message Sender, Edited Persistent Message Time, Edited Persistent Message ID, Edited Persistent Message Text, Edited Persistent Message Main Message ID, Edited Persistent Message Main Message Timestamp, Edited Persistent Message File Name, Edited Persistent Message File Size, Persistent Message Sender, Persistent Message Time, Persistent Message ID, Persistent Message Main Message ID, Persistent Message Main Message Timestamp, Persistent Message File, Persistent Message File Size, Persistent Message Images Exchanged, Persistent Message Files Exchanged, Persistent Message Videos Exchanged, Persistent Message Channel Title, Persistent Message Whiteboard Annotations, Persistent Message Text, Deleted Message Sender, Deleted Message Time, Deleted Message ID, Deleted Message Text, Deleted Message Main Message ID, Deleted Message Main Message Timestamp, Deleted Message File Name, Deleted Message File Size, Edited Message Sender, Edited Message Time, Edited Message ID, Edited Message Text, Edited Message Main Message ID, Edited Message Main Message Timestamp, Edited Message File Name, Edited Message File Size, Message Sender, Message Time, Message ID, Message Main Message ID, Message Main Message Timestamp, Message File, Message File Size, Message Text.

12. *Identity verification information:* Question, answer, and email address.

13. *Carpool and parking information:* Records related to membership in carpools with USPS employees or about individuals who otherwise regularly use USPS parking facilities, including name, space number, principal's and others' license numbers, home address, and contact information.

RECORD SOURCE CATEGORIES:

Employees; contractors; subject individuals; and other systems of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

1. Records about building access and issuance of accountable property are retrieved by name, Social Security Number, or Employee Identification Number.

2. Records about authorized access to computer and information resources are retrieved by name, logon ID, Employee Identification Number, or other unique identifier of the individual.

3. Report and tracking data created during web-based meetings and video conferences that pertain to individual participants, content shared, conference codes and other relevant session data and historical device usage data are retrieved by meeting ID, host name or host email address.

4. Records pertaining to web-based collaboration and communication applications are retrieved by organizer name and other associated personal identifiers.

5. Media recordings created during web-based meetings and video conferences are retrieved by meeting ID, host name or host email address.

6. Records of carpools and parking facilities are retrieved by name, ZIP Code, space number, or parking license number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Building access and accountable property records are retained until termination of access or accountability.

2. Records of computer access privileges are retained 1 year after all authorizations are cancelled.

3. Report and tracking data created during web-based meeting and video conferences, such as other relevant session data and historical device usage data, are retained for twenty-four months.

4. Records pertaining to web-based collaboration and communication applications are retained for twenty-four months.

5. Web-based meeting or video session recordings are retained for twenty-four months.

6. Records of carpool membership and use of USPS parking facilities are retained 6 years.

7. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Inquiries for records about building access, accountable property, carpool membership, and use of USPS parking facilities must be addressed to the facility head. Inquiries about computer access authorization records must be directed to the Manager, Corporate Information Security, 475 L'Enfant Plaza SW, Suite 2141, Washington, DC 20260. For Inspection Service computer access records, inquiries must be submitted to the Inspector in Charge, Information Technology Division, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201. Inquiries must include full name, Social Security Number or Employee Identification Number, and period of employment or residency at the location.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

August 4, 2020, 85 FR 47258; June 1, 2020, 85 FR 33210; April 11, 2014, 79 FR 20249; June 27, 2012, 77 FR 38342; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

SYSTEM NAME AND NUMBER:

USPS 890.000, Sales, Marketing, Events, and Publications.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Headquarters Marketing and Public Policy; Integrated Business Solutions Services Centers; National Customer Service Center; Area and District USPS facilities; Post Offices; and contractor sites.

SYSTEM MANAGER(S):

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–4016.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

PURPOSE(S) OF THE SYSTEM:

1. To understand the needs of customers and improve USPS sales and marketing efforts.
2. To provide appropriate materials and publications to customers.
3. To conduct registration for USPS and related events.
4. To enable access to the USPS meeting and video web conferencing application.
5. To enhance your online meeting experience by utilizing enhanced features and functionality, including voluntary polling to gather responses from attendees to generate reports or the interactive chat feature.
6. To facilitate team collaboration and communication through information sharing and cross-functional participation.
7. To provide users outside of the USPS limited collaboration and communication capabilities through guest account access.
8. To facilitate and support cybersecurity investigations of detected or reported information security incidents.
9. To share your personal image via your device camera during meetings and web conferences, if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.
10. To provide pre-registration for guest access to online meetings and web conferences
11. To facilitate and support marketing initiatives, advertising campaigns, brand strategy, customer experience with products and service, including call centers, strategic customer programs, and innovation and product improvement development.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who interact with USPS sales personnel, respond to direct marketing messages, request publications, respond to contests and surveys, voluntarily participate in focus groups, interviews, diaries, observational studies, prototype assessments, A/B comparison tests, and attend USPS events.
2. Customers and other individuals who participate in web-based meeting, video conference, collaboration, and communication applications sponsored by the USPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Customer and key contacts' names, date of birth, age, home mailing address, and email address; phone, fax, and pager numbers; company name, job descriptions, titles, roles, level, and company address; other names and emails provided by customers.
2. *Identifying information:* Customer ID(s), D–U–N–S Numbers, USPS account numbers, meter numbers, and signatures.
3. *Business specific information:* Firm name, size, and years in business; number of employees; sales and revenue information; business sites and locations; URLs; company age; industrial classification numbers; use of USPS and competitor's products and services; types of customers served; customer equipment and services; advertising agency and spending; names of USPS employees serving the firm; and calls made.
4. *Information specific to companies that act as suppliers to USPS:* Contract start and end dates, contract award number, contract value, products and/or services sold under contract.
5. Information provided by customers as part of a survey or contest.
6. *Payment information:* Credit and/or debit card number, type, expiration date, and check information; and ACH information.
7. *Event information:* Name of event; role at event; itinerary; and membership in a PCC.
8. *Customer preferences:* Preferences for badge name and accommodations.
9. *Survey data:* customer perception, feelings, habits, past behaviors, preferences, recommended improvements, willingness to buy, ownership, and hypothetical future scenarios.
10. *Participant session data from web-based meetings and web conferences:* Participant name, participant's webcam-generated image (including presenters), recorded participant audio, video, and shared meeting screen content, chat interaction, polling questions and associated responses, participant join time and leave time, meeting duration, participant location, and participant media hardware information, Participant Job Information, Participant Stated Locale, Participant Connection Type, Participant Data Center, Participant Device Type, Participant Domain, Participant Full Data Center, Participant Hard Disk ID, Participant ID, Participant IP Address, Participant Join Time, Participant Camera Name, Participant MAC Address, Participant Microphone Name, Participant Network Type, Participant PC Name, Participant Role, Participant Share Settings, Participant Speaker Name, Participant Status, Participant User ID, Participant User Name, Participant Zoom, Participant SIP URL, Participant Leave Reason, Participant AS Input, Participant AS Output, Participant Audio Input, Participant Audio Output, Participant CPU Usage, Participant Video Input, Participant Video Output, Participant Quality, Participant Sharing Details, Participant Recording Details.
11. *Device data from web-based meetings and web conferences:* Device type (such as mobile, desktop, or tablet), Device Operating System, Number of users of related Operating Systems, Operating System Version, Operating System Type, MAC address, and IP address, hard disk ID, PC Name, Bluetooth Information, Packet Loss, internet Connection Type, Bluetooth Device Name, Bluetooth Device Type, Device Architecture, Central Processing Unit (CPU) Core Type, CPU core frequency, CPU Brand, Available Memory, Total CPU Capacity, Total Capacity Utilized by Application, Memory Used by Application, API Permissions, API Authentication, Authentication Secret Key, Graphics Processing Unit (GPU) Brand, GPU Type, Custom Attributes Defined by Organization, Archived Meeting Files, Archive Meeting Account Name, Archived Meeting File Download User, Archived Meeting File Extension, Archived Meeting File Size, Archived Meeting File Type, Archived Meeting File ID, Archived Meeting File Participant Email, Archived Meeting Participant Join Time, Archived Meeting Participant Leave Time, Archived Meeting File Recording Type, Archived Meeting File Status, Archived Meeting Complete Time, Archived Meeting

Complete Time Duration, Archived Meeting Duration, Archived Meeting Duration In Seconds, Archived Meeting Host ID, Archived Meeting ID, Archived Meeting Settings, Archived Meeting Type, Archived Meeting Recording Count, Archived Meeting Start Time, Archived Meeting Topic, Archived Meeting Total Size, Archived Meeting UU ID, Past Meeting Participant ID, Past Meeting Participant Name, Past Meeting Participant Email, SIP Phone Authorization Name, SIP Phone Domain, SIP Phone ID, SIP Phone Password, SIP Phone Proxy Servers, SIP Phone Register Servers, SIP Phone Registration Expire Time, SIP Phone Transport Protocols, SIP Phone User Email, SIP Phone User Name, SIP Phone Voice Voicemail.

12. *User data from web-based meetings and web conferences:* User Creation Date, User Department, User Email Address, User Employee ID, User Name, User System ID, User Chat Group Ids, User System Client Version, User Last Login Time, User Picture URL, User PMI, User Status, User Timezone, User Type, User Verified Status, User Password, User JID, User Language, User Manager, User Personal Meeting URL, User Role ID, User Role Name, User Use PMI Status, User Phone Country, User Company, User Custom Attributes, User CMS User ID, User Pronouns, User Vanity Name, User Assistant Email, User Assistant ID, User Permissions, User Presence Status, User Scheduler Email, User Scheduler ID, User Settings, User Token, User Meeting Minutes, User Number Of Meetings, User Participant Number, User's Web Conferences Template, User Scheduled Web Conferences, User Web Conferences Settings, User Web Conferences Recurrence Settings, User Web Conferences Password, User Web Conferences Agenda, User Web Conferences Duration, User Web Conferences Start Time, User Web Conferences Template ID, User Web Conferences Topic. User Web Conferences Tracking Fields, User Web Conferences Time zone User Web Conferences Created Date, User Web Conferences Host ID, User Web Conferences Type, User Web Conferences UU ID, User Web Conferences Start URL, User TSP Account Conference Code, User TSP Account Dial-In Numbers, User TSP Account ID, User TSP Account Leader PIN, User TSP account TSP Bridge, User TSP Audio URL, Chat Messaging Content.

13. *Web-based meeting and web conference administration data:* Account Administrator Name, Account Contact Information Account ID, Account Billing Information, Account Plan Information, Conference Room Account type, Conference Room calendar name, conference room camera name, conference room device IP address, conference room email address, conference room health, conference room ID, conference room issues, conference room last start time, conference room microphone name, conference room name, conference room speaker name, conference room status, Conference Room live meeting, Conference Room past meetings, conference room activation code, conference room support email, conference room support phone, conference room passcode, conference room settings, conference room location description, conference room location name, User Sign In And Sign Out Times, Deleted Message Sender, Deleted Message Time, Deleted Message ID, Deleted Message Text, Deleted Message Main Message ID, Deleted Message Main Message Timestamp, Deleted Message File Name, Deleted Message File Size, Edited Message Sender, Edited Message Time, Edited Message ID, Edited Message Text, Edited Message Main Message ID, Edited Message Main Message Timestamp, Edited Message File Name, Edited Message File Size, Message Sender, Message Time, Message ID, Message Main Message ID, Message Main Message Timestamp, Message File, Message File Size, Group admin name, Group admin email, group admin ID, group member email, group member first name, group member last name, group member ID, group member type, chat group ID, chat group name, chat croup total members, chat group, Files sent through chat, GIPHYs sent through chat, groups sent through chat, p2p sent through chat, text sent through chat, total sent through chat, audio sent through chat, code snippet sent through chat, Operation Log action, operation log category type, operation log operation detail, operation log user, operation log time, Role member department, role member email, role member first name, role member ID, role member type, client feedback detail email, client feedback detail meeting ID, client feedback detail participant name, client feedback detail time.

14. *Web-Based Meeting And Web Conference Telemetry Data:* Event Time, Client Type, Event Location, Event, Subevent, UUID, Client Version, UserID, Client OS, Meeting ID.

15. *Chat Application Telemetry Data:* User Email, Group Chat, Message Type, In Meeting Message, Status, Do Not Disturb Time, Notification Setting, Show Group On Contact List, File Type, File Location, Link URL, Keywords, GIF Keywords, Emoji Code, Audio Setting, Video Setting, Is E2E Enabled, Message ID, IP Address.

16. *Communication Data:* Deleted Persistent Message Sender, Deleted Persistent Message Time, Deleted Persistent Message ID, Deleted Persistent Message Text, Deleted Persistent Message Main Message ID, Deleted Persistent Message Main Message Timestamp, Deleted Persistent Message File Name, Deleted Persistent Message File Size, Edited Persistent Message Sender, Edited Persistent Message Time, Edited Persistent Message ID, Edited Persistent Message Text, Edited Persistent Message Main Message ID, Edited Persistent Message Main Message Timestamp, Edited Persistent Message File Name, Edited Persistent Message File Size, Persistent Message Sender, Persistent Message Time, Persistent Message ID, Persistent Message Main Message ID, Persistent Message Main Message Timestamp, Persistent Message File, Persistent Message File Size, Persistent Message Images Exchanged, Persistent Message Files Exchanged, Persistent Message Videos Exchanged, Persistent Message Channel Title, Persistent Message Whiteboard Annotations, Persistent Message Text, Deleted Message Sender, Deleted Message Time, Deleted Message ID, Deleted Message Text, Deleted Message Main Message ID, Deleted Message Main Message Timestamp, Deleted Message File Name, Deleted Message File Size, Edited Message Sender, Edited Message Time, Edited Message ID, Edited Message Text, Edited Message Main Message ID, Edited Message Main Message Timestamp, Edited Message File Name, Edited Message File Size, Message Sender, Message Time, Message ID, Message Main Message ID, Message Main Message Timestamp, Message File, Message File Size, Message Text.

17. *Survey data:* customer perception, feelings, habits, past behaviors, preferences, recommended improvements, willingness to buy, ownership, and hypothetical future scenarios.

RECORD SOURCE CATEGORIES:

Customers, USPS personnel, and list providers.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases, computer storage media, and paper.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

1. For sales, events, and publications, information is retrieved by customer name or customer ID(s), mail or email address, and phone number.

2. For direct marketing, information is retrieved by Standard Industry Code (SIC) or North American Industry Classification System (NAISC) number, and company name.

3. Report and tracking data created during web-based meetings and video conferences that pertain to individual participants, content shared, conference codes and other relevant session data and historical device usage data, are retrieved by meeting ID, host name or host email address.

4. Records pertaining to web-based collaboration and communication applications are retrieved by organizer name and other associated personal identifiers.

5. Media recordings created during web-based meetings and video conferences are retrieved by meeting ID, host name or host email address.

6. Web-based meeting and video session recordings are retrieved by meeting ID, host name or host email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records relating to organizations and publication mailing lists are retained until the customer ceases to participate.

2. ACH records are retained up to 2 years. Records relating to direct marketing, advertising, and promotions are retained 5 years.

3. Other records are retained 3 years after the relationship ends.

4. Report and tracking data created during web-based meeting and video conferences, such as session data and historical device usage data, are retained for twenty-four months.

5. Records pertaining to web-based collaboration and communication applications are retained for twenty-four months.

6. Web-based meeting and video session recordings are retained for twenty-four months.

7. Customer insight, market research, and survey records will be retained for 3 years.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmission is protected by encryption.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

For information pertaining to sales, inquiries should be addressed to: Sales and Customer Relations 475 L'Enfant Plaza SW, Washington, DC 20260.

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Customer and Marketing Officer and Executive Vice President and include their name and address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

August 4, 2020, 85 FR 47258; June 1, 2020, 85 FR 33208; October 24, 2011, 76 FR 65756; April 29, 2005, 70 FR 22516.

Ruth Stevenson,

Chief Counsel, Ethics and Legal Compliance.

[FR Doc. 2022–28026 Filed 12–22–22; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34779; File No. 812–15248]

PCM Fund, Inc., et al.

December 19, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: PCM Fund, Inc., PIMCO Corporate & Income Opportunity Fund, PIMCO Corporate & Income Strategy Fund, PIMCO Dynamic Income Fund, PIMCO Dynamic Income Opportunities Fund, PIMCO Energy and Tactical Credit Opportunities Fund, PIMCO Global StocksPLUS® & Income Fund, PIMCO High Income Fund, PIMCO Income Strategy Fund, PIMCO Income Strategy Fund II, PIMCO Strategic Income Fund, Inc., PIMCO Access Income Fund, PIMCO California Municipal Income Fund, PIMCO California Municipal Income Fund II, PIMCO California Municipal Income Fund III, PIMCO Municipal Income Fund, PIMCO Municipal Income Fund II, PIMCO Municipal Income Fund III, PIMCO New York Municipal Income Fund, PIMCO New York Municipal Income Fund II, PIMCO New York Municipal Income Fund III, PIMCO Flexible Credit Income Fund, PIMCO Flexible Municipal Income Fund, PIMCO Flexible Emerging Markets Income Fund, PIMCO Flexible Real Estate Income Fund, PIMCO California Flexible Municipal Income Fund, PIMCO Capital Solutions BDC Corp., PIMCO BRAVO Fund III, L.P., LVS III Holding LP, PIMCO BRAVO Fund IV, L.P., LVS IV Holding SP LP, LVS IV Holding LP, PIMCO Real Estate Opportunities Fund, L.P., PIMCO Commercial Real Estate Debt Fund, L.P., PIMCO Commercial Real Estate Debt Fund II, L.P., PIMCO Corporate Opportunities Fund III, L.P., PIMCO Corporate Opportunities Fund IV, L.P., OC III Holding LP, PIMCO Private

Income Fund LP, PIMCO Tactical Opportunities Master Fund Ltd., PIMCO Horseshoe Fund, LP, PIMCO Red Stick Fund, L.P., PIMCO Distressed Senior Credit Opportunities Fund II, L.P., PIMCO Disco Fund III LP, PIMCO Residential Opportunities Fund, L.P., PHFS Residential Opportunities Offshore Fund, L.P., PIMCO OP Trust Flexible Credit Fund, L.P., PIMCO Flexible Credit Master Fund, L.P., PIMCO ILS Series SPC, on behalf of and for the Account of PIMCO ILS Fund I, PIMCO ILS Series SPC, on behalf of and for the Account of PIMCO ILS Fund II, PIMCO Global Credit Opportunity Master Fund LDC, PIMCO Absolute Return Strategy 3 Master Fund LDC, PIMCO Absolute Return Strategy 3D Offshore Fund LTD., PIMCO Absolute Return Strategy 3E Master Fund LDC, PIMCO Absolute Return Strategy IV Master Fund LDC, PIMCO Absolute Return Strategy IV IDF LLC, PIMCO Absolute Return Strategy IV eFund, PIMCO Absolute Return Strategy V Master Fund LDC, PIMCO Mortgage Investment Trust, INC., PIMCO Private Diversified Lending Fund Private Sleeve LP, PIF II Offshore I LTD, PAF LUX SCA, SICAV–RAIF, PIMCO Disco Contingent Capital Fund Series I LP, PIMCO European Data Centre Opportunity Fund, SCSP, PIMCO Commercial Real Estate Lending Europe Fund SCSP, PIMCO Corporate Opportunities Fund IV LUX, SCSP, DCCF SPV 1 Series 1 LP, DCCF SPV 1 Cayman Series 1 LTD, PIMCO Specialty Finance Income Fund, L.P., SFI Offshore 1 LTD, PIMCO Elysian Park Fund, L.P., PIMCO CLO Opportunities Fund II, L.P., PIMCO Investments LLC, Pacific Investment Management Company LLC.

FILING DATES: The application was filed on July 20, 2021, and amended on March 3, 2022, August 29, 2022 and November 29, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 13, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: David C. Sullivan, Ropes & Gray LLP, *David.sullivan@ropesgray.com* and Michael G. Doherty, Ropes & Gray LLP, *Michael.doherty@ropesgray.com.*

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' third amended and restated application, dated November 29, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27913 Filed 12–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96541/December 20, 2022]

Order Scheduling Filing of Statements on Review; In the Matter of the Financial Industry Regulatory Authority, Inc. for an Order Granting the Approval of Proposed Rule Change, as Modified by Amendment No. 2, To Establish a Corporate Bond New Issue Reference Data Service (File No. SR–FINRA–2019–008)

On January 15, 2021, the Commission issued an order (''Approval Order'') approving a proposed rule change (''Proposal'') by Financial Industry Regulatory Authority, Inc. (''FINRA'') to establish a new issue reference data service for corporate bonds.[1] Bloomberg L.P. (''Bloomberg'') filed a petition for review of the Approval Order in the U.S. Court of Appeals for the District of Columbia Circuit (''D.C. Circuit''), challenging the Commission's Approval Order.

The D.C. Circuit found that all but one of Bloomberg's arguments lacked merit. Specifically, the D.C. Circuit concluded that the Approval Order failed to sufficiently consider Bloomberg's ''concerns about the costs that FINRA, as well as market participants, will incur in connection to the creation and maintenance of the data service.'' [2] The D.C. Circuit remanded to the Commission for reconsideration of this issue, but did not vacate the Approval Order.[3]

The court stated that ''on remand, 'the Commission can redress its failure of explanation' by analyzing the costs FINRA will incur in building and maintaining its data service and how the costs of building the data service will be remunerated if the fee proposal is ultimately disapproved by the Commission.'' [4] The D.C. Circuit's mandate, which was issued on October 11, 2022, returned the matter to the Commission for further proceedings.[5]

Accordingly, to facilitate the Commission's further review of the Proposal, *it is ordered,* that by January 19, 2023, FINRA may submit any additional statements or information that it considers relevant to the Commission's analysis of the issue on remand, including the costs FINRA expects to incur in building and maintaining its data service and how the costs of building the data service would be remunerated if the fee proposal is ultimately disapproved by the Commission.

Furthermore, the Commission is providing other parties and persons 30 days to respond to any additional statements or information FINRA may submit.

Accordingly, *it is ordered,* that by February 18, 2023, any party or other person may submit any additional statements or information such party or other person considers relevant to the issue on remand.

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[1] *See* Exchange Act Release No. 90939 (Jan. 15, 2021), 86 FR 6922 (Jan. 25, 2021) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 2, To Establish a Corporate Bond New Issue Reference Data Service).

[2] *Bloomberg L.P.* v. *SEC,* 45 F.4th 462, 466 (D.C. Cir. 2022).

[3] *Id.* at 478.

[4] *Id.* at 477.

[5] Doc. No. 1968395, Case No. 21–1088 (D.C. Cir. Oct. 11, 2022).

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27959 Filed 12–22–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96533; File No. SR–OCC–2022–012)]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation Concerning Collateral Haircuts and Standards for Clearing Banks and Letters of Credit

December 19, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2022, The Options Clearing Corporation (''OCC'' or ''Corporation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would concern proposed changes to OCC's Rules, Collateral Risk Management Policy (''CRM Policy''), Margin Policy, and System for Theoretical Analysis and Numerical Simulation (STANS) Methodology Description (''STANS Methodology Description''). The proposed changes are designed to (i) provide that OCC will value Government securities and GSE debt securities deposited as margin or Clearing Fund collateral using a fixed haircut schedule that OCC would set and adjust pursuant to OCC's CRM Policy, rather than as codified in OCC's Rules as the schedule is today; (ii) adopt new OCC Rules concerning minimum standards for OCC's Clearing Bank relationships; and (iii) revise certain OCC Rules regarding the acceptability of letters of credit as margin assets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As the sole clearing agency for standardized equity options listed on a national securities exchange registered with the Commission (''listed options''), OCC is exposed to certain risks, including credit risk arising from its relationships with (i) the Clearing Members for which OCC becomes the buyer to every seller and the seller to ever buyer with respect to listed options, and (ii) other financial institutions such as banks, including the settlement banks (''Clearing Banks'') that support OCC's clearance and settlement services. OCC manages these risks through financial safeguards that include rigorous admission standards, member surveillance activities, collection of high-quality margin collateral and a mutualized Clearing Fund. OCC also maintains standards for third-party relationships, including for Clearing Banks and banks that issue letters of credit that Clearing Members may deposit as margin collateral. One aspect of OCC's processes for managing margin collateral is to acknowledge that such collateral could be worth less in the future than when it is pledged to OCC (a ''collateral haircut'').

OCC has identified opportunities to enhance its rules and risk management processes concerning collateral haircuts and concentration limits for specific collateral types and third-party standards for banks. First, OCC is proposing to eliminate existing authority to value Government securities using Monte Carlo simulations as part of its STANS margin methodology (commonly referred to as ''Collateral in Margin'' or ''CiM'') in favor of applying fixed collateral haircuts that OCC would set and adjust pursuant to OCC's CRM Policy in order to better incorporate stressed market periods (the ''procedure-based approach''), rather than according to the fixed haircut schedule codified in OCC's Rules today. OCC does not expect these changes to have a significant impact on Clearing Members based on an impact assessment of eliminating the CiM approach and because it expects the fixed haircut schedule under the procedure-based approach would initially be the same as those currently defined in OCC's Rules. Second, OCC is proposing to codify additional standards for Clearing Banks in OCC's Rules to provide greater clarity and transparency regarding minimum standards for banking relationships that are critical to OCC's clearance and settlement services. Third, OCC is proposing to make conforming changes to the standards for letter-of-credit issuers to the proposed Clearing Bank standards to ensure internal consistency within OCC's Rules and establish OCC's authority to set more restrictive concentration limits for letters of credit than those currently codified in OCC's Rules. These standard changes are not expected to have a significant impact on Clearing Members because the institutions currently approved as Clearing Banks and letter-of-credit issuers meet these standards.

(1) Purpose

There are three primary components of this proposed rule change. First, OCC proposes to amend its Rules, CRM Policy, Margin Policy, and STANS Methodology Description to eliminate existing authority to value Government securities using Monte Carlo simulations as part of its STANS margin methodology in favor of applying fixed collateral haircuts that OCC would set and adjust pursuant to OCC's CRM Policy, rather than according to the fixed haircut schedule codified in OCC's Rules today. Second, OCC proposes to amend OCC Rules 101 and 203 to codify minimum capital and operational requirements and the governance process for approving OCC's Clearing Banks, which the Rules do not currently address. Third, OCC proposes to revise OCC Rule 604 regarding the acceptability of letters of credit as margin assets to, among other things, standardize requirements for letter-of-credit issuers with the requirements for OCC's other banking relationships, including the proposed standards for Clearing Banks, and allow OCC to set concentration limits with respect to letters of credit that are more restrictive than those currently codified in OCC's Rules, which would be retained as minimum standards.

Haircuts for Government Securities and GSE Debt Securities

OCC accepts Government securities [3] from Clearing Members as contributions to the Clearing Fund.[4] OCC also accepts Government securities and GSE debt securities [5] from Clearing Members as margin assets.[6] The collateral valuation haircuts for Government securities and GSE debt securities that a Clearing Member may deposit as margin collateral are specified in OCC Rule 604(b). The collateral valuation haircuts for Government securities that a Clearing Member contributes to the Clearing Fund are specified in OCC Rule 1002(a)(ii). As discussed below, OCC proposes several changes regarding this structure, including to: (a) eliminate the use of OCC's STANS margin methodology to value Government securities in favor of applying fixed collateral haircuts; (b) remove the fixed collateral haircut schedule for Government securities and GSE debt securities from OCC's Rulebook; (c) amend the CRM Policy to establish a procedures-based approach for setting the haircut schedule; [7] (d) conform OCC's Rules with respect to valuation of such securities to the CRM Policy, which allows OCC to revalue collateral on a more frequent basis than daily; and (e) make other conforming changes to OCC's policies.

a. Removing Collateral in Margin Treatment

First, OCC would remove the Rules concerning the valuation of Government securities and GSE debt securities through OCC's STANS margin methodology. OCC currently has authority pursuant to Interpretation and Policy (''I&P'') .06 to OCC Rule 601 and OCC Rule 604(f) to determine the collateral value of any Government securities or GSE debt securities that are pledged by Clearing Members as margin assets either by: (1) the CiM method of including them in Monte Carlo simulations as part of OCC's STANS margin methodology,[8] or (2) by applying the fixed haircuts that are specified in OCC Rule 604(b). OCC's model validation analyses and regulatory examination findings have identified certain weaknesses related to its current CiM methodology for valuing Government securities and GSE debt securities, including that the current CiM methodology may not adequately consider relevant stressed market conditions for such collateral.[9] Accordingly, OCC is proposing to eliminate I&P .06 to OCC Rule 601 and OCC Rule 604(f), thereby removing CiM treatment for Government securities. Instead, all Government securities pledged by Clearing Members as margin assets would be subject to a fixed haircut schedule that OCC would set in accordance with the CRM Policy, as discussed below.

In general, the fixed haircut approach would be less procyclical. While it may be more conservative in periods of low market volatility, it would prevent spikes in margin requirements during periods of heightened volatility that may take place under the existing CiM approach. Upon implementation of the proposed change, Government security deposits currently valued using STANS would shift from margin balances to collateral balances and would be valued using the fixed haircuts schedule as described under the proposed OCC Rule 604(e) and amendments to the CRM Policy, as discussed below.[10] OCC's preliminary analysis shows the average impact as a percentage of the value of Government securities and GSE debt securities is typically under 1 percent and that the impact to the Clearing Fund is negligible.[11] OCC intends to provide parallel reporting to its Clearing Members for a period of at least four consecutive weeks prior to implementing the change.

b. Removing the Fixed Haircut Schedule From OCC's Rules

Second, OCC would remove the fixed haircut schedules for Government securities and GSE debt securities as margin collateral under OCC Rule 604(b) and for Government securities deposited in respect of the Clearing Fund under OCC Rule 1002(a)(ii), which pre-date the Commission's adoption of the Standards for Covered Clearing Agencies.[12] Instead, OCC would establish, implement, maintain and enforce written policies and procedures reasonably designed to set appropriately conservative haircuts for such collateral. OCC believes that establishing policies and procedures that would allow OCC to set haircuts for Government securities and GSE debt securities based on changing market conditions will help to ensure that the haircuts remain appropriately conservative. The remainder of this section discusses the proposed changes to OCC's Rules. Proposed changes to the CRM Policy to establish the new procedures-based approach for the haircut schedule is discussed further below.

In place of the existing Rules providing for fixed haircut schedules, OCC proposes to introduce a new OCC Rule 604(e) [13] regarding the valuation of and haircuts for Government securities and GSE debt securities that are margin assets and make similar amendments to OCC Rule 1002(a)(ii) regarding the valuation of and haircuts for Government securities contributed to the Clearing Fund. These proposed Rules would provide that OCC generally will apply a schedule of haircuts that OCC would specify from time to time upon prior notice to Clearing Members. Under the amended CRM Policy, OCC would provide Clearing Members at least one full day's notice prior to implementing a change to the schedule and would post the haircut schedule to OCC's public website.[14]

[3] Art. I., Section 1.G.(5) of OCC's By-Laws defines the term ''Government securities'' to mean ''securities issued or guaranteed by the United States or Canadian Government, or by any other foreign government acceptable to [OCC], except Separate Trading of Registered Interest and Principal Securities issued on Treasury Inflation Protected Securities (commonly called TIP–STRIPS). The term 'short term Government securities' means Government securities maturing within one year. The term 'long-term Government securities' means all other Government securities.''

[4] *See* OCC Rule 1002(a).

[5] Art. I., Section 1.G.(6) of OCC's By-Laws defines the term ''GSE debt securities'' to mean ''such debt securities issued by Congressionally chartered corporations as the [OCC] Risk Committee may from time to time approve for deposit as margin.''

[6] *See* OCC Rule 604(b)(1), (2).

[7] The CRM Policy is filed with the Commission as a rule of OCC. *See, e.g.,* Exchange Act Release No. 82311 (Dec. 13, 2017), 82 FR 60252 (Dec. 19, 2017) (SR–OCC–2017–008).

[8] *See* OCC Rule 601, I&P .06; OCC Rule 604(f).

[9] OCC has included information related to these issues in confidential Exhibit 3A to SR–OCC–2022–012.

[10] Specifically, the value of CiM eligible government securities would no longer be included in margin calculations and thus would no longer be included on margin reports. The Net Asset Value (''NAV'') portion of the margin calculation would decrease by the market value of CiM eligible government security deposits (*i.e.,* the NAV credit created by these deposits will be removed from the margin calculation), slightly offset by a reduction in risk charges (*i.e.,* the Risk Charge debit balance generated by the CiM haircut on these deposits would be removed from the margin calculation). Following implementation of the proposed changes, the value of the previously CiM eligible government securities would be found in collateral reports.

[11] OCC has provided this analysis in confidential Exhibit 3B to SR–OCC–2022–012.

[12] In 2016, the SEC adopted Rule 17Ad–22(e)(5), which the SEC intended to help ensure that covered clearing agencies are resilient in times of market stress by requiring the agencies to establish written policies and procedures that, among other things, set and enforce appropriately conservative haircuts. *See* Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70812 (Oct. 13, 2016) (S7–03–14).

[13] Existing OCC Rule 604(e) and each subsequent paragraph of that Rule would be renumbered accordingly.

[14] The schedule of haircuts would be made available through the Operations Manual and on the OCC website, and OCC would generally issue an Information Memo whenever the schedule is modified to inform Clearing Members of the changes.

OCC would also have conditional authority to apply more conservative haircuts to Government securities and GSE debt securities. Specifically, OCC would have authority, in its discretion, to use greater haircuts or, in unusual or unforeseen circumstances, assign no value or partial value to Government securities, in each case with prior notice to Clearing Members and with prior approval by the Management Committee and/or its delegates, to the extent it deems appropriate for its protection or the protection of Clearing Members or the general public based on factors such as (i) volatility and liquidity, (ii) elevated sovereign credit risk,[15] and (iii) any other factors OCC determines are relevant. For example, OCC might reduce or assign no value to specific Government securities if there was an elevated risk that the U.S. Government would reach its statutory borrowing limit and default on payment obligations. OCC already has authority under I&P .15 to OCC Rule 604 to determine that Government securities and GSE debt securities that otherwise meet the requirements for margin collateral are nevertheless disapproved as margin collateral based on such factors.[16] The proposed amendments would allow OCC to take steps short of outright refusal to grant collateral value to a particular Government security or GSE debt security and would extend such authority to the valuation of such securities deposited in respect of the Clearing Fund. The CRM Policy, in turn, currently provides that mitigating actions with respect to elevated sovereign credit risk or country risk are approved by OCC's Management Committee or its delegate prior to implementation. OCC proposes to add that such actions will also be communicated to Clearing Members prior to implementation.

c. Establishing a Procedures-Based Approach To Setting Haircuts

Third, OCC would replace its Rules codifying the fixed haircut schedule for Government securities and GSE debt securities with a procedures-based approach to setting the fixed haircut schedule. Specifically, OCC would amend the CRM Policy to provide that its Pricing and Margins team within OCC's Financial Risk Management (''FRM'') department will monitor the adequacy of the haircuts using a Historical Value-at-Risk approach (''H-VaR'') [17] with multiple look-back periods (*e.g.,* 2-year, 5-year, and 10-year), updated at least monthly. Each look-back period would be comprised of a synthetic time series of the greatest daily negative return observed for each combination of security type and maturity bucket (*e.g.,* Government securities maturing in more than 10 years). The longest look-back period under the proposed H-VaR approach would include defined periods of market stress.[18] Accordingly, this H-VaR approach would consider stressed market conditions. The delineation of look-back periods, periods of stressed market volatility included in the longest-term look-back period, and the type and maturity buckets would be defined in procedures maintained by Pricing and Margins.[19] The CRM Policy would further provide that the fixed haircut schedule must be maintained at a level at least equal to a 99% confidence interval of the most conservative look-back period. Changes to the haircut rate would be communicated to Clearing Members at least one full day in advance and the schedule would be maintained on OCC's public website.

OCC anticipates that upon implementation of these changes, the haircuts OCC would announce would initially be identical to those already specified in OCC Rule 604(b) and OCC Rule 1002(a). However, following implementation of the new procedures-based approach, OCC plans to separate out Separate Trading of Registered Interest and Principal Securities (''STRIPS'') and Treasury Inflation Protected Securities (''TIPS'') into their own schedule, which will be more conservative for longer maturities than the current haircut rate for U.S. Government securities.

d. Valuation Frequency

Fourth, OCC Rules 604(e) and 1002(a)(ii) would replace or modify provisions concerning the valuation of Government securities currently found elsewhere in OCC's Rules. Specifically, OCC would determine the value for Government securities and GSE debt securities not less than daily based on the quoted price supplied by a price source designated by OCC. Currently, OCC Rules 604(b)(1) and (2) provide that the Risk Committee of the Board may determine from time to time the interval at which such collateral will be valued, but not less than daily. OCC Rule 1002(a)(ii) currently provides the same with respect to such collateral deposited with respect to the Clearing Fund, except that Rule 1002(a)(ii) provides that the minimum interval shall be not less than monthly. However, because frequent revaluation is critical to ensure OCC's valuations reflect the most currently available market information, OCC's CRM Policy, approved by the Risk Committee, provides that valuation shall be ''at least daily'' and that Pricing and Margins shall ''[a]t a minimum update the value of its collateral on a daily basis and in instances where that collateral is providing margin offset, pricing shall also be updated on an intraday basis.'' This language was intended so that the designation of minimum valuation intervals was not a limiting factor to more frequent valuation when warranted. Accordingly, proposed OCC Rules 604(e) and 1002(a)(ii) would provide that OCC would determine the market value of Government securities and GSE debt securities at such intervals as OCC may from time to time prescribe, but not less than daily, on the basis of the quoted price supplied by a source designated by OCC.

Conforming the Rules to the CRM Policy so that Pricing and Margins may revalue Government securities and GSE debt securities more frequently than the minimum interval would promote the ability to more quickly adjust the valuation intervals in response to changing market conditions. Under the CRM Policy, Pricing and Margins monitors haircuts daily for ''breaches''

[15] In this context, sovereign credit risk refers primarily to the risk associated with accepting a country's debt as collateral.

[16] Specifically, I&P .15 to OCC Rule 604 provides that OCC may disapprove a security as margin collateral with respect to all Clearing Members, and therefore not grant margin credit, based on factors such as (i) trading volume, (ii) number of outstanding shareholders, (iii) number of outstanding shares, (iv) volatility and liquidity and (v) any other factors OCC determines are relevant. While factors (i) through (iii) are not relevant to Government securities haircuts, OCC is proposing to enumerate sovereign credit risk as a factor in the CRM Policy for haircuts on Government securities because of the animating concern for this authority in that context. OCC is also proposing to include ''any other factors the Corporation determines are relevant'' for consistency with I&P .15 to OCC Rule 604 and because such a catch-all is designed to capture unforeseen circumstances that might not previously have been considered possible, as once was the case with respect to the possible default of the U.S. Government on its payment obligations.

[17] H-VaR is a common risk management method employed by financial services firms. *See, e.g.,* Exchange Act Release No. 67650 (Aug. 14, 2012), 77 FR 50730 (Aug. 22, 2012) (SR–CME–2012–22) (''[H-VaR] is a standard, well understood model and is easily replicable.'').

[18] Currently, OCC employs a parametric VaR approach with a Student's t distribution to monitor the adequacy of its haircuts for Government securities and GSE debt securities. However, OCC is proposing to move to an H-VaR approach because appending time series to the longest look-back period when necessary to incorporate stressed market conditions effectively ignores the normal distribution inherent in Student's t.

[19] OCC has provided anticipated changes to these internal procedures in confidential Exhibit 3C to SR–OCC–2022–012.

(*i.e.,* an erosion in value exceeding the relevant haircut) and adequacy, with any issues being promptly reported to appropriate decisionmakers at OCC. As the business unit responsible for such monitoring, OCC believes that Pricing and Margins is well positioned to make the determination about more frequent valuation intervals consistent with the directive of the CRM Policy approved by the Risk Committee. The proposed rule change would allow OCC to react more quickly to adjust haircuts or take other mitigating actions in response to breaches. Changes to OCC's Rules and the CRM Policy, including the minimum valuation interval, would remain subject to Risk Committee approval and the Risk Committee would retain oversight over OCC's risk management determinations.[20]

e. Policy Changes

To implement the changes described above, OCC also proposes to make other conforming changes to its CRM Policy, Margin Policy, and STANS Methodology Description. Under the proposed rule change, the CRM Policy would be the relevant OCC policy governing OCC's process for valuing Government securities and GSE debt securities. OCC would therefore delete from the CRM Policy those descriptions that indicate that Government securities and GSE debt securities pledged as margin assets may be valued using Monte Carlo simulations as part of OCC's STANS margin methodology. OCC would make a similar conforming change to the Margin Policy, which currently indicates that Government securities may be valued using the CiM approach. OCC also proposes to conform capitalization of terms in the CRM Policy with how those terms are defined in OCC's By-Laws.

Regarding the STANS Methodology Description, OCC proposes to delete certain portions of the document that exist to support the valuation of Government securities and GSE debt securities that are pledged as margin assets using Monte Carlo simulations. As part of the proposed rule change, OCC would remove Treasuries from the model currently used for generating yield curve distributions to form theoretical price distributions for US Government securities and for modeling Treasury rates within STANS joint distribution of risk factors. These securities would instead be valued under the CRM Policy as discussed above.[21] The STANS Methodology Description would also be revised to reflect the fact that the Liquidation Cost Add-on charge[22] would no longer be assessed to Government security collateral deposits. Based on an analysis of the average daily Liquidation Cost charge across all accounts, the Liquidation Cost charge for such collateral is currently, and is expected to remain, immaterial. As described above, OCC is proposing to incorporate stressed market periods in the H-VaR approach for setting and adjusting the haircuts for such collateral, which is comparable to the approach for incorporating stressed markets into the Liquidation Cost Add-on.

Clearing Bank Standards

OCC Rule 203 requires that every Clearing Member establish and maintain a bank account at a Clearing Bank for each account maintained by it with OCC. The only eligibility requirement for a Clearing Bank currently expressed in OCC's Rules is that the Clearing Bank be a bank or trust company that has entered into an agreement with OCC in respect of settlement of confirmed trades on behalf of Clearing Members.[23] OCC's Clearing Bank standards, including financial and operational capability requirements and the governance process for approving Clearing Banks, are currently maintained in internal OCC procedures. Those procedures align standards for Clearing Banks with those codified in I&P .01 to OCC Rule 604 with respect to banks or trust companies that OCC may approve to issue letters of credit as margin collateral, including, among other things, a Tier 1 Capital requirement of $100 million for U.S. banks and $200 million for non-U.S. banks.[24] Due to the critical role Clearing Banks play in OCC's clearance and settlement of options, OCC proposes to amend its By-Laws and Rules to codify minimum requirements for Clearing Banks in a new Rule 203(b). OCC believes that amending its By-Laws and Rules to reflect these requirements will provide Clearing Members and other market participants greater clarity and transparency concerning OCC's Clearing Bank relationships.

Currently, OCC's By-Laws and Rules are silent on the internal governance process for approving Clearing Bank relationships. Proposed OCC Rule 203(b) would provide that the Risk Committee may approve a bank or trust company as a Clearing Bank if it meets the minimum requirements set out in that paragraph. In addition, OCC would amend the definition of ''Clearing Bank'' in OCC Rule 101 to reflect that such Clearing Bank relationships are approved by the Risk Committee. OCC believes that the Risk Committee is the appropriate governing body to approve such relationships because of the nature of the risks presented by OCC's Clearing Bank relationships, including the risk that OCC would need to borrow from or satisfy a loss using Clearing Fund assets in order to meet its liquidity needs as a result of the failure of a Clearing Bank to achieve daily settlement.[25]

Proposed OCC Rule 203(b)(1) would provide that any Clearing Bank, whether domiciled in the U.S. or outside the U.S., maintain at least $500 million (U.S.) in Tier 1 Capital.[26] This requirement represents an increase to the current Tier 1 Capital requirement for letter-of-credit issuers in I&P .01 to OCC Rule 604. OCC believes that increasing the required Tier 1 Capital standard for any bank or trust company would reduce the risks associated with establishing and maintaining a Clearing Bank relationship with an institution with lesser Tier 1 Capital. In reviewing its existing Clearing Banks, OCC found that a $500 million (U.S.) Tier 1 Capital standard was more representative of these institutions.

In addition, proposed OCC Rule 203(b)(2) and (4) would codify certain requirements currently maintained in OCC's procedures that Clearing Banks maintain (i) common equity tier 1 capital (CET1) of 4.5%, (ii) minimum Tier 1 capital of 6%, and (iii) total risk-based capital of 8% and a Liquidity Coverage Ratio of at least 100%, unless the Clearing Bank is not required to compute such ratio. Additionally, proposed OCC Rule 203(b)(3) would provide that non-U.S. Clearing Banks must be domiciled in a country that has a sovereign rating considered to be ''low

[20] *See* Exchange Act Release No. 94988 (May 26, 2022), 87 FR 33535, 33536, n.19 (Jun. 2, 2022) (SR–OCC–2022–002) (discussing the proposed governance process for amending OCC's risk management policies, among other governance arrangements).

[21] OCC notes that it would ultimately decommission the model currently used for generating yield curve distributions to form theoretical price distributions for US Government securities and modeling Treasury rates within STANS's joint distribution of risk factors.

[22] The STANS methodology includes a model to estimate the liquidation cost for all options and futures, as well as cash instruments that are part of margin collateral. *See* Securities Exchange Act Release No. 86119 (June 17, 2019), 84 FR 29267 (June 21, 2019) (SR–OCC–2019–004).

[23] *See* OCC Rule 101.C.(1).

[24] *See* OCC Rule 604, I&P .01.

[25] *See* OCC Rule 1006(c), (f).

[26] As defined in proposed Rule 203(c), ''Tier 1 Capital'' would mean the amount reported by a bank or trust company to its regulatory authority. The same would be true for the other capital measures and ratios identified in Rule 203(b) (*i.e.,* ''Common Equity Tier 1 Capital (CET1),'' ''total risk-based capital,'' and ''Liquidity Coverage Ratio'').

credit risk'' (*e.g.,* A- by Standard & Poor's, A3 by Moody's, A- by Fitch, or equivalent). OCC believes that these ratings better reflect current understanding of those sovereign credit ratings considered to be ''low credit risk'' than the AAA ratings currently required of non-U.S. letter-of-credit issuers under I&P .01 to OCC Rule 604, which OCC believes is now too conservative. The current AAA rating requirement effectively limits non-U.S. eligible issuers to those domiciled in Canada and Australia. The proposed change would, for example, allow for issuers from France with which OCC previously had relationships before France's sovereign credit rating fell below AAA.

Proposed OCC Rule 203(b)(5) would codify certain minimum requirements currently maintained in OCC's procedures associated with the agreements that a Clearing Bank must execute with OCC, including that the Clearing Bank: (A) maintain the ability to utilize the Society for Worldwide Interbank Financial Telecommunication (''SWIFT'') as the primary messaging protocol, (B) maintain access to the Federal Reserve Bank's Fedwire Funds Service, and (C) provide its quarterly and annual financial statements to OCC and promptly notify OCC of material changes to its operations, financial condition, and ownership.[27] However, consistent with OCC's current internal procedures and practices, proposed OCC Rule 203(b)(5)(A) would also allow for the use of such other messaging protocol, apart from SWIFT, as approved by the Risk Committee. For example, the Risk Committee may elect to temporarily accommodate a Clearing Bank that does not meet these requirements if it is actively implementing such capabilities.

The Clearing Bank requirements set forth in proposed OCC Rule 203(b) would be the minimum standards for the Risk Committee to approve a Clearing Bank relationship. Accordingly, proposed OCC Rule 203(b)(6) would provide that in addition to the articulated minimum standards, a Clearing Bank must meet such other eligibility criteria as OCC may determine from time to time. This provision reflects that even under OCC's current Rules, OCC is not obligated to enter into a Clearing Bank relationship merely because a bank or trust company meets OCC's minimum standards.

Letter-of-Credit Issuer Standards and Concentration Limits

OCC intends that proposed OCC Rule 203(b) generally would serve as the minimum requirements for all OCC's bank relationships, including with respect to banks and trust companies authorized to issue letters of credit. Accordingly, OCC proposes to make conforming changes to OCC Rule 604, which governs the treatment of letters of credit as margin collateral. In addition, OCC would make other amendments to OCC Rule 604 intended to allow OCC to control exposures by imposing more stringent concentration limits and eliminating wrong-way risk.

a. Letter-of-Credit Issuer Standards

I&P .01 to OCC Rule 604 currently sets forth minimum standards for the types of U.S. and non-U.S. institutions that OCC may approve as an issuer of letters of credit, including minimum Tier 1 Capital requirements, and for non-U.S. institutions, the ultimate sovereign credit rating for the country of domicile for non-U.S. institutions, credit ratings for the institution's commercial paper or other short-term obligations, and standards that apply if there is no credit rating on the institution's commercial paper or other short-term obligations. OCC proposes the following amendments to I&P .01:

- OCC would combine under paragraph (a) the current standards for the types of institutions that OCC may approve. In addition, the capitalized terms ''U.S. Institutions'' and ''Non-U.S. Institutions'' would be deleted because those are not defined terms. In any event, the terms would not be necessary as courtesy titles now that the standards are combined under the same paragraph. OCC would also modify the capitalization of certain terms to conform to how those terms appear in the International Bank Act of 1978,[28] to which the Rule refers, and would note that the meaning of those terms would apply generally throughout the Rules, including use of those terms in I&P .03 to OCC Rule 604 (as amended).
- OCC would delete the current Tier 1 Capital requirements. Instead, paragraph (b) would incorporate the new minimum Tier 1 Capital requirement for Clearing Banks under OCC Rule 203(b)(1), which would be the same for both U.S. and non-U.S. issuers. New paragraph (b) would also incorporate the minimum capital ratio requirements in OCC Rule 203(b)(2), which would align standards across OCC's banking relationships. As discussed above, the minimum Tier 1 Capital requirement would be greater than those presently found in I&P .01 to OCC Rule 604. However, as with Clearing Banks, OCC believes that increasing the required Tier 1 Capital standard for any bank or trust company would reduce the risks associated with letters of credit that may be issued by institutions with lesser Tier 1 Capital. In addition, the $500 million (U.S.) Tier 1 Capital standard is more representative of the institutions currently approved as letter-of-credit issuers.
- New paragraph (b) would also replace the domicile sovereign credit ratings for non-U.S. institutions by incorporating the minimum for Clearing Banks in OCC Rule 203(b)(3). As noted above, the current standards in I&P .01(b)(3) to OCC Rule 604 are considered too conservative; the new minimum standards better align with those considered to be low risk. By eliminating I&P .01(b)(3), OCC would also remove the subjective process for determining a ''AAA'' equivalent country based on consultation with entities experienced in international banking and finance matters satisfactory to the Risk Committee, in favor of the more objective standards in proposed OCC Rule 203(b)(3).
- OCC would delete the external credit rating standards for a non-U.S. institution's commercial paper, other short-term obligations or long-term obligations in current I&P .01(b)(4). OCC has had to terminate several letter-of-credit issuer relationships pursuant to these external credit rating standards even though the institutions otherwise met OCC's requirements and were not reporting elevated internal credit risk metrics. Consistent with industry best practice, OCC would instead rely on its Watch Level and Internal Credit Rating surveillance processes under its Third-Party Risk Management Framework (''TPRMF'') to determine creditworthiness of institutions.[29]
- Proposed paragraph (c) would provide that an institution must meet such other standards as OCC may determine from time to time. Like proposed OCC Rule 203(b), I&P .01 to OCC Rule 604 would specify the minimum standards for issuers of letters of credit. Under OCC's current Rules, OCC ''may in its discretion approve a bank or trust company'' as a letter-of-credit issuer if the issuer meets the

[27] *See* Securities Exchange Act Release No. 82221 (Dec. 5, 2017), 82 FR 58230 (Dec. 11, 2017) (SR–OCC–2017–805) (advance notice concerning execution of agreements with Clearing Banks that would provide for a transition to SWIFT messaging as the primary messaging protocol for OCC's then-existing Clearing Bank relationships).

[28] *See* 12 U.S.C. 3101(5)–(6), (11)–(12).

[29] The TPRMF is filed with the Commission as a rule of OCC. *See* Securities Exchange Act Release No. 90797 (Dec. 23, 2020), 85 FR 86592 (Dec. 30, 2020) (SR–OCC–2020–014). The TPRMF can also be found on OCC's public website.

minimum standards. OCC is not obligated to accept a letter-of-credit issuer simply because an issuer meets the minimum standards. Accordingly, proposed paragraph (c) would clarify that articulation of these minimum standards would not limit OCC's discretion to approve or disapprove an institution based on other factors, including based on OCC's Watch Level and Internal Credit Rating surveillance, as discussed above.

In addition to the above changes, OCC also proposes to amend I&P .03 and .09 concerning the domicile of the issuer's branch at which letters of credit must be issued. I&P .03 to OCC Rule 604 requires any letter of credit issued by a Non-U.S. institution be payable at a Federal or State branch or agency thereof. In addition, I&P .09 to OCC Rule 604 provides that a letter of credit may be issued by a Non-U.S. branch of a U.S. institution provided that it otherwise conforms with Rule 604 and the Interpretations and Policies thereunder and is payable at a U.S. office of such institution. OCC is proposing to delete the current text of I&P .09. Instead, I&P .03 would be amended so that letters of credit used as margin assets would be required to be payable at an issuer's ''domestic branch,'' as that term is defined in the Federal Deposit Insurance Act,[30] or at the issuer's Federal or State branch or agency, as those terms are defined in I&P .01 by reference to the International Banking Act of 1978.[31] As amended, I&P .03 would address both U.S. and Non-U.S. institutions.

b. Letter-of-Credit Concentration Limits

The proposed changes would also establish OCC's authority to establish more restrictive concentration limits for letters of credit than those currently codified in OCC's Rules and eliminate wrong-way risk.[32] OCC Rules currently codify certain concentration limits for letters of credit. I&P .02 to OCC Rule 604 provides that ''[n]o more than 50% of a Clearing Member's margin on deposit at any given time may include letters of credit in the aggregate, and no more than 20% may include letters of credit issued by any one institution.'' In addition, I&P .04 to OCC Rule 604 limits the total amount of letters of credit issued for the account of any one Clearing Member by a U.S. or Non-U.S. institution to a maximum of 15% of such institution's Tier 1 Capital. While OCC proposes to retain these concentration limits as minimum standards, OCC is proposing to establish authority to set more conservative concentration limits under the CRM Policy, consistent with OCC's regulatory obligation to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, set and enforce appropriately conservative concentration limits.

In order to establish such authority, OCC proposes to amend I&P .09—the current content of which would be deleted as part of the changes to I&P .03 and .09 discussed above—to provide that OCC may from time to time specify more restrictive limits for the amount of letters of credit a Clearing Member may deposit in the aggregate or from any one institution than those specified in the Rules based on factors such as market conditions, the financial condition of approved issuers, and any other factors the Corporation determines are relevant. The Rule would also provide that any such limit would be applicable to all Clearing Members. In this way, the Rule would provide OCC similar authority to disapprove letters of credit based on risk-based criteria as OCC has to disapprove specific securities as margin collateral under current I&P .15 to OCC Rule 604.

Under proposed changes to the CRM Policy, OCC's Credit and Liquidity Risk Working Group (''CLRWG''), a cross-functional group comprised of representatives from relevant OCC business units including Pricing and Margins, Collateral Services and Credit Risk Management, would be responsible for setting and adjusting more restrictive concentration limits. Similar to collateral haircuts, the CRM Policy would provide that OCC will maintain the concentration limits on its website and will provide prior notice of any changes to the limits. As under the current CRM Policy, the CLRWG would review the performance and adequacy of the CRM Policy on at least an annual basis, including but not limited to a review of concentration limits. OCC's Model Risk Management would also continue to review the concentration limits on at least an annual basis. Any changes to the CRM Policy would continue to be presented to the Management Committee and, if approved, then the Risk Committee.

Among other things, OCC anticipates that it would use the proposed authority to establish an absolute dollar limit for letters of credit, which would be more restrictive than the current percentage thresholds for OCC Clearing Members with larger margin requirements. In addition, OCC expects to specify more stringent limits on the amount of letters of credit a Clearing Member may maintain from a single issuer—not to exceed 5% of the issuing institution's Tier 1 Capital. OCC believes that lowering this limit will reduce the risks associated with having too great of a proportion of an institution's Tier 1 Capital in letters of credit for any one Clearing Member Organization. These changes are not expected to have any impact on Clearing Members because use of letters of credit as margin collateral is currently low. While utilization is low, OCC continues to support letters of credit based on their acceptability as collateral under Commodity Futures Trading Commission (''CFTC'') regulations.[33]

Finally, OCC would also make changes to the letter-of-credit concentration limits articulated in the Rules to eliminate wrong-way risk. I&P .08 to OCC Rule 604 provides that OCC will not accept a letter of credit issued pursuant to Rule 604(c) for the account of a Clearing Member in which the issuing institution, a parent, or an affiliate has an equity interest in the amount of 20% or more of such Clearing Member's total capital. The proposed rule change would tighten this requirement to prohibit acceptance of a letter of credit for the account of a Clearing Member in which the issuing institution, a parent, or an affiliate has any equity interest in such Clearing Member's total capital. Although the current rule seeks to limit the amount of wrong-way risk in these types of affiliated relationships, OCC believes this proposed change should eliminate wrong-way risk associated with allowing the issuing institution of a letter of credit to have an equity interest in the Clearing Member's total capital.

Implementation Timeframe

As discussed above, OCC intends to provide parallel reporting to its Clearing Members for a period of at least four consecutive weeks prior to implementing the change. If this parallel reporting does not commence at least four weeks prior to the date OCC obtains all necessary regulatory approvals for the proposed change, OCC will announce the implementation date of the proposed change by an Information Memorandum posted to its public website at least two (2) weeks prior to implementation.

(2) Statutory Basis

For the following reasons, OCC believes that the proposed rule change

[30] *See* 12 U.S.C. 1813(o).

[31] *See* 12 U.S.C. 3101(5)–(6), (11)–(12).

[32] Wrong-way risk occurs when exposure to a counterparty is adversely correlated with the credit quality of that counterparty.

[33] *See* 17 CFR 39.13(g)(10).

is consistent with section 17A(b)(3)(F) of the Act [34] and Rule 17Ad–22(e)(5),[35] Rule 17Ad–22(e)(9),[36] Rule 17Ad–22(e)(22),[37] and Rule 17Ad–22(e)(23) [38] thereunder.

Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act [39] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest. As discussed above, there are three primary components of this proposed rule change. First, the proposed rule change would transition away from the current CiM approach to valuing Government securities and GSE debt securities deposited as collateral in favor of applying fixed collateral haircuts that OCC would set and adjust pursuant to OCC's CRM Policy, which would allow OCC to more quickly respond to changing market conditions than possible when the fixed haircut schedule is codified in OCC's Rules, as it is today. Second, the proposed rule change would codify standards designed to ensure that OCC's Clearing Banks are adequately capitalized and meet certain minimum operational capability requirements. Third, the proposed rule change would improve OCC's credit and collateral risk management processes by aligning the standards for issuers of letters of credit with the new Clearing Bank standards and applying other changes intended to allow OCC to control exposures by imposing more stringent concentration limits and eliminating wrong-way risks.

Taken together, these changes would help ensure that OCC requires Clearing Members to maintain sufficient collateral, in form and amount, and maintain adequate Clearing Bank arrangements to facilitate the prompt and accurate clearance and settlement of securities transactions in the markets served by OCC. OCC would use the margin it has collected from a defaulting Clearing Member to protect other Clearing Members and their customers from default losses and ensure that OCC can continue the prompt and accurate clearance and settlement of its cleared products. In addition, maintaining adequate Clearing Bank arrangements helps protect Clearing Members and their customers from losses or liquidity shortfalls that might result from a Clearing Bank's failure.[40] For these reasons, the proposed changes to OCC's rules are reasonably designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds in OCC's custody or control, and, in general, to protect investors and the public interest in accordance with section 17A(b)(3)(F) of the Act.[41]

Rule 17Ad–22(e)(5)

Rule 17Ad–22(e)(5) [42] under the Act requires a covered clearing agency in relevant part to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity and market risks, and set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposures. In addition, Rule 17Ad–22(e)(5) requires a covered clearing agency to review the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually. OCC requires collateral to manage credit exposures between OCC and its Clearing Members, and OCC believes that the proposed rule change furthers these requirements in the following ways.

First, the proposed changes would remove Government securities and GSE debt securities deposited as margin from the CiM valuation approach under OCC's STANS margin methodology in favor of a procedures-based approach for valuing such collateral and determining haircuts under OCC's CRM Policy. OCC has identified certain weaknesses related to its current model for valuing Government securities as part of OCC's STANS margin methodology, including that the current CiM method may not adequately consider relevant stressed market conditions. OCC would address these weaknesses by setting a fixed haircut schedule in accordance with proposed changes to its CRM Policy, as opposed to the current schedule codified in OCC's Rules. Specifically, the CRM Policy would adopt an H-VaR approach to monitoring the continued adequacy of haircuts for Government Securities and GSE debt securities, which is a well understood financial services risk management method that OCC would utilize to incorporate periods of market stress into its analysis. The proposed change would require OCC to maintain its haircut levels for such collateral at a level at least equal to a 99% confidence interval of the most conservative look-back period under this H-VaR approach. OCC believes the proposed approach would result in more conservative collateral requirements for those Government securities currently valued using STANS and would have a minimal impact on the Clearing Fund. This procedures-based approach would involve review of the sufficiency of OCC's haircuts for Government securities and GSE debt securities on an at-least monthly basis. In addition, OCC would continue to review the haircuts as part of the annual review of the CRM Policy. Accordingly, OCC believes these changes are consistent with SEC Rule 17Ad–22(e)(5) [43] because they would establish written policies and procedures reasonably designed to set and enforce appropriately conservative collateral haircuts and to review the sufficiency of such haircuts not less than annually.

The proposed changes would also establish the authority of the Management Committee or its delegate to take mitigating actions in the form of applying greater haircuts or, in unusual or unforeseen circumstances, assigning no value or partial value to Government securities or GSE debt securities, as may be the case if there was an elevated risk of an imminent default by the sovereign that issued the securities. This authority would be similar to OCC's present authority to disapprove securities deposited to satisfy margin requirements under I&P .15 to OCC Rule 604, but would allow OCC to take less restrictive action if warranted and would also apply with respect to the Government securities deposited to satisfy Clearing Fund requirements. OCC believes this change would help to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, consistent with SEC Rule 17Ad–22(e)(5).[44]

Second, the proposal would specify that the concentration limits for letters of credit currently identified in OCC's Rules are minimum standards. The proposed changes would establish OCC's authority to set more restrictive concentration limits for letters of credit based on factors such as market

[34] 15 U.S.C. 78q–1(b)(3)(F).

[35] 17 CFR 240.17Ad–22(e)(5).

[36] 17 CFR 240.17Ad–22(e)(9).

[37] 17 CFR 240.17Ad–22(e)(22).

[38] 17 CFR 240.17Ad–22(e)(23).

[39] 15 U.S.C. 78q–1(b)(3)(F).

[40] *See* OCC Rule 1006(c), (f) (authorizing OCC to borrow from or charge the Clearing Fund in the event of a bank's insolvency or failure to perform an obligation to OCC when due).

[41] 15 U.S.C. 78q–1(b)(3)(F).

[42] 17 CFR 240.17Ad–22(e)(5).

[43] 17 CFR 240.17Ad–22(e)(5).

[44] *Id.*

conditions, the financial condition of approved issuers, and any other factors OCC determines are relevant. OCC believes these changes would help ensure OCC has authority under its policies and procedures to set appropriately conservative concentration limits for letters of credit. OCC would continue to review the concentration limits on at least an annual basis, including as part of the annual review of the CRM Policy. Accordingly, OCC believes these changes are consistent with SEC Rule 17Ad–22(e)(5) [45] because they establish written policies and procedures reasonably designed to set and enforce appropriately conservative concentration limits and to review the sufficiency of those concentration limits not less than annually.

Third, the proposed rule change would strengthen other standards applicable to letter-of-credit issuers, including by (1) increasing the minimum capital requirements for institutions that can issue letters of credit from $100 million in the case of U.S. institutions, and $200 million for non-U.S. institutions, to a required $500 million for any institution; (2) requiring that all letters of credit, regardless of issuer, be payable at a branch within the United States; (3) prohibiting the use of letters of credit for the account of a Clearing Member in which the issuing institution, a parent, or an affiliate has an equity interest in such Clearing Member's total capital, and (4) eliminating reliance on credit ratings for commercial paper, other short term obligations and long term obligations in favor of OCC's internal credit ratings. OCC believes these changes would also serve to reduce the risks associated with letters of credit by ensuring that letters of credit used as margin assets are issued by established banks with sufficient Tier 1 capital and will thus reduce credit risks associated with those letters of credit, including the elimination of wrong-way risk arising from an issuer of a letter of credit having an equity interest in the Clearing Member. Taken together, OCC believes the amendments in the proposed rule change would enhance OCC's credit and collateral risk management process by strengthening OCC's requirements regarding the use of letters of credit as margin assets. Accordingly, OCC believes the proposed changes are consistent with SEC Rule 17Ad–22(e)(5) [46] by helping to limit the assets OCC accepts as collateral to those with low credit, liquidity, and market risk.

Fourth, OCC would remove or amend certain letter-of-credit standards that are no longer appropriately conservative. For example, OCC would conform the sovereign credit rating for a non-U.S. issuer's country of domicile to the standard proposed for Clearing Banks in proposed OCC Rule 203(b)(3). While these standards would be less restrictive than those currently codified in I&P .01 to OCC Rule 604 with respect to letter-of-credit issuers, OCC believes that the current standards are too conservative. The proposed standards better align with sovereign credit ratings considered to be low risk.

For the foregoing reasons, OCC believes the proposed rule changes would establish policies and procedures reasonably designed to limit the assets that OCC accepts as collateral to those with low credit, liquidity and market risks and to set and enforce appropriately conservative haircuts and concentration limits to manage its or its Clearing Members credit exposures, consistent with the requirements of Rule 17Ad–22(e)(5).[47]

Rule 17Ad–22(e)(9)

Rule 17Ad–22(e)(9) [48] requires a covered clearing agency in relevant part to establish, implement, maintain and enforce written policies and procedures reasonably designed to minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency. The proposed Clearing Bank standards would help ensure that OCC's Clearing Banks are adequately capitalized and meet certain minimum operational capability and reporting requirements. The proposed rule change would therefore help ensure OCC's ability to monitor and manage the financial and operational risks that may be presented by its Clearing Banks. The proposed rule change would also require that OCC's Risk Committee approve any new Clearing Banks prior to onboarding. OCC believes the proposed change is therefore reasonably designed to minimize and manage the credit and liquidity risk arising from conducting its money settlements in commercial bank money consistent with Rule 17Ad–22(e)(9).[49]

Rule 17Ad–22(e)(22)

Rule 17Ad–22(e)(22) [50] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to use, or at a minimum, accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement. OCC believes that by codifying OCC's expectation that Clearing Banks use the SWIFT messaging network when possible, the proposed rule change would mitigate risks by ensuring the use of internationally accepted communication procedures and standards by OCC's Clearing Banks to facilitate efficient payment, clearing, and settlement. OCC believes the proposed rule change is therefore consistent with Rule 17Ad–22(e)(22).[51]

Rule 17Ad–22(e)(23)

Finally, Rule 17Ad–22(e)(23) [52] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures, provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency, and provide for a comprehensive public disclosure that describes its material rules, policies, and procedures regarding, among other things, its risk management framework. OCC believes that codifying its minimum standards for Clearing Banks and letter-of-credit issuers will provide Clearing Members and other market participants greater clarity and transparency concerning these relationships while preserving OCC's authority to disapprove specific relationships on other grounds, as warranted by individual facts and circumstances.

In addition, the proposed changes would provide for public disclosure of information related to the collateral haircuts for Government securities and GSE debt securities and concentration limits for letters of credit. OCC's CRM Policy would provide that OCC would make such collateral haircut schedule and concentration limits available on OCC's website and provide Clearing Members with a full day's notice prior to implementing a change. OCC would generally issue an Information Memo

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] 17 CFR 240.17Ad–22(e)(9).

[49] *Id.*

[50] 17 CFR 240.17Ad–22(e)(22).

[51] *Id.*

[52] 17 CFR 240.17Ad–22(e)(23).

whenever the schedule of haircuts or concentration limits are modified to inform Clearing Members of the changes and would update its Operations Manual. Information Memos are available on OCC's public website. In addition, OCC would disclose information concerning how it sets and enforces these collateral haircuts and concentration limits, including use of the H-VaR approach for determining the adequacy of collateral haircuts, in its responses to the Disclosure Framework for Financial Market Infrastructures issued by the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions.[53] OCC believes the proposed rule change is therefore consistent with Rule 17Ad–22(e)(23).[54]

For these reasons, OCC believes that the proposed rule change is consistent with applicable provisions of section 17A of the Exchange Act and Rule 17Ad–22 thereunder.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[55] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule changes concerning collateral haircuts or letters of credit would impact or impose any burden on competition. The proposed rule change is designed to modify OCC's rules so that the Government securities and GSE debt securities that are pledged as margin or Clearing Fund collateral would be value based on a fixed schedule of haircuts that would be set and enforced pursuant to OCC's CRM Policy, codify certain Clearing Bank standards currently maintained in OCC's internal procedures, and revise certain I&Ps to OCC Rule 604 regarding the acceptability of letters of credit as margin assets. None of these changes would inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another, and all of the changes would be applied uniformly to all Clearing Members. In addition, the changes to Clearing Bank and letter-of-credit issuer standards are not expected to have any impact on Clearing Members because the Clearing Banks and issuers with which Clearing Members have established relationships meet the proposed standards.

For the foregoing reasons, OCC believes the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impact or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the selfregulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–OCC–2022–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2022–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

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–OCC- 2022–012 and should be submitted on or before January 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27912 Filed 12–22–22; 8:45 am]

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[53] *See* The Options Clearing Corporation Disclosure Framework for Financial Market Infrastructures, *available at https://www.theocc.com/Risk-Management/PFMI-Disclosures.*

[54] 17 CFR 240.17Ad–22(e)(23).

[55] 15 U.S.C. 78q–1(b)(3)(I).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96530; File No. SR–NYSEAMER–2022–56]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Increase Certain Annual Fees Set Forth in Section 141 of the NYSE American Company Guide

December 19, 2022.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 13, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 141 of the NYSE American Company Guide (the ''Company Guide') to amend its annual fees charged to issuers of listed equity securities. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its annual fees charged to issuers of listed equity securities as set forth in Section 141 of the Company Guide. The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2023.

The Exchange currently charges an annual fee of $50,000 to issuers with 50 million or fewer shares outstanding and an annual fee of $70,000 to issuers with more than 50 million shares outstanding. The Exchange proposes to increase the annual fee for issuers with 50 million or fewer shares outstanding to $55,0000 [sic], and to increase the annual fee for issuers with more than 50 million shares outstanding to $75,000.

The proposed increase in the annual fee rates reflects increases in the costs the Exchange incurs in providing services to listed companies on an ongoing basis, as well as increases in the costs of conducting its related regulatory activities. As described below, the Exchange proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

The revised annual fees will be applied in the same manner to all issuers with listed securities in the affected categories and the Exchange believes that the changes will not disproportionately affect any specific category of issuers.

The Exchange also proposes to remove from Section 141 text referring to fee rates that are no longer applied as this reference is no longer relevant.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4) [5] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Section 141 to increase the annual fees for listed equity securities as set forth above because of the increased costs incurred by the Exchange since it established the current rates.

The Proposed Changes Are Reasonable

The Exchange believes that the proposed changes to its annual fee schedule are reasonable. In that regard, the Exchange notes that its general costs to support its listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies. Specifically, the Exchange has (among other things) increased expenditure on listed companies and the value of an NYSE American listing by: making improvements to NYSE Connect, an online service that provides listed companies with access to in-depth information to better understand the trading of their securities; and launching the NYSE Institute, whose focus includes providing thought leadership and advocacy on behalf of listed companies. The Exchange notes that companies listed on both the New York Stock Exchange and NYSE American all benefit from the foregoing services.

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities affected by the proposed annual fee adjustments. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS,[7] the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] Release No. 34–51808 (June 9, 2005); 70 FR 37496 (June 29, 2005).

[8] *See* Regulation NMS, 70 FR at 37499.

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the adoption of an increase to the annual fees for various categories of equity securities represents a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings.

The Exchange proposes to make the aforementioned fee increases in Section 141 to better reflect the value of such listing to issuers.

The Proposal Is An Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed amendments to the annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the amount of certain of the fees to reflect increased operating costs. Similarly, as the fee structure remains effectively unchanged apart from increases in the rates paid by all issuers, the changes to annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer of equity securities.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers of operating company equity securities because the same fee schedule will apply to all such issuers. The Exchange does not propose to increase the minimum annual fees charged for any of the various classes of derivative securities products, closed end funds, bonds, or warrants for which annual fees are also set forth in Section 141. The Exchange believes that this is not unfairly discriminatory to the issuers of operating company equity securities as the benefits the issuers of these other classes of securities receive in connection with their listings are consistent with the current fee levels paid by those issuers. This is because those types of listings do not generally benefit to the same extent from services provided by the Exchange as do issuers of operating company equity securities.

Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) [9] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2022–56 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–NYSEAMER–2022–56. 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

[9] 15 U.S.C. 78s(b)(3)(A).

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–NYSEAMER–2022–56 and should be submitted on or before January 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27910 Filed 12–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96534; File No. SR–NASDAQ–2022–074]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date of Nasdaq's Post-Trade Risk Management Product to Q2 2023

December 19, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2022, 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 of its Post-Trade Risk Management product to Q2 2023.

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 of its Post-Trade Risk Management tool to Q2 2023.

Nasdaq proposed to enhance its connectivity, surveillance and risk management services by launching three re-platformed products: (i) WorkX, (ii) Real-Time Stats and (iii) Post-Trade Risk Management. These changes were filed by Nasdaq on April 20, 2021 and published in the **Federal Register** on May 7, 2021.[3]

Nasdaq initially proposed that WorkX and Real-Time Stats would launch on April 12, 2021 and Post-Trade Risk Management would launch no later than Q3 2021.[4] Due to re-prioritization in the Nasdaq product pipeline, on September 14, 2021, Nasdaq proposed to delay the implementation date of Post-Trade Risk Management until Q1 2022.[5] On March 31, 2022, Nasdaq proposed to delay the implementation date from Q1 2022 to Q2 2022.[6] On June 30, 2022, Nasdaq proposed an additional delay until Q4 2022.[7] Due to continued re-prioritization, Nasdaq is further delaying the implementation of Post-Trade Risk Management until Q2 2023.[8] The Exchange will announce the new implementation date in an Equity Trader Alert at least ten days in advance of implementing the Post-Trade Risk Management product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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 modify the timing of the planned implementation for the Post-Trade Risk Management product and to inform the SEC and market participants of that change. The introduction of the Post-Trade Risk Management product was proposed in a rule filing that was submitted to the SEC, and the Exchange is not proposing with this filing, any changes other than to modify the implementation date for the Post-Trade Risk Management product. Nasdaq is delaying the implementation date in order to complete testing in line with Nasdaq's re-prioritized product pipeline.

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 modify the timing of the planned implementation for the Post-Trade Risk Management product and to inform the SEC and market participants of that change. The existing Nasdaq Risk Management product will continue to be available, and the implementation delay will impact all market participants equally. The Exchange does not expect the date change to place any burden on competition and clearing brokers will continue to have use of Nasdaq Risk Management service to monitor correspondent activity against limit settings and manage credit risk exposure.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91744 (May 3, 2021), 86 FR 24685 (May 7, 2021) (NASDAQ–2021–025) (''Proposal'').

[4] *See* Proposal *supra* n. 3 at 24685.

[5] *See* Securities Exchange Act Release No. 93125 (September 24, 2021), 86 FR 54255 (September 30, 2021).

[6] *See* Securities Exchange Act Release No. 94704 (April 12, 2022), 87 FR 22958 (April 18, 2022) (SR–NASDAQ–2022–029).

[7] *See* Securities Exchange Act Release No. 95216 (July 7, 2022), 87 FR 41774 (July 13, 2022) (SR–NASDAQ–2022–038).

[8] As a result of the delay, the Exchange is designating Equity 7, Section 116–A, the Post-Trade Risk Management Rule, to be operative in Q2 2023.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–074 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–2022–074. 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–2022–074, and should be submitted on or before January 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27916 Filed 12–22–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, 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.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–473, OMB Control No. 3235–0530]

Proposed Collection; Comment Request; Extension: Rule 32a–4

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 32(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a 31(a)(2)) (''Act'') requires that the selection of a registered management investment company's or registered face-amount certificate company's (collectively, ''funds'') independent public accountant be submitted to shareholders for ratification or rejection. Rule 32a–4 under the Investment Company Act (17 CFR 270.32a–4) exempts a fund from this requirement if, among other things, the fund has an audit committee consisting entirely of independent directors. The rule permits continuing oversight of a fund's accounting and auditing processes by an independent audit committee in place of a shareholder vote.

Among other things, in order to rely on rule 32a–4, a fund's board of directors must adopt an audit committee charter and must preserve that charter, and any modifications to the charter, permanently in an easily accessible place. The purpose of these conditions is to ensure that Commission staff will be able to monitor the duties and responsibilities of an audit committee of a fund relying on the rule.

Commission staff estimates that on average the board of directors takes 15 minutes to adopt the audit committee charter. Commission staff has estimated that with an average of 9 directors on the board,[1] total director time to adopt the charter is 2.25 hours. Combined with an estimated ½ hour of paralegal time to prepare the charter for board review, the staff estimates a total one-time collection of information burden of 2.75 hours for each fund. Once a board adopts an audit committee charter, the charter is preserved as part of the fund's records. Commission staff estimates that there is no annual hourly burden associated with preserving the charter in accordance with this rule.[2]

Because virtually all existing funds have now adopted audit committee charters, the annual one-time collection of information burden associated with adopting audit committee charters is limited to the burden incurred by newly established funds. Commission staff estimates that fund sponsors establish approximately 120 new funds each

[1] This estimate is based on staff experience and on discussions with a representative of an entity that surveys funds and calculates fund board statistics based on responses to its surveys.

[2] This estimate is based on staff experience and discussions with funds regarding the hour burden related to maintenance of the charter.

year,[3] and that all of these funds will adopt an audit committee charter in order to rely on rule 32a–4. Thus, Commission staff estimates that the annual one-time hour burden associated with adopting an audit committee charter under rule 32a–4 is approximately 330 hours.[4]

When funds adopt an audit committee charter in order to rely on rule 32a–4, they also may incur one-time costs related to hiring outside counsel to prepare the charter. Commission staff estimates that those costs average approximately $1500 per fund.[5] As noted above, Commission staff estimates that approximately 120 new funds each year will adopt an audit committee charter in order to rely on rule 32a–4. Thus, Commission staff estimates that the ongoing annual cost burden associated with rule 32a–4 in the future will be approximately $180,000.[6]

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collections of information required by rule 32a–4 are necessary to obtain the benefits of the rule. The Commission is seeking OMB approval, because 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 control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by February 21, 2023.

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, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: December 19, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27907 Filed 12–22–22; 8:45 am]

BILLING CODE 8011–01–P

[3] This estimate is based on the average annual number of notifications of registration on Form N–8A filed from 2019 to 2021.

[4] This estimate is based on the following calculation: (2.75 burden hours for establishing charter × 120 new funds = 330 burden hours).

[5] Costs may vary based on the individual needs of each fund. However, based on the staff's experience and conversations with outside counsel that prepare these charters, legal fees related to the preparation and adoption of an audit committee charter usually average $1,500 or less. The Commission also understands that model audit committee charters are available, which reduces the costs associated with drafting a charter.

[6] This estimate is based on the following calculations: ($1500 cost of adopting charter × 120 newly established funds = $180,000).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96532; File No. SR–NASDAQ–2022–068]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Entry and All-Inclusive Annual Fees for Certain Companies

December 19, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify entry and all-inclusive annual fees for certain companies, as described below. While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2023.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to (i) replace the tiered entry fee structure with a flat fee of $270,000 when a Company first lists a class of equity securities on the Nasdaq Global or Global Select Market; (ii) modify the Exchange's all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets; (iii) replace the two-tier entry fee structure with a flat fee of $80,000 when an Acquisition Company, as defined below, first lists a class of equity securities on Nasdaq; (iv) to adopt an all-inclusive annual listing fee structure specific to Acquisition Companies listing on the Nasdaq Capital Market; and (v) to replace the current three-tier all-inclusive annual listing fee structure for all Acquisition Companies with a two-tier structure, as described below.

Entry Fees on the Nasdaq Global Market[3]

Currently, Nasdaq charges Companies listing pursuant to Rule 5910(a)(1), other than Acquisition Companies, entry fees for the Nasdaq Global and Global Select Market based on the number of shares outstanding according to the following tiers:[4]

Up to 30 million shares	$150,000
30+ to 40 million shares	$170,000
40+ to 50 million shares	$210,000
50+ to 60 million shares	$250,000

[3] Nasdaq is not proposing to amend the Entry Fees on the Nasdaq Capital Market, except for the Acquisition Companies, as explained below.

[4] Companies must also submit a $25,000 initial application fee, which is credited towards the entry fee upon listing. The initial application fee for an Acquisition Company is $5,000. *See* Rule 5910(a)(11).

60+ to 70 million shares $290,000
Over 70 million shares $295,000

These fees are based on the aggregate of all classes of equity securities to be listed on the Nasdaq Global and Global Select Market, as shown in the company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular or registration statement. In the case of foreign companies, total shares outstanding includes only those shares issued and outstanding in the United States.

The entry fees for companies listing on the Nasdaq Global and Global Select Markets were last modified in 2018.[5] Nasdaq now proposes to replace the tiered structure with a flat fee of $270,000 when a Company, other than an Acquisition Company, first lists a class of equity securities on the Nasdaq Global or Global Select Market.

Nasdaq proposes to make this change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat entry fee when a Company first lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While some companies would pay a higher (or lower) initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this change is not unfairly discriminatory because, similarly, the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding.

Nasdaq also proposes to provide that any company, including an Acquisition Company (until it has satisfied the condition in Rule IM–5101–2(b)),[6] that lists an additional class of equity securities (not otherwise identified in Rule 5900 Series) is not subject to entry fees but is charged a non-refundable $25,000 initial application fee (except for an Acquisition Company that is charged a non-refundable $5,000 initial application fee).[7] Currently, Rule 5910(a)(1) provides that a company, including an Acquisition Company, that submits an application to list any class of its securities (not otherwise identified in Rule 5900 Series) on the Nasdaq Global Market is subject to the entry fees. Nasdaq proposes to make this change to better reflect the value of listing an additional class of securities for already listed companies and to better align such value with Nasdaq's regulatory resources expended in connection with such applications. In particular, the Exchange believes it is reasonable to charge only a non-refundable $25,000 initial application fee (except for an Acquisition Company that is charged a non-refundable $5,000 initial application fee) because the company listing an additional class of equity securities is already subject to Nasdaq rules, including the applicable corporate governance requirements. Accordingly, Nasdaq, typically, expends less regulatory resources qualifying an additional class of equity securities for listing.

All-Inclusive Annual Listing Fees

Currently, for companies listed on the Capital Market, other than ADRs, Closed-end Funds and Limited Partnerships, the all-inclusive annual fee ranges from $45,000 to $81,000; for ADRs listed on the Capital Market the all-inclusive annual fee ranges from $45,000 to $54,500; and for Limited Partnerships listed on the Capital Market the all-inclusive annual fee ranges from $33,000 to $40,500. On the Global and Global Select Markets, the all-inclusive annual fee for companies other than, in part,[8] ADRs, Closed-end Funds and Limited Partnerships ranges from $48,000 to $167,000; for ADRs the all-inclusive annual fee ranges from $48,000 to $86,000; and for Limited Partnerships the all-inclusive annual fee ranges from $40,500 to $83,500. The all-inclusive annual fee for Closed-end Funds listed on any market tier ranges from $33,000 to $107,500. In each case, a company's all-inclusive annual fee is based on its total shares outstanding.[9]

Nasdaq proposes to amend the all-inclusive annual fee for all domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets to the following amounts,[10] effective January 1, 2023:

Global/Global Select Markets

	Total shares outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2023
Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships.	Up to 10 million shares	$48,000	$50,000
	10+ to 50 million shares	59,500	62,000
	50+ to 75 million shares	81,000	84,000
	75+ to 100 million shares	107,500	112,000
	100+ to 125 million shares	134,500	140,000
	125+ to 150 million shares	145,500	151,500
	Over 150 million shares	167,000	173,500
ADRs	Up to 10 million ADRs and other listed equity securities.	48,000	50,000
	10+ to 50 million ADRs and other listed equity securities.	54,500	56,500

[5] *See* Securities Exchange Act Release No. 84930 (December 21, 2018), 83 FR 67752 (December 31, 2018) (SR–NASDAQ–2018–105).

[6] After an Acquisition Company completes a business combination where all conditions in Rule IM–5101–2(b) are met, the combined Company must meet the requirements for initial listing, but the company is not subject to Entry Fee because the company is either already listed on Nasdaq or the Entry Fees do not apply pursuant to Listing Rule 5910(a)(7)(v). After that, the combined Company is no longer subject to the additional requirements of Listing Rule IM–5101–2.

[7] Nasdaq is not proposing to change Rule 5910(a)(11), which provides that a company (except for an Acquisition Company) subject to the Entry Fee described in Rule 5910(a)(1) must submit a non-refundable $25,000 initial application fee with its application. An Acquisition Company must submit a non-refundable $5,000 initial application fee with its application.

[8] Rule 5930 sets forth the all-inclusive annual listing fees applicable to SEEDS and Other Securities; and Rule 5940 sets forth the all-inclusive annual listing fees applicable to Exchange Traded Products that are listed on the Nasdaq Global Market.

[9] REITs are subject to the same fee schedule as other equity securities; however for the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the same Nasdaq market tier may be aggregated. Similarly, for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market. *See* Listing Rules 5910(b)(2) and 5920(b)(2).

[10] The proposed fee change reflects about a 4.0% increase rounded to the nearest $500.

	Total shares outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2023
	50+ to 75 million ADRs and other listed equity securities.	64,500	67,000
	Over 75 million ADRs and other listed equity securities.	86,000	89,500
Closed-end Funds	Up to 50 million shares	33,000	34,500
	50+ to 100 million shares	54,500	56,500
	100+ to 250 million shares	81,000	84,000
	Over 250 million shares	107,500	112,000
Limited Partnerships	Up to 75 million shares	40,500	42,000
	75+ to 100 million shares	54,500	56,500
	100+ to 125 million shares	67,000	69,500
	125+ to 150 million shares	72,500	75,500
	Over 150 million shares	83,500	87,000

Capital Market

	Total shares outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2023
Equity securities other than ADRs, Closed-end Funds and Limited Partnerships.	Up to 10 million shares	$45,000	$47,000
	10+ to 50 million shares	59,500	62,000
	Over 50 million shares	81,000	84,000
ADRs	Up to 10 million ADRs and other listed equity securities.	45,000	47,000
	Over10 million ADRs and other listed equity securities.	54,500	56,500
Closed-end Funds	Up to 50 million shares	33,000	34,500
	50+ to 100 million shares	54,500	56,500
	100+ to 250 million shares	81,000	84,000
	Over 250 million shares	107,500	112,000
Limited Partnerships	Up to 75 million shares	33,000	34,500
	Over 75 million shares	40,500	42,000

Nasdaq also proposes to update the maximum fee applicable to a Closed-End Fund family to $112,000 and the maximum fee applicable to a REIT Family listed on the Nasdaq Global Market and the Nasdaq Capital Market to $173,500 and $84,000, respectively, to reflect the proposed fee change for other equity securities, as described above.[11]

Finally, Nasdaq proposes to update amounts in examples in Listing Rules 5910(b)(3)(D) and 5920(b)(3)(D), clarifying the application of the rules for companies transferring between Nasdaq tiers, to align the fee amounts with the fees applicable in year 2023.

As described below, Nasdaq proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

Nasdaq also proposes to remove references to fees that are no longer applicable because they were superseded by new fee rates specified in the rule text.

[11] *See* footnote 9 above.

Entry Fee for Acquisition Companies

Nasdaq proposes to modify the Entry Fee for companies whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM–5101–2, (''Acquisition Companies'').

Nasdaq currently charges entry fees for Acquisition Companies listing on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers:[12]

Up to 15 million shares $50,000
Over 15 million shares $75,000

These fees are based on the aggregate of all classes of equity securities to be listed on Nasdaq, as shown in the company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular or registration statement. In the case of foreign companies, total shares outstanding includes only those shares issued and outstanding in the United States.

Nasdaq now proposes to replace the two-tier structure with a flat fee of $80,000 when an Acquisition Company first lists a class of equity securities on Nasdaq. The flat entry fee would cover both an Acquisition Company's common shares and also warrants and rights, if any.

Nasdaq proposes to make these fee increases to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat entry fee when an Acquisition Company first lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this increase is not unfairly discriminatory because, similarly, the value of the listing to a company is

[12] Listing Rules 5910(a)(1)(B) and 5920(a)(1) for the Nasdaq Global or Global Select Market and the Nasdaq Capital Market, respectively. Companies must also submit a $5,000 initial application fee, which is credited towards the entry fee upon listing. *See* Listing Rules 5910(a)(11) and 5920(a)(11).

substantially the same regardless of the number of shares the company has outstanding. Nasdaq also believes that the fee increase is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions with operating companies.

In addition, the Exchange observes that many companies may not know their share structure or how many shares will ultimately be outstanding at the time they are considering whether to list on the Exchange. Therefore, the Exchange believes that adopting a flat entry fee will provide prospective Acquisition Companies listing on Nasdaq with greater transparency on the costs associated with initially listing on the Exchange.

All-Inclusive Annual Listing Fee for Acquisition Companies

Nasdaq currently charges an All-Inclusive Annual Listing Fee for Acquisition Companies listed on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers:

Up to 10 million shares $45,000
10+ to 50 million shares $59,500
Over 50 million shares $81,000

Currently, the securities of an Acquisition Company listing on the Nasdaq Capital Market are subject to the same all-inclusive annual fee schedule as all domestic and foreign companies listing equity securities on the Nasdaq Capital Market. These fees were last modified in 2021, effective for 2022, as part of the Exchange's modification of all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets.[13] The securities of an Acquisition Company listing on the Nasdaq Global and Global Select Markets are subject to the same all-inclusive annual fee schedule as the securities of an Acquisition Company listing on the Nasdaq Capital Market as provided in Listing Rule 5910(a)(1)(B) [sic].[14]

Nasdaq now proposes to adopt a fee structure specifically for Acquisition Companies listing on the Nasdaq Capital Market and to replace the current three-tier structure for Acquisition Companies listing on the Nasdaq Capital, Global and Global Select Markets with the following two-tier structure:

Up to 50 million shares $70,000
Over 50 million shares $81,000

As described above, securities listed on the Nasdaq Capital Market by an Acquisition Company are, and have been, subject to the same annual fee schedule as all domestic and foreign companies listing equity securities on the Nasdaq Capital Market. This structure was maintained since Nasdaq first adopted a rule to impose additional listing requirements on Acquisition Companies, which allowed such companies to list on Nasdaq.

In establishing the proposed All-Inclusive Annual Fees for Acquisition Companies across all tiers, including the changes to the number and cut-off point of pricing tiers, Nasdaq considered various factors that distinguish Acquisition Companies from other issuers of primary equity securities on Nasdaq, the use of various Nasdaq regulatory and support services by Acquisition Companies, as well as, pricing for similar securities on other national securities exchanges. Based on this analysis, Nasdaq proposes to modify the number of fee tiers within the annual fee schedule to better align fees with the size of the companies that pay those fees and the use that companies of various sizes typically make of Nasdaq's services. In setting the proposed All-Inclusive Annual Fee, Nasdaq reviewed the billing history of more than 450 Acquisition Companies that had been listed on Nasdaq to determine the fees assessed these companies. Nasdaq also reviewed listing-related services provided to Acquisition Companies, including reviews of various regulatory forms, rule interpretations requests, and compliance plan reviews. Nasdaq established the proposed two tier All-Inclusive Annual Fee for Acquisition Companies and shares outstanding tier based on this analysis of historical fees paid and regulatory services used.

Based on this analysis, Nasdaq determined that only a small minority of Acquisition companies were listed on Nasdaq with less than 10 million of total shares outstanding, but the services provided to them and the Exchange's regulatory resources dedicated to such listings are substantially the same regardless of the number of shares the company has outstanding. The vast majority of listed Acquisition companies fall within the current second tier. Accordingly, Nasdaq believes that the new tier of up to 50 million shares better reflects both the value of the listing to Acquisition Companies and the expenditure of regulatory resources by Nasdaq. Nasdaq also believes that the all-inclusive fee increase for this tier is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

While there is a small minority of Acquisition Companies that fall within the current third tier (over 50 million shares) and that will not be affected by the proposed fee change, Nasdaq believes that this is not unfairly discriminatory because such large Acquisition Companies tend to have better known and more experienced sponsors and advisors, and therefore require fewer resources from Nasdaq. In addition, Nasdaq obtains value from being associated with these experienced sponsors. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that maintaining this tier as is, is reasonable given the competitive landscape.

Nasdaq also proposes to renumber certain rules to improve the clarity and readability of these rules.

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2023.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the adoption of a flat entry fee on the Nasdaq Global and Global Select Markets represents a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings. Nasdaq proposes to

[13] *See* Securities Exchange Act Release No. 34-93713 (December 3, 2021), 86 FR 70156 (December 9, 2021) (SR–NASDAQ–2021–091).

[14] *See* Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021) (SR–NASDAQ–2021–055). In this filing Nasdaq explained its belief that Acquisition Companies listed on the Nasdaq Global Market receive the same services as Acquisition Companies listed on the Nasdaq Capital Market making it appropriate for Nasdaq to charge such companies the same fees.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

make the aforementioned fee structure change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat fee when a company first lists a class of securities as the value to the company is substantially the same regardless of the number of shares the company has outstanding. While some companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, the Exchange believes that this increase is not unfairly discriminatory, as the resources the Exchange expends in connection with the initial listing of those companies are typically consistent with the resources the Exchange expends on many companies that are already subject to the similar fees under the current structure. This proposal is consistent with the approach of other exchanges.[17]

Nasdaq believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rule 5910(a)(1) to provide that any company, including an Acquisition Company (until it has satisfied the condition in Rule IM–5101–2(b)), that lists an additional class of equity securities (not otherwise identified in Rule 5900 Series) is not subject to entry fees under this rule but is charged a non-refundable $25,000 initial application fee (except for an Acquisition Company that is charged a non-refundable $5,000 initial application fee) because this change better reflects the value of listing an additional class of securities for already listed companies and better aligns such value with Nasdaq's regulatory resources expended in connection with such applications. In particular, the Exchange believes it is reasonable to charge only a non-refundable $25,000 initial application fee (except for an Acquisition Company that is charged a non-refundable $5,000 initial application fee), because the company listing an additional class of equity securities is already subject to Nasdaq rules, including the applicable corporate governance requirements. Accordingly, Nasdaq, typically, expends less regulatory resources qualifying an additional class of equity securities for listing.

Nasdaq believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the all-inclusive annual fees listing fees[18] as set forth above because of the increased costs incurred by Nasdaq since it established the current rates. In that regard, the Exchange notes that its general costs to support our listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies, the technology to deliver those services and the customer experience at the Nasdaq MarketSite. These improvements include, ESG services, governance solutions and support, the remodeling of a portion of the New York Headquarters and the investment in technology to support direct listings with a capital raise, IPO innovations and ongoing trading.

Nasdaq also believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the all-inclusive annual listing fees while rounding the 4% increase to the nearest $500 as set forth above because such rounding represents de minimis variation in fees for Nasdaq listed companies. In addition, Nasdaq has used the same methodology since the adoption of the all-inclusive annual listing fee schedule and all annual listing fees under Listing Rules 5910(b)(2) and 5920(b)(2) are rounded to $500.

The proposed change to update amounts in examples clarifying the application of the rules for companies transferring between Nasdaq tiers and to update the maximum fee applicable to a Closed-End Fund family and the maximum fee applicable to a REIT Family to reflect the proposed fee change for other equity securities, as described above, is not unfairly discriminatory because it merely provides transparency to the application of fees without changing the substance of the rule.

Nasdaq believes that the Exchange operates in a highly competitive marketplace for the listing of companies, including the Acquisition Companies.[19] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange's listing fees. In other words, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, Nasdaq believes that the adoption of a flat Entry Fee and a modification to the All-Inclusive Annual Fee schedule for Acquisition Companies represent a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings.

Nasdaq believes it is reasonable to apply a flat Entry Fee when an Acquisition Company lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While Acquisition Companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this increase is not unfairly discriminatory, similarly, the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. Nasdaq also believes that the fee increase is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

Nasdaq believes it is reasonable to transition from the current three-tier structure for the All-Inclusive Annual Fee for Acquisition Companies to the proposed two-tier structure because Nasdaq's analysis, as described above, indicates that the proposed structure better reflects the value of services Nasdaq provides to Acquisition Companies. Nasdaq also believes that the All-Inclusive Fee increase for the proposed first tier is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

[17] *See* Section 902.03 Fees for Listed Equity Securities; of the NYSE Listed Company Manual.

[18] Effective January 1, 2022, Nasdaq modified the fee schedule for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets. Securities Exchange Act Release No. 93713 (December 3, 2022), 86 FR 70156 (December 9, 2022) (SR–NASDAQ–2021–095).

[19] The Justice Department has noted the intense competitive environment for exchange listings. *See* ''NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

While there is a small minority of Acquisition Companies that fall within the proposed second tier (over 50 million shares) that will not be affected by the proposed fee change, Nasdaq believes that this is not unfairly discriminatory because such large Acquisition Companies tend to have better known and more experienced sponsors and advisors, and therefore have more value to Nasdaq when they list. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that maintaining this tier as is, is reasonable given the competitive landscape.

The proposed removal of text relating to fees that are no longer applicable and renumbering certain rules to improve their clarity and readability is ministerial in nature and has no substantive effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues, both within the U.S. and internationally. For this reason, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[20]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2022–068 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–2022–068.* 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–2022–068 and should be submitted on or before January 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27911 Filed 12–22–22; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11950]

Biodiversity Beyond National Jurisdiction

ACTION: Notice of public meeting.

SUMMARY: The Department of State will hold an information session regarding upcoming United Nations negotiations concerning marine biodiversity of areas beyond national jurisdiction.

DATES: The public meeting will be held via WebEx on January 24, 2023, 10:00–11:00 a.m.

FOR FURTHER INFORMATION CONTACT: If you would like to participate in this meeting, please send your (1) name, (2) organization/affiliation, and (3) email address and phone number, to Meaghan Cuddy at *CuddyMR@state.gov* or at (202) 340–3272.

SUPPLEMENTARY INFORMATION: The Department of State will hold a public meeting at 10:00 a.m. on Tuesday, January 24, 2023, to prepare for the resumed fifth session of an Intergovernmental Conference (IGC) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). This public meeting will be held by way of WebEx, with a capacity of up to 1000 members of the public to participate. To RSVP, participants should contact the meeting coordinator, Meaghan Cuddy, by email at *CuddyMR@state.gov* for log on and dial-in information, and to request reasonable accommodation. Requests for reasonable accommodation received after January 17, 2023, will be considered but might not be possible to fulfill.

The United Nations will convene the resumed fifth session of the BBNJ IGC from February 20–March 3, 2023, in New York City. The UN General Assembly established the IGC to consider the recommendations of a two-year Preparatory Committee and to elaborate the text of an international legally binding instrument under the United Nations Convention on the Law of Sea on BBNJ. This resumed session is a continuation of the session held from August 15–26, 2022. It is

anticipated that the BBNJ Agreement may be adopted at the conclusion of negotiations in this session. Additional information on the BBNJ process is available at *www.un.org/bbnj.*

We are inviting interested U.S. stakeholders to this virtual public meeting to share views about the BBNJ IGC, in particular to provide information to assist the U.S. Government in developing its positions. We will provide a brief overview of the upcoming negotiations and listen to the viewpoints of U.S. stakeholders. The information obtained from this session will help the U.S. delegation prepare for participation in the resumed fifth IGC session.

Authority: 22 U.S.C. 2656.

Elizabeth Kim,

Director, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2022–27938 Filed 12–22–22; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36642]

Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc.—Control Exemption—Delta Southern Railroad, Inc.

Patriot Rail Company LLC (Patriot), SteelRiver Transport Ventures LLC; Global Diversified Infrastructure Fund (North America) LP; First State Infrastructure Managers (International) Limited; and Mitsubishi UFJ Financial Group, Inc. (MUFG) (collectively, Patriot Rail), have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to acquire control of Delta Southern Railroad, Inc. (DSRR), a Class III rail carrier.[1] Through this transaction, Patriot Rail would acquire from West Branch Intermediate Holdings, LLC (West Branch), a noncarrier, a controlling interest in DSRR. Patriot Rail currently controls 31 Class III rail carriers (the Patriot Short Lines).[2]

The transaction may be consummated on or after January 6, 2023, the effective date of the exemption.[3]

According to the verified notice, through a Stock Purchase Agreement, Patriot would acquire a controlling interest in DSRR through Patriot's purchase of all DSRR's issued and outstanding stock. Patriot states that the proposed transaction involves a stock acquisition and would have no effect on DSRR's corporate entity status.

The verified notice indicates that: (1) none of the Patriot Short Lines connect with DSSR; (2) the transaction is not part of a series of anticipated transactions that would connect any of the Patriot Short Lines or DSRR; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 30, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36642, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Patriot Rail's representative, John M. Scheib, Gentry Locke, 919 E Main Street, Suite 1130, Richmond, VA 23219.

According to Patriot Rail, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 20, 2022.

By the Board, Cynthia T. Brown, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2022–28031 Filed 12–22–22; 8:45 am]

BILLING CODE 4915–01–P

[1] The verified notice states that DSRR owns and operates two lines: the first rail line begins at Tallulah, La., and continues to Lake Providence, La.; the second line extends from Monroe, La., to Sterlington, La. Maps depicting the DSRR lines are contained in Exhibit B of the verified notice.

[2] Exhibit C of the verified notice of exemption lists the short line carriers indirectly controlled by Patriot Rail. Maps depicting the Patriot Short Lines are contained in Exhibit D of the verified notice.

[3] On September 28, 2022, Lake Providence Port Commission (LPPC) replied in opposition to the verified notice, requesting that the Board postpone the effective date and ''ultimately reject Patriot Rail's petition insofar as it would permit [West Branch and DSRR] to disrupt'' the feeder line application proceeding in Docket No. FD 36447, in which LPPC is attempting to acquire one of DSRR's lines. (LPPC Reply 1–2.) By decision served October 14, 2022, this proceeding was placed in abeyance until further order of the Board, and Patriot Rail, DSRR, and LPPC were directed to meet and confer on the issues raised in Docket No. FD 36647. *Patriot Rail Co. LLC,—Control Exemption—Delta S. R.R.,* FD 36447 et al., slip op. at 2 (STB served October 14, 2022). By decision served December 20, 2022, the Board denied LPPC's request to reject the notice of exemption and lifted the abeyance in this proceeding.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35724; Docket No. FD 35724 (Sub-No. 1)]

California High-Speed Rail Authority—Construction Exemption—In Merced, Madera, and Fresno Counties, Cal.; California High-Speed Rail Authority—Construction Exemption—In Fresno, Kings, Tulare, and Kern Counties, Cal.; Decision

On September 17, 2021, the California High-Speed Rail Authority (Authority), a Class III non-operating rail carrier, filed a petition to reopen Docket No. FD 35724 (Merced Petition) and a petition to reopen Docket No. 35724 (Sub-No. 1)[1] (Fresno Petition). In Docket No. FD 35724, the Board in 2013 granted the Authority an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct approximately 65 miles of high-speed passenger rail line between Merced, Cal., and Fresno, Cal. (the Merced to Fresno Section),[2] and in Docket No. FD 35724 (Sub-No. 1), the Board in 2014 granted the Authority an exemption to construct approximately 114 miles of high-speed passenger rail line between Fresno and Bakersfield, Cal. (the Fresno to Bakersfield Section).[3]

In its September 2021 petitions to reopen those dockets, the Authority sought the Board's approval for an

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] *Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, & Fresno Cntys., Cal.* (*June 2013 Decision*), FD 35724 (STB served June 13, 2013).

[3] *Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal.* (*Aug. 2014 Decision*), FD 35724 (Sub-No. 1) (STB served Aug. 12, 2014).

addition to the Merced to Fresno Section and a modification to the Fresno to Bakersfield Section, neither of which were previously considered by the Board. In a decision served on February 11, 2022 (*February 2022 Decision*), the Board found that the Authority provided new evidence and demonstrated changed circumstances that warranted reopening the two proceedings. The Board granted the petitions to reopen and solicited comments on the transportation merits of the proposed additions and modifications to the sections. No comments on the transportation merits were filed.

The Authority, as the current lead agency under National Environmental Policy Act (NEPA), 42 U.S.C. 4321 to 4370m–11, and the National Historic Preservation Act (NHPA), 54 U.S.C. 300101–307108, and the Federal Railroad Administration (FRA), as the previous lead agency under NEPA and NHPA, conducted environmental and historic reviews of the proposed modifications. The Board, through its Office of Environmental Analysis (OEA), participated as a cooperating agency. The environmental and historic reviews considered the environmental and historic impacts the proposed route modifications would have, potential alternatives, and whether different or additional conditions should be recommended to mitigate the impacts. OEA prepared an Environmental Memorandum in each of these proceedings summarizing the environmental and historic reviews and making final recommendations to the Board. OEA's Environmental Memoranda are appended to this decision.

In this decision, the Board authorizes the Authority's proposed changes to these construction projects, subject to the final recommended mitigation measures set forth in OEA's environmental memoranda.

Background

On March 27, 2013, and September 26, 2013, the Authority filed petitions seeking exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct the Merced to Fresno Section and the Fresno to Bakersfield Section, respectively. Both sections are components of the California High-Speed Rail (HSR) System. The HSR System consists of eight rail line sections that, together, ultimately would comprise a high-speed rail line from San Francisco, Cal., to Anaheim, Cal. (Merced Pet. 2.) The Merced to Fresno Section and the Fresno to Bakersfield Section are the first and only two sections of the HSR System for which the Authority has sought construction authority from the Board. (*See* Fresno Pet. 2 n.4.) The Board authorized the construction of the Merced to Fresno Section in the *June 2013 Decision* and the construction of the Fresno to Bakersfield Section in the *August 2014 Decision,* subject to extensive environmental mitigation conditions to avoid or minimize the projects' potential environmental impacts. (*See* Merced Pet. 3; Fresno Pet. 3.)

The Merced to Fresno Section. The Merced to Fresno Section connects the Downtown Merced Station to the Downtown Fresno Mariposa Avenue Station along a mostly north-south alignment and includes a wye to allow an east-west connection to the proposed San Jose to Merced section of the HSR System.[4] (Merced Pet. 2.) FRA and the Authority conducted a joint environmental review pursuant to NEPA and the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code section 21000–21189.3, and issued an Environmental Impact Report/Environmental Impact Statement (EIR/EIS),[5] after which FRA subsequently issued its Record of Decision (ROD) in 2012.[6] However, finding that part of the alignment merited further study,[7] FRA deferred final consideration of the Central Valley Wye (CVY), which would connect the north-south Merced to Fresno Section with the proposed east-west San Jose to Merced section. (Merced Pet. 2–3; *see also* ROD 19.)

As the lead Federal agency, FRA initiated the consultation process under Section 106 of NHPA (54 U.S.C. 306108) for the Merced to Fresno Section prior to OEA's involvement. *June 2013 Decision,* FD 35724, slip op. at 27. During that process, FRA consulted with the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and other interested parties. *Id.* The parties executed a Programmatic Agreement (PA) setting out a general process for Section 106 compliance for the proposed entire 800-mile system on June 11, 2011.[8] *Id.* The Section 106 consultation process, as well as evaluations conducted during the NEPA review, identified properties that are included in, or eligible for inclusion in, the National Register of Historic Places (National Register) that would be adversely affected by construction and operation of the Merced to Fresno Section. *Id.* FRA, the SHPO, and the Authority[9] then executed a Memorandum of Understanding (MOA)[10] that outlines additional surveys, historic property treatment, mitigation measures, and other efforts. *Id.* Subsequently, the parties executed a First Amendment to the MOA in 2013 to add OEA, for the Board, as a party. *Id.*

OEA conducted an independent analysis of the Final EIS prepared by FRA and the Authority and, following this review, recommended that the Board adopt the Final EIS for the

[4] The term ''wye'' refers to the Y-like formation that is created at the point where train tracks branch off the mainline to continue in different directions. The transition of mainline track to a wye requires splitting two tracks into four tracks that cross over one another before the wye legs can diverge in opposite directions to allow two-way travel. For the Merced to Fresno Section, the two tracks traveling east-west from the proposed San Jose to Merced Section must become four tracks—a set of two tracks branching toward Merced to the north and a set of two tracks branching toward Fresno to the south.

[5] The environmental documents were titled EIR/EIS to meet the obligations of both CEQA and NEPA, respectively. The Board is only required to comply with NEPA; accordingly, hereafter this decision will refer to the environmental documentation prepared in these cases as ''EISs.''

[6] The FRA's 2012 ROD is available on the Authority's website at *hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/final_EIR_MerFres_FRA09182012.pdf.*

[7] As noted in the Final EIS, the selection of the alignment for the wye connection impacted the environmental analysis for both the Merced to Fresno Section and the San Jose to Merced section. FRA, *Final Merced to Fresno Section Project EIR/EIS* 2–3, April 20, 2012, *railroads.dot.gov/environmental-reviews/california-hsr-merced-fresno/merced-fresno-final-eireis.* The alignment of the latter section, which would impact the ultimate location of the wye connection, was being studied and analyzed at the time of the *June 2013 Decision. See id.* Since then, the Authority has identified a preferred alternative for the San Jose to Merced section, for which it published a Draft EIS on April 24, 2020. The public comment period on that Draft EIS closed on June 23, 2020. *See* California High-Speed Rail Authority, *Project Section Environmental Documents—San Jose to Merced, hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/san-jose-to-merced-project-section-draft-environmental-impact-report-environmental-impact-statement/.*

[8] With the PA set to expire on July 21, 2021, the Signatories to the PA executed the First Amendment to the PA on July 21, 2021. In addition to extending the duration of the document, the amendment added OEA, for the Board, as an Invited Signatory to the agreement and designated the Authority as lead federal agency to Section 106 consultation and implementation.

[9] ACHP chose not to participate.

[10] Due to access restrictions, surveys for archaeological properties were incomplete and, therefore, additional National Register-eligible properties could have been present. The regulations implementing Section 106 allow for the development of an MOA when the effects of an undertaking cannot be fully determined prior to approval of an undertaking. *June 2013 Decision,* FD 35724, slip op. at 27. When there would be an adverse effect, the MOA can also establish responsibilities for the treatment of historic properties, implementation of mitigation measures, and ongoing consultation efforts. *Id.*

Merced to Fresno Section, which included the decision to defer consideration of the alignment of the CVY.[11] (Merced Pet. 3.) OEA also recommended that the Board find that OEA's participation in the MOA would satisfy the Board's obligations under Section 106. In the *June 2013 Decision,* the Board agreed with OEA's recommendations, adopted FRA and the Authority's Final EIS (subject to environmental conditions, including environmental conditions developed by OEA), found that the MOA would satisfy the Board's obligations under Section 106, and granted the Authority's petition for exemption. Both FRA's 2012 ROD and the Board's *June 2013 Decision* approved portions of the north-south alignment and the Downtown Merced and Downtown Fresno Mariposa Station locations, but they intentionally did not address the area known as the ''wye connection,'' which includes the location of the north-south track in that area. (*See* ROD 22.)

The Authority states that, since the *June 2013 Decision,* it has conducted significant additional analysis on the alignment of the wye connection to the proposed San-Jose-to-Merced section.[12] (Merced Pet. 4.) Of 17 possible alignments, the Authority and FRA selected four options for additional analysis. (*Id.* & n.10.) Based on that analysis and input from interested parties, the SR 152 (North) to Road 11 Wye Alternative was selected as the preferred alternative for the CVY. (*Id.*) The CVY Final Supplemental EIS was issued by the Authority on August 7, 2020, and the Authority issued its Supplemental ROD on the CVY in September 2020, subject to environmental mitigation measures. (*Id.*) The additional analysis, according to the Authority, allowed it to refine alternative alignments for the CVY that ''minimized impacts on farmland and communities and balanced environmental impacts with concerns for travel time and construction costs.'' (*Id.* at 6.) The Board (through OEA) participated as a cooperating agency for the CVY Final Supplemental EIS.

Citing these developments that followed the *June 2013 Decision* as new evidence and changed circumstances, the Authority requested that the Board reopen the proceeding in Docket No. FD 35724 to consider the CVY. The Authority also requested that the Board review and adopt the supplemental environmental and historic review completed by the Authority and FRA, pursuant to 40 CFR 1506.3. (Merced Pet. 6.) In the *February 2022 Decision* reopening Docket No. FD 35724, the Board stated that it would review the supplemental environmental and historic review and decide whether to adopt the Final Supplemental EIS. The Board also solicited comments on the transportation merits of the CVY. No comments on the transportation merits were received.

The Fresno to Bakersfield Section. The Authority and FRA conducted a joint environmental review for the Fresno to Bakersfield Section, with the Board, through OEA, acting as a cooperating agency. (Fresno Pet. 2.) In 2014, a Final EIS was issued, and FRA issued its ROD. (*Id.*)

As lead agency at the time, FRA initiated section-specific NHPA review for the Fresno to Bakersfield section. *August 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 20. The Section 106 consultation process, as well as evaluations conducted during the NEPA review, identified properties that are included, or eligible for inclusion, in the National Register that would be adversely affected by construction and operation of the Preferred Build Alternative. FRA, the Authority, the Board (through OEA), the U.S. Army Corps of Engineers, the SHPO, and ACHP executed an MOA on May 14, 2014, that outlines additional surveys, historic property treatment, mitigation measures, and other efforts that will take place prior to construction of the Fresno to Bakersfield Section. *Id.*

OEA recommended that the Board adopt the Final EIS, with several additional environmental mitigation measures. (*Id.* at 2–3.) OEA also recommended that the Board find that OEA's participation in the MOA process would satisfy the Board's obligations under Section 106. In the *August 2014 Decision,* the Board accepted OEA's recommendations, adopted the Final EIS and OEA's recommended mitigation measures, found that the MOA would satisfy the Board's obligations under Section 106, and authorized construction of the Fresno to Bakersfield Section.

In June 2014, the City of Bakersfield (the City) filed a lawsuit against the Authority, claiming, among other things, that ''the Preferred Alternative identified in the Fresno to Bakersfield Section Final EIS would severely affect the City's ability to utilize existing city assets, including its corporation yard, senior housing, and parking facilities at Rabobank Arena, Theatre and Convention Center; would render unusable one of the city's premier health care facilities; and would affect the Bakersfield Commons project, a retail/commercial/residential development.'' (Fresno Pet. 3–4 (quoting the description of the lawsuit in Suppl. ROD Section 1.3.2 at 1–9.)) After the Board issued its *August 2014 Decision,* the Authority and the City entered into a settlement agreement, dated December 19, 2014. (Fresno Pet. 4.) According to the Authority, as part of the settlement agreement, the Authority agreed ''to develop and study alternative routes that would address the City's concerns as well as the design needs of the Authority.'' (*Id.*)

The Authority states that, following the settlement agreement, it worked with the City and other stakeholders to develop the alternative (the Locally Generated Alternative, or LGA) that is now the subject of its exemption request. (*Id.*) The LGA consists of a 23.13-mile alternative alignment between the cities of Shafter, Cal., and Bakersfield, Cal., and a new location of the Bakersfield Station at F Street. (*Id.*) The Authority, as lead NEPA agency, conducted an environmental review of the modification (with the Board, through OEA, participating as cooperating agency) and issued a combined Final Supplemental EIS and Supplemental ROD on October 31, 2019. (*Id.* at 5.) The Authority represents that the proposed modifications would not disturb the remainder of the Fresno to Bakersfield Section authorized in the *August 2014 Decision.* (Fresno Pet. 4.)

The Authority sought to reopen Docket No. FD 35724 (Sub-No. 1), the Fresno to Bakersfield Section proceeding, to allow the Board to consider the LGA. In addition, the Authority requests that the Board review and adopt the environmental and historic review of the LGA completed by the Authority, pursuant to 40 CFR 1506.3. (Fresno Pet. 6.) In the *February 2022 Decision* reopening the proceeding, the Board stated that it would review the supplemental environmental and historic review and decide whether to adopt the Final Supplemental EIS. The Board also solicited comments on the

[11] When the Authority petitioned the Board for authority to construct the Merced to Fresno Section in March 2013, the environmental review under NEPA for that section had already been completed by the Authority and FRA. Consequently, the Board did not participate in the environmental review as a cooperating agency. However, as described further in this decision, the Board (through OEA) acted as a cooperating agency for the CVY Final Supplemental EIS.

[12] Pursuant to 23 U.S.C. 327, under a NEPA Assignment Memorandum of Understanding between FRA and the State of California, effective July 23, 2019, the Authority became the lead agency for compliance with NEPA and other federal laws for the HSR System, including the issuance of EISs and RODs under NEPA. Accordingly, the supplemental environmental reviews for both HSR sections were conducted by the Authority, not FRA.

transportation merits of the LGA, but none were filed.

Discussion and Conclusions

Rail Transportation Analysis

The construction of new railroad lines requires prior Board authorization, through either a full application and certificate under 49 U.S.C. 10901 or, as requested here, an exemption under 49 U.S.C. 10502 from the prior approval requirements of section 10901. Section 10901(c) directs the Board to grant authority for a rail line construction proposal unless it finds the proposal ''inconsistent with the public convenience and necessity.'' *See Alaska R.R.—Constr. & Operation Exemption—a Rail Line Extension to Port MacKenzie, Alaska,* FD 35095, slip op. at 5 (STB served Nov. 21, 2011), *aff'd sub nom. Alaska Survival* v. *STB,* 705 F.3d 1073 (9th Cir. 2013). Thus, there is a statutory presumption that rail construction projects are in the public interest and should be approved unless shown otherwise. *N. Plains Res. Council* v. *STB,* 668 F.3d 1067, 1091–92 (9th Cir. 2011); *Mid States Coal. for Progress* v. *STB,* 345 F.3d 520, 552 (8th Cir. 2003).

Under section 10502(a), the Board must exempt a proposed rail line construction from the prior approval requirements of section 10901 when it finds that (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. 10101, and (2) either (a) the proposal is of limited scope or (b) the full application procedures are not needed to protect shippers from an abuse of market power.

In the *June 2013 Decision* and the *August 2014 Decision,* the Board found that the Authority met the standards of 49 U.S.C. 10502 for exemptions from the prior approval requirements of 49 U.S.C. 10901 for the construction of the proposed Merced to Fresno Section and the proposed Fresno to Bakersfield Section, respectively. In both decisions, the Board concluded that the requested exemptions would reduce the need for Federal regulation (49 U.S.C. 10101(2)), ensure the development of a sound rail transportation system with effective competition to meet the needs of the shipping public (49 U.S.C. 10101(4)), foster sound economic conditions in transportation (49 U.S.C. 10101(5)), reduce regulatory barriers to entry (49 U.S.C. 10101(7)), and encourage and promote energy conservation (49 U.S.C. 10101(14)). *See June 2013 Decision,* FD 35724, slip op. at 22–23; *Aug. 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 12–13. The Board also found that although parties argued that certain other aspects of the rail transportation policy would be affected, no evidence was provided supporting the claims. *See June 2013 Decision,* FD 35724, slip op. at 23; *Aug. 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 14. The Board found that potential health and safety impacts (49 U.S.C. 10101(8)) were fully analyzed during the environmental review processes and that the extensive environmental mitigation that would be imposed on the projects would eliminate or minimize potential impacts on public health and safety to the extent practicable. *See June 2013 Decision,* FD 35724, slip op. at 24; *Aug. 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 14. Finally, the Board found that regulation of the proposed construction projects was not necessary to protect shippers or the traveling public from the abuse of market power. *See June 2013 Decision,* FD 35242, slip op. at 24–25; *Aug. 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 14–15. The Authority sought, and the Board granted authority to reopen to reconsider the exemptions, based on a finding of substantially changed circumstances. However, no party has challenged the Board's 2013 or 2014 conclusions on the transportation merits of the proposals, and there is nothing in the record since 2013 and 2014 that would call those conclusions into question. The Board therefore reaffirms the 2013 and 2014 conclusions here with regard to the transportation merits of the Merced to Fresno and Fresno to Bakersfield Sections, as modified, and now turns to consideration of the environmental and historic aspects of the proposed modifications to the project.

Environmental and Historic Analysis

NEPA requires Federal agencies to examine the environmental effects of proposed major Federal actions and to inform the public concerning those effects. *Balt. Gas & Elec. Co.* v. *Nat. Res. Def. Council,* 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize railroad construction as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). *Tex. Ry. Exch.—Constr. & Operation Exemption—Galveston Cnty., Tex.,* FD 36186 et al., slip op. at 5 (STB served Jan. 17, 2020). While NEPA prescribes the process that must be followed, it does not mandate a particular result. *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 350 (1989). Once the environmental effects, if any, of a proposed action have been adequately identified and evaluated, an agency may conclude that other values outweigh those environmental effects. *Id.*

Section 106 of NHPA requires Federal agencies to ''take into account the effect of'' their licensing decisions (in this case, whether to grant the Authority's request for an exemption, also called the ''undertaking'' under NHPA) on properties included in, or eligible for inclusion in, the National Register, and prior to the approval of an undertaking, to afford the ACHP a reasonable opportunity to comment. *See* 54 U.S.C. 306108. Consultation with the SHPO is also required. *See* 36 CFR 800.2(a)(4) & (c)(1), 800.3(c)(3). If the undertaking would have an adverse effect on historic properties, the agency (here, the Authority, as lead agency) must continue to consult to possibly mitigate the adverse effect. *See* 36 CFR 800.6(a).

The Environmental and Historic Review Process—CVY. As explained in more detail in OEA's Environmental Memorandum to the Board for the CVY (CVY Memorandum) (Appendix A), the Authority, as the lead agency under NEPA, conducted an environmental review of the CVY (with the Board, through OEA, participating as a cooperating agency). Of 17 possible CVY alignments, four build alternatives were selected for additional environmental review. The Authority issued a Draft Supplemental EIS in September 2019 for a 45-day public comment period, and a Final Supplemental EIS on August 7, 2020.[13] Based on this environmental review process, on September 16, 2020, the Authority issued its Supplemental ROD, in which the Authority selected the State Route 152 (North) to Road 11 Wye alignment as its preferred and environmentally preferable alternative for the CVY. (Suppl. ROD 31–32.) The remaining portions of the Merced to Fresno Section that were authorized by the Board in the *June 2013 Decision,* north of the CVY from Ranch Road to the Merced Station and south of the CVY from Avenue 19 to the Fresno Station, are unaffected by the Supplemental ROD. The Authority's Supplemental ROD also imposes extensive mitigation conditions through its Mitigation & Monitoring Enforcement Plan (MMEP) for the CVY, which supplements the mitigation required by the 2012 MMEP for the Merced to Fresno Section. (Suppl. ROD 29; *id.* at App. D.)

[13] The Draft and Final Supplemental EISs for the CVY are available on the Authority's website at *hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/merced-to-fresno-central-valley-wye/.*

As for the Section 106 process, since the *June 2013 Decision,* a Second Amendment to the MOA was executed in 2017 to improve the process. However, because the CVY was contemplated as part of the Merced to Fresno section at the time the MOA was executed for the Merced to Fresno Section, there was no need to amend the MOA further to address the CVY. Indeed, the SHPO approved the Authority's assessment of adverse effects to historic resources from the CVY in 2018 in *Merced to Fresno Section: Central Valley Wye Final Supplemental Section 106 Findings of Effect Report.* (Suppl. ROD 40.)

In its Environmental Memorandum, OEA concludes that (1) OEA's substantive comments and suggestions were incorporated into the Draft and Final Supplemental EISs for the CVY; (2) the EISs adequately assess the potential environmental impacts associated with the CVY and meet the standards of the Council on Environmental Quality's (CEQ's) NEPA regulations and the Board's own environmental regulations at 49 CFR part 1105; and (3) the State Route 152 (North) to Road 11 Wye alignment represents the preferred and environmentally preferable alternative for the CVY. *See* App. A, CVY Env't Mem. section 6.1–6.3. OEA further concludes that execution of the MOA and the First and Second Amendments to the MOA, their filing with ACHP, and subsequent implementation of their terms satisfy the requirements of Section 106 (36 CFR 800.6(c)) for the Merced to Fresno Section, including the CVY. OEA does not recommend any additional mitigation but recommends that the Board adopt and impose conditions requiring compliance with the MMEP, the mitigation plan developed by the Authority, and the mitigation contained in the Section 106 MOA, as amended.

Accordingly, OEA recommends that, in order to satisfy its NEPA and Section 106 obligations, the Board adopt the Draft and Final Supplemental EISs in any decision granting the Authority's request to construct the CVY and impose the mitigation developed by the Authority, through its MMEP and the MOA, as amended.

The Board's Analysis of Environmental and Historic Issues—CVY. The Board adopts the analysis and conclusions in OEA's Environmental Memorandum on the CVY, the Draft and Final Supplemental EISs, and the final recommended mitigation measures. As explained in detail in OEA's memorandum, while the Draft and Final Supplemental EISs show that there would be certain unavoidable impacts from the CVY modification (including residential and business relocations, impacts to agriculture lands, and impacts to aesthetic and visual resources), the Authority adopted an approximately 126-page MMEP in its Supplemental ROD that specifies means to avoid, minimize, or mitigate likely environmental harm caused by construction and operation of the proposed CVY modification.[14] The Authority's Supplemental ROD obligates it to comply with all the mitigation measures in the MMEP. The Board is satisfied that OEA, together with the Authority and other parties, have taken the requisite hard look at the potential environmental impacts associated with the CVY and properly determined that the recommended environmental mitigation for the CVY will adequately address the potential impacts of the proposal.

The Board also adopts OEA's conclusion that execution of the MOA and the First and Second Amendments to the MOA, their filing with ACHP, and subsequent implementation of their terms satisfy the requirements of Section 106 for the Merced to Fresno Section, including the CVY.

The Environmental and Historic Review Process—LGA. As detailed in OEA's Environmental Memorandum to the Board for the LGA (LGA Memorandum) (Appendix B), the Authority, as the current lead agency under NEPA, and FRA, as the previous lead agency under NEPA, conducted an environmental review of the LGA (with the Board, through OEA, participating as a cooperating agency). FRA issued a Draft Supplemental EIS in November 2017 for a 60-day public comment period and held a public hearing on December 19, 2017, to receive oral testimony and comments. The Authority issued a combined Final Supplemental EIS and Supplemental ROD on October 31, 2019.[15] The Draft Supplemental EIS and Final Supplemental EIS assess the potential environmental impacts of the LGA and compare those impacts to those of the previously approved component of the Fresno to Bakersfield Section that the LGA would replace.

As to the Section 106 process, the parties expanded the process to include the LGA in a First Amendment to the MOA that the parties executed on January 4, 2017.

In the Supplemental ROD, the Authority approved the LGA, including the F Street Station in Bakersfield, as its preferred and environmentally preferable alternative for this portion of the Fresno to Bakersfield Section. (Suppl. ROD 6–1.) The remaining portion of the Fresno to Bakersfield Section that was authorized by the Board in the *August 2014 Decision* is unchanged and unaffected by the Supplemental ROD. The Authority's Supplemental ROD also imposes extensive mitigation conditions through its MMEP for the LGA. (Suppl. ROD 5–1; *id.* at App. C.)

In its Environmental Memorandum for the LGA, OEA concludes that (1) OEA's substantive comments and suggestions were incorporated into the Draft and Final Supplemental EISs; (2) the EISs adequately assess the potential environmental impacts associated with the LGA modification and meet the standards of CEQ's NEPA regulations and the Board's own environmental regulations at 49 CFR part 1105; and (3) the LGA represents the preferred and environmentally preferable alternative for the 23-mile portion of the Fresno to Bakersfield Section. *See* App. B, LGA Env't Mem. section 6.1. OEA also concludes that execution of the MOA and First Amendment to the MOA, their filing with ACHP, and subsequent implementation of their terms satisfy the requirements of Section 106 for the Fresno to Bakersfield Section, including the LGA. OEA does not recommend any additional mitigation but recommends that the Board adopt and impose conditions requiring compliance with the MMEP, the mitigation plan developed by the Authority, as amended, and the mitigation contained in the Section 106 MOA, as amended. OEA further recommends that the Board remove a mitigation measure, which prohibits pile driving near Mercy Hospital, imposed in the *August 2014 Decision* because the measure pertains specifically to the component of the Fresno to Bakersfield Section that the LGA would replace.

Accordingly, OEA recommends that, in order to satisfy its NEPA and Section 106 obligations, the Board adopt the Draft and Final Supplemental EISs in any decision granting the Authority's request to construct the LGA modification and impose the mitigation developed by the Authority, through its

[14] The MMEP is attached to the Supplemental ROD as Appendix D and is available on the Authority's website at *hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/A-10_CVY_ROD_APP_D_MMEP.pdf.*

[15] The Authority's Supplemental ROD is available on its website at *hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/fresno-to-bakersfield-locally-generated-alternative/.*

MMEP,[16] as amended [17] and the MOA, as amended. *See* App. B, LGA Env't Mem. section 6.1, 6.3.

The Board's Analysis of Environmental and Historic Issues—LGA. The Board adopts the analysis and conclusions in the LGA Environmental Memorandum and the Draft and Final Supplemental EISs including the final recommended mitigation measures.[18] As explained in detail in the LGA Environmental Memorandum, while the Draft and Final Supplemental EISs show that there would be certain unavoidable impacts from the LGA modification (including road closures, residential and business relocations, noise impacts, and impacts to agriculture lands, aesthetic and visual resources, community cohesion, and environmental justice populations), the Authority adopted an approximately 180-page MMEP, as amended, in its Supplemental ROD that specifies extensive means to avoid, minimize, or mitigate likely environmental harm caused by construction of the proposed LGA modification.[19] *See* App. B, LGA Env't Mem. section 4.0, 6.2, 6.3. As a result, the LGA represents the environmentally preferable modification to the Fresno to Bakersfield Section. The Authority's Supplemental ROD obligates it to comply with all the mitigation measures in the amended MMEP. The Board is satisfied that OEA, together with the Authority and other parties, have taken the requisite hard look at the potential environmental impacts associated with the LGA and properly determined that the final recommended environmental mitigation will appropriately address the potential impacts of the proposal.

The Board adopts OEA's conclusion that execution of the MOA and First Amendment to the MOA, their filing with ACHP, and subsequent implementation of their terms, satisfy the requirements of Section 106 for the Fresno to Bakersfield Section, including the LGA.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. In Docket No. FD 35724, under 49 U.S.C. 10502, the Board exempts construction of the Authority's proposed route addition to the Merced to Fresno Section from the prior approval requirements of 49 U.S.C. 10901.

2. In Docket No. FD 35724 (Sub-No. 1), under 49 U.S.C. 10502, the Board exempts construction of the Authority's proposed route modifications to the Fresno to Bakersfield Section from the prior approval requirements of 49 U.S.C. 10901.

3. In Docket No. FD 35724, the Board adopts the environmental mitigation measures set forth in OEA's Environmental Memorandum regarding the CVY (Appendix A) and imposes them as conditions to the exemption granted here.

4. In Docket No. FD 35724 (Sub-No. 1), the Board adopts the environmental mitigation measures set forth in OEA's Environmental Memorandum regarding the LGA (Appendix B) and imposes them as conditions to the exemption granted here.

5. Notice will be published in the **Federal Register** on December 23, 2022.

6. Petitions for reconsideration must be filed by January 9, 2023.

7. This decision is effective on its service date.

Decided: December 19, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

BILLING CODE 4915–01–P

[16] The Board imposed the mitigation in the MMEP in the *August 2014 Decision.*

[17] The MMEP, as amended, is attached to the Supplemental ROD as Appendix C, and is available on the Authority's website at *hsr.ca.gov/wp-content/uploads/docs/programs/fresno-baker-eir/FBLGA_ROD_Attachment_C_MMEP.pdf.*

[18] The final recommended mitigation measures include removal of the condition related to pile driving near Mercy Hospital. The Board adds two new measures to assure compliance with the Authority's final environmental and Section 106 mitigation.

[19] As the LGA Environmental Memorandum explains, the LGA would have substantial impacts on minority and low-income populations even after mitigation measures are taken. *See* App. B, LGA Env't Mem. sec. 4.0 (citing Draft Suppl. EIS). Such mitigation measures include installing sound barriers; acquiring property easements; locating suitable replacement properties and facilities; adding landscaping to screen structures, light, glare, and blocked views. (Suppl. ROD Section 6–8.) Continued environmental justice outreach in adversely affected neighborhoods could also provide resident feedback that may be used to further mitigate some of these impacts. (*See* Suppl. ROD, Attachment C, MMEP, Table 1 at 1–49, SO–MM#6.) Input from these communities would be used to refine the LGA during ongoing engineering design efforts. (*Id.*)

Appendix A

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Environmental Analysis

MEMORANDUM

TO: Martin Oberman, Chairman

Michelle Schultz, Vice Chairman

Patrick Fuchs, Member

Karen Hedlund, Member

Robert Primus, Member

CC: Mai Dinh, Director, Office of Proceedings

Scott Zimmerman, Deputy Director, Office of Proceedings

FROM: Danielle Gosselin

Director, Office of Environmental Analysis

DATE: November 9, 2022

SUBJECT: Docket No. FD 35724, California High-Speed Rail Authority – Construction Exemption – in Merced, Madera, and Fresno Counties, Cal.: Petition to Reopen to Consider the Central Valley Wye - **Environmental and Historic Review Process and Recommendations**

This memorandum summarizes the environmental review conducted for the California High-Speed Rail Authority's (Authority) proposed construction of the Central Valley Wye (CVY), a modification to the previously approved high-speed passenger rail line between Merced, Cal. and Fresno, Cal. (the Merced to Fresno Section) of the California High-Speed-Rail (HSR) system.[1] This memorandum also presents the Office

[1] Should the Authority receive authorization to construct the CVY, it would acquire a common carrier obligation to provide service over the CVY even though it has not expressly sought operating authority. Moreover, if the Authority decides to delegate

of Environmental Analysis' (OEA) final recommendations to the Board regarding adoption of the Draft and Final Supplemental Environmental Impact Statements (EIS) for the CVY modification, the selection of the preferred and environmentally preferable alternative for the CVY, and environmental mitigation measures.

1.0 INTRODUCTION

The approximately 65-mile Merced to Fresno Section connects the Downtown Merced HSR (Merced) Station to the Downtown Fresno Mariposa Avenue HSR (Fresno) Station along a generally north-south alignment. The section includes the approximately 50-mile CVY (located approximately 10 miles south-southeast of the Merced Station), a Y-like formation that would connect the Merced to Fresno Section to the San Jose to Merced Section to the west. See attached map. The CVY would enable HSR trains to travel seamlessly and at full speed in different directions (e.g., Merced to Fresno, San Jose to Fresno, San Jose to Merced, and vice versa).

On June 13, 2013, the Board granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 for the Authority's construction of the Merced to Fresno Section.[2] However, a decision on the preferred CVY alternative intentionally was not made at that time because, as the Board recently explained, a selected alignment for the CVY had yet to be determined and potential CVY alignment alternatives were still being studied and analyzed when the Board's June 2013 decision was issued. See Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, & Fresno Cntys., Cal. (Feb. 2022 Decision), slip op. at 2-4, 5-6, FD 35724 (STB served Feb. 11, 2022). The additional environmental review of the CVY has now been completed and on September 17, 2021, the Authority filed a petition to reopen the above-referenced proceeding seeking Board approval of a specific CVY modification (the State Route 152 [North] to Road 11 Wye alignment).[3] In addition, the Authority requests that the Board review and adopt the environmental and historic review of the CVY completed by the Authority, in which OEA participated for the Board as a cooperating agency.

In the Feb. 2022 Decision, the Board granted the petition to reopen and solicited comments on the transportation merits of the proposed CVY modification. No comments were received.

2.0 ENVIRONMENTAL REVIEW OF THE CENTRAL VALLEY WYE

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operational responsibilities for the CVY to another entity, that entity would need to request operating authority from the Board before beginning operations. See Port of Moses Lake—Constr. Exemption—Moses Lake, Wash., FD 34936, slip op. at 2 & n.1 (STB served Aug. 27, 2009) (citing Big Stone-Grant Indus. Dev. & Transp., L.L.C.—Constr. Exemption—Ortonville, Minn., FD 32645 (ICC served Sept. 26, 1995)).

[2] Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, & Fresno Cntys., Cal. (June 2013 Decision), FD 35724 (STB served June 13, 2013).

[3] The remaining portions of the Merced to Fresno Section, north of the CVY from Ranch Road to the Merced Station and south of the CVY from Avenue 19 to the Fresno Station, are unaffected by the Authority's petition to reopen.

The Authority and the Federal Railroad Administration (FRA) conducted a joint environmental review of the Merced to Fresno Section under the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321 – 4370h). In 2012, a Final EIS was issued, and FRA issued its Record of Decision (ROD) authorizing construction of the section subject to the extensive mitigation in its Mitigation & Monitoring Enforcement Plan (MMEP).[4] In its ROD, FRA selected the Hybrid Alternative with the Downtown Merced Station and Downtown Fresno Mariposa Avenue Station as its preferred and environmentally preferable alternative. However, finding that further environmental review was needed before a specific CVY alignment could be selected, FRA's ROD intentionally deferred a decision on the CVY.

After issuance of FRA's ROD, the Authority sought approval from the Board to construct the Merced to Fresno Section (minus the CVY) in 2013.[5] Because the Final EIS was issued without OEA's participation as a cooperating agency, OEA conducted an independent review of the document, subsequently recommending that the Board adopt the Final EIS and impose the MMEP along with several additional environmental mitigation measures if it authorized the section. In its June 2013 Decision, the Board accepted OEA's recommendations, adopted the Final EIS, imposed the MMEP and OEA's recommended additional mitigation measures, and authorized construction of the Merced to Fresno Section, but intentionally made no decision about the CVY.

In its petition to reopen, the Authority explains, as lead agency under NEPA,[6] that it conducted an environmental review of the CVY (with the Board, through OEA, participating as a cooperating agency). Of 17 possible CVY alignments, four build alternatives were selected for additional environmental review. The Authority issued a Draft Supplemental EIS in September 2019 for a 45-day public comment period, and a Final Supplemental EIS on August 7, 2020.[7] Based on this environmental review process, the Authority selected the State Route 152 (North) to Road 11 Wye alignment as its preferred and environmental preferable alternative for the CVY.

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[4] FRA's 2012 ROD is available on the Authority's website at https://hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/final_EIR_MerFres_FRA09182012.pdf

[5] The Authority's ROD is available on its website at https://hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/A-06_CVY_ROD_Final.pdf

[6] The environmental review, consultation, and other actions required by applicable federal environmental laws for the CVY are being or have been carried out by the State of California pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding (MOU) dated July 23, 2019, and executed by FRA and the State of California. Pursuant to the MOU, the Authority is the lead federal agency. Prior to July 23, 2019, FRA was the lead federal agency.

[7] The Draft and Final Supplemental EISs for the CVY are available on the Authority's website at https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/merced-to-fresno-central-valley-wye/

3.0 THE AUTHORITY'S SUPPLEMENTAL RECORD OF DECISION

The Authority issued its Supplemental ROD for the CVY modification on September 16, 2020. In the Supplemental ROD, the Authority approved the CVY with the State Route 152 (North) to Road 11 Wye alignment as its preferred and environmentally preferable alternative. The remaining portions of the Merced to Fresno Section authorized by the Board in the June 2013 Decision, north of the CVY from Ranch Road to the Merced Station and south of the CVY from Avenue 19 to the Fresno Station, are unaffected by the Supplemental ROD. See attached map. The Authority's Supplemental ROD also imposes extensive mitigation conditions through its MMEP for the CVY, which supplements the mitigation required by the 2012 MMEP for the Merced to Fresno Section.

4.0 OVERVIEW OF KEY ENVIRONMENTAL TOPICS

Below, OEA provides an overview of key environmental topics associated with the proposed CVY modification addressed in the Draft and Final Supplemental EISs and the Authority's Supplemental ROD. Generally, the key topics are resource areas that could experience potentially significant impacts (both adverse and beneficial) from construction and operation of the preferred alternative for the proposed CVY modification (i.e., the State Route 152 [North] and Road 11 Wye).

Air Quality and Climate Change. According to the Draft and Final Supplemental EISs, construction of the CVY preferred alternative would result in an increase in emissions of criteria pollutants and greenhouse gas emissions. However, implementation of mitigation imposed by the Authority would offset construction-related Clean Air Act (42 U.S.C. Chapter 85) criteria pollutant emissions. These mitigation measures include emissions requirements for construction vehicles, dust control measures, and the placement of plants to make concrete (which can degrade localized air quality) at least 1,000 feet from sensitive receptors. Additionally, the Authority would be required to purchase emission credits to offset the impacts through a Voluntary Emission Reduction Agreement with the San Joaquin Valley Air Pollution Control District, as well as offsets for emissions within the San Francisco Bay Area Basin (Supp. ROD, pp. 21 and 22). Also, as a component of Phase 1 of the HSR project, operation of the CVY would result in a net benefit to air quality by diverting trips from transportation modes with higher emissions (i.e., automobile trips and commercial air flights) to high-speed rail, which has lower emissions (Supp. ROD, p. 22).

Noise and Vibration. Construction activities associated with the CVY preferred alternative would result in noise impacts, but these impacts would be temporary and mitigated through implementation of design features and mitigation measures. After mitigation, the Authority anticipates that construction vibration impacts would be less than significant, and that noise impacts from temporary road closures and the associated diversion of traffic would result in the exposure of only two sensitive noise receptors to increases that exceed Federal Highway Administration Noise Abatement Criteria (Supp. ROD, p. 22). Once Phase 1 of the proposed HSR system is fully operational from San Francisco to Los Angeles, approximately 35 single-family residences near the CVY would experience severe noise impacts notwithstanding the mitigation measures imposed by the Authority (which include building sound insulation and the purchase of noise

easements[8] under mitigation measure NV-MM#3) (Supp. ROD, pp. 22 and 23). The Authority determined that the use of noise barriers was not feasible because of the rural setting and large distances between individual residences (Final Supp. EIS, pp. 3.4-38, 3.4-39 and 3.4-45).

Biological Resources. Construction and operation of the CVY preferred alternative would result in impacts on biological resources and wetlands. The Authority's mitigation measures would reduce these impacts by requiring pre-construction surveys for special-status species, salvage and relocation of special-status species, seasonal work restrictions, and providing compensatory mitigation for loss of habitat and wetlands (Final Supp. EIS, p. 3.7-162).

Socioeconomics and Communities. Construction and operation of the CVY preferred alternative would displace residences and businesses and would result in unavoidable adverse impacts on community cohesion due to road closures that would disrupt pedestrian, bicycle, and transit circulation patterns for the community of Fairmead (Supp. ROD, p. 25). The Authority's mitigation, however, would require the Authority, after consultation with the community of Fairmead, to include appropriate features into the CVY design to assist in maintaining community cohesion, including the installation of vehicular crossings, multiuse trails, new sidewalks, roadway and sidewalk improvements, and streetlights and landscaping (Final Supp. EIS, Mitigation Measure SO-MM#2, p. 3.12-72).

The preferred CVY alternative would also require the displacement of approximately 62 residential units, seven commercial and industrial businesses and convert approximately 2,145 acres of Important Farmland (Final Supp. EIS, pp. 3.12-47, 3.12-50, 3.12-51, and 3.14-20). However, as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Chapter 61), the Authority would assist displaced residents and businesses financially and with advisory services related to relocation (Final Supp. EIS, p. 3.12-49).

Agricultural Lands. The preferred CVY alternative would result in the permanent conversion of agricultural land to nonagricultural uses, severance of large agricultural properties, and conflicts with farmland protection contracts (Draft Supp. EIS, p. 3.14-29). Approximately 2,145 acres of Important Farmland, including 831 acres of Prime Farmland (designated under the Farmland Protection Policy Act, 7 U.S.C. §§ 4201-4209), would be directly converted to HSR right-of-way and related facilities (Final Supp. EIS, p. 3.14-20). However, these impacts are below Natural Resources Conservation Service thresholds that would otherwise require the consideration of other alternatives (Final Supp. EIS, p. 3.14-21). The Authority also has agreed to purchase agricultural conservation easements from willing sellers that would preserve Important Farmland in an amount commensurate with the quantity and quality of converted farmlands (Supp. ROD, p. 27).

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[8] The noise easement provision provides that when other noise mitigation is neither effective nor feasible, the Authority could enter into agreements with property owners to financially compensate them for future noise conditions if the property owners agree not to petition the Authority regarding future noise levels and disruptions (Final Supp. EIS, p. 3.4-39).

Aesthetics and Visual Resources. Construction of the preferred CVY alternative would result in the removal of established palm trees from the Robertson Boulevard Tree Row in Chowchilla, CA, a visually prominent and historic resource first planted in 1913. The CVY would disturb approximately 4,088 linear feet of the tree row, extending the existing tree gap at the SR 152 interchange from approximately 1,700 feet to 3,600 feet. Mitigation measures related to the design of the CVY would reduce but not eliminate this potential impact (Supp. ROD, p. 27, Final Supp. EIS, p. 3-15-42). The CVY would also traverse the community of Fairmead, and HSR infrastructure would introduce permanent changes to the aesthetic and visual quality of existing residential views there. To minimize these impacts, as mitigation, the Authority would be required to provide landscape screening and replanting of landscape vegetation disturbed by the CVY construction (Final Supp. EIS, pp. 3.16-44 and 3.16-46).

Environmental Justice. The preferred CVY alternative would result in adverse impacts to low-income and minority populations residing along the HSR corridor with the greatest effects occurring to those populations in the community of Fairmead. However, if its mitigation is implemented, the Authority concludes that there would not be disproportionately high and adverse effects on Fairmead. The Authority's mitigation measures include providing funding to construct a community center in Fairmead and supporting the development of a community water and sewer service, which the community currently lacks. Specifically, the Authority would be required to provide funding to connect Fairmead to the Chowchilla Wastewater Treatment Plant and to the nearest safe and reliable municipal water supply system. The Authority would also implement resource-specific measures to reduce residential displacement, noise, wetland, biological, and agricultural impacts (Supp. ROD, pp. 36 through 38).

5.0 THE HISTORIC REVIEW PROCESS

Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) requires federal agencies to "take into account the effect of" their licensing decisions (in this case, whether to grant the Authority's request for an exemption, also called the "undertaking" under NHPA) on properties included in, or eligible for inclusion in, the National Register of Historic Places (National Register), and prior to the approval of an undertaking, to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. Consultation with the State Historic Preservation Officer (SHPO) is also required. If the undertaking would have an adverse effect on historic properties, the agency must continue to consult to possibly mitigate the adverse effects.

As the lead federal agency for Section 106 consultation at the time, FRA initiated the Section 106 consultation process for the Merced to Fresno Section prior to OEA's involvement. During that process, FRA consulted with the California SHPO, ACHP, federally recognized Tribal organizations and other interested parties. The parties executed a Programmatic Agreement (PA) setting out a general process for Section 106 compliance for the entire HSR project on July 21, 2011. With the PA set to expire on July 21, 2021, the Signatories to the PA executed the First Amendment to the PA on July 21, 2021. In addition to extending the duration of the document, the amendment added OEA, for the Board, as an Invited Signatory to the agreement, and designated the Authority as lead Federal agency to 106 consultation and implementation.

The Section 106 consultation process, as well as evaluations conducted during the NEPA review, identified properties that are included in, or eligible for inclusion in, the National Register that would be adversely affected by the CVY. Due to access restrictions, surveys for archaeological properties are incomplete; therefore, additional National Register-eligible properties could be present. The regulations implementing Section 106 allow for the development of a Memorandum of Agreement (MOA) when the effects of an undertaking cannot be fully determined prior to approval of an undertaking. When there would be an adverse effect, the MOA can also establish responsibilities for the treatment of historic properties, implementation of mitigation measures, and ongoing consultation efforts. In this case, FRA, the Authority, the U.S. Army Corps of Engineers (USACE), SHPO, and ACHP executed an MOA in 2012, that outlines additional surveys, historic property treatment, mitigation measures and other efforts that will take place prior to construction of the Merced to Fresno Section. Subsequently, the parties executed a First Amendment to the MOA in 2013 to add OEA, for the Board, as a party to the MOA. A Second Amendment to the MOA was executed in 2017 to improve the 106 process. Execution of the MOA and the First and Second Amendments to the MOA, their filing with ACHP, and subsequent implementation of their terms, satisfy the requirements of Section 106 (36 C.F.R. § 800.6(c)) for the Merced to Fresno Section, including the CVY, and OEA concludes that no additional mitigation outside the 106 process is required.

6.0 OEA'S FINAL ENVIRONMENTAL RECOMMENDATIONS

6.1 Supplemental EIS Adoptions

As a cooperating agency in the Supplemental EIS process, OEA concludes that: (1) OEA's substantive comments and suggestions on the administrative drafts of the Draft and Final Supplemental EISs were incorporated; (2) the EISs adequately assesses the potential environmental impacts associated with the CVY modification and meet the standards of CEQ's NEPA regulations and the Board's own environmental regulations at 49 C.F.R. Part 1105; and (3) the State Route 152 (North) to Road 11 Wye alignment represents the preferred and environmentally preferable alternative for the CVY. Accordingly, OEA recommends that, in order to satisfy its NEPA and Section 106 obligations, the Board adopt the Draft and Final Supplemental EISs in any decision granting the Authority's request to construct the CVY modification and impose the mitigation developed by the Authority, through its MMEP, as well as additional mitigation measures recommended by OEA, discussed below.

6.2 Preferred and Environmentally Preferable Alternative

In its Supplemental ROD, the Authority approved the SR 152 (North) to Road 11 Wye alternative for the CVY modification. The approved alternative also represents the Authority's preferred and environmentally preferable alternative. The SR 152 (North) to Road 11 Wye was one of four build alternatives carried forward for detailed analysis in

the Draft and Final Supplemental EISs.[9] In making its decision, the Authority noted that its preferred alternative for the CVY modification best satisfies the purpose, need, and objectives of the proposed action and minimizes potential impacts on the environment in comparison to the other three build alternatives. Thus, the Authority identifies the SR 152 (North) to Road 11 Wye modification as both its preferred and environmentally preferable CVY alternative under NEPA (Supp. ROD, pp. 19 and 20). OEA concurs with the Authority's conclusions and summarizes the advantages of the Authority's preferred alternative over the other build alternatives evaluated in the Draft and Final Supplemental EISs below:

- Three of the four build alternatives for the CVY modification, including the preferred alternative, would benefit regional traffic safety and circulation by grade separating many roads and would divert intercity trips from the regional road system to high-speed rail (Supp. ROD, p. 20).
- Overall, the preferred alternative for the CVY modification would result in fewer impacts to key natural environmental features than the other build alternatives, including reduced impacts to wetlands, vernal pools, riparian and stream habitat, special-status wildlife invertebrate species, special-status plant communities, wildlife movement corridors and waterbody crossings (Supp. ROD, p. 20, Final Supp. EIS, p. 8-13).
- Regarding potential impacts to waters of the United States, the USACE and the U.S. Environmental Protection Agency (USEPA) concurred that the preferred CVY alternative is the preliminary Least Environmentally Damaging Practicable Alternative; and therefore, would be consistent with the USACE's Clean Water Act, Section 404 permitting program and the USEPA's Section 404(b)(1) Guidelines (40 C.F.R. Part 230) (Supp. ROD, pp. 20).
- The preferred alternative for the CVY modification would directly convert the least amount of Important Farmland (2,145 acres). The direct impacts to Important Farmland under the other three build alternatives would range from 2,182 to 2,305 acres (Final Supp. EIS, p. 8-12).
- Regarding displacement, the preferred CVY alternative would displace 62 residential units and 191 residents: the fewest among the four build alternatives. Residential displacements under the other three build alternatives range from 65 to 119 residential units and 213 to 391 residents (Final Supp. EIS, p. 8-11).
- In coordination with the community of Fairmead, the Authority identified and developed mitigation to offset impacts associated with the preferred alternative for the CVY modification. With mitigation, the Authority concludes that its preferred alternative would not result in disproportionately high and adverse effects on the community of Fairmead (Final Supp. EIS, p. 5-55).

6.3 Mitigation

While the Draft and Final Supplemental EISs show that there would be certain unavoidable impacts from the CVY modification (including residential and business relocations, impacts to agriculture lands, and aesthetic and visual resources), the

[9] The other three build alternatives included the SR 152 (North) to Road 13 Wye, SR 152 (North) to Road 19 Wye, and Avenue 21 to Road 13 Wye.

Authority adopted an approximately 126-page MMEP in its Supplemental ROD that specifies means to avoid, minimize or mitigate likely environmental harm caused by construction and operation of the proposed CVY modification.[10] The Authority's Supplemental ROD obligates it to comply with all the mitigation measures in the MMEP. OEA believes that the mitigation in the MMEP is adequate to address the potential impacts.

In any decision granting the Authority's request to construct the CVY modification, OEA recommends that the Board impose two mitigation measures to assure compliance with the Authority's final environmental and Section 106 mitigation, as follows:

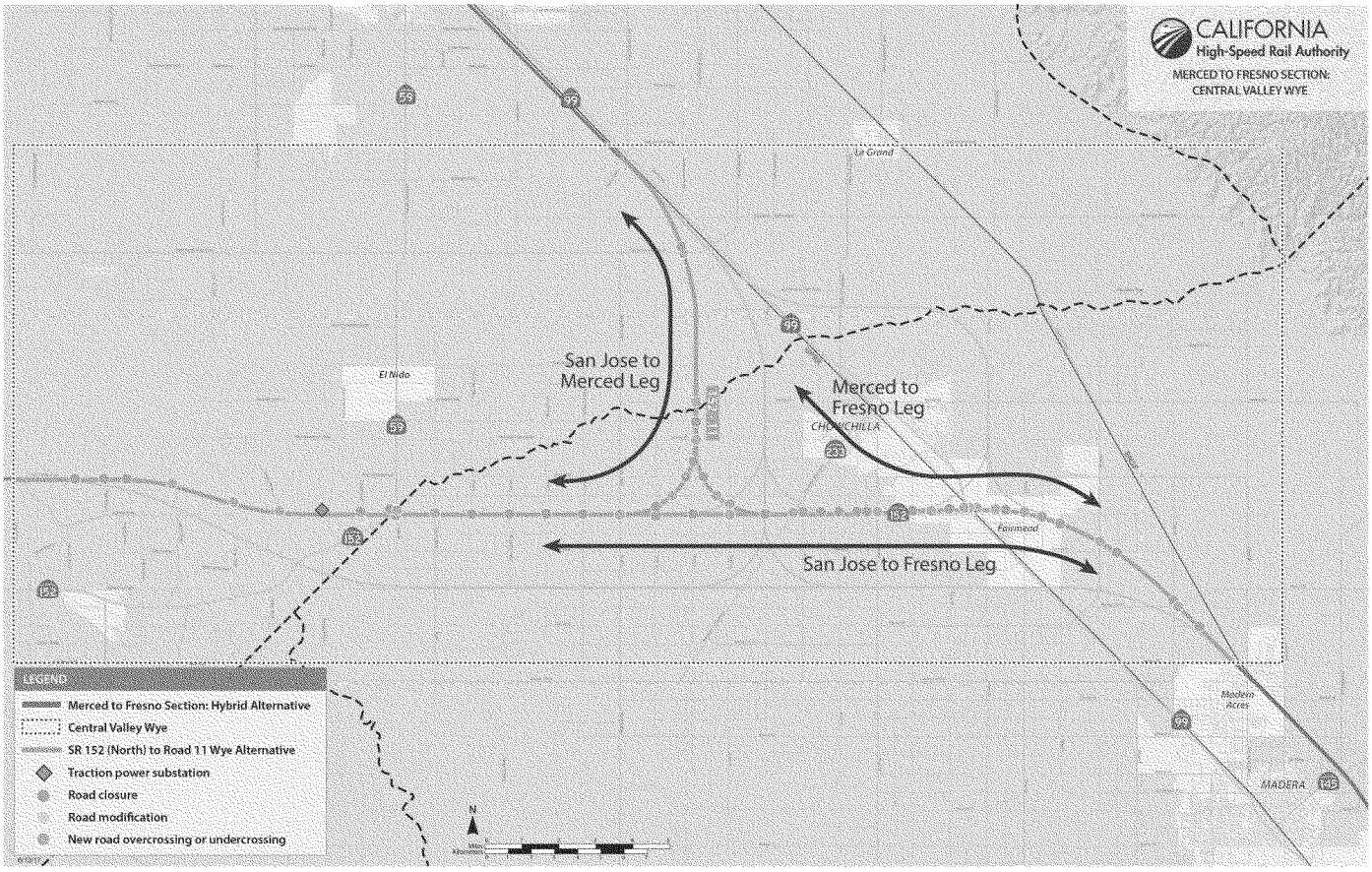
- The California High-Speed Rail Authority shall comply with the Mitigation & Monitoring Enforcement Plan, as amended, which is included in Appendix D to the Authority's Supplemental Record of Decision, dated September 16, 2020.

- The California High-Speed Rail Authority shall comply with the Programmatic Agreement and Memorandum of Agreement, and subsequent amendments, developed through the Section 106 process of the National Historic Preservation Act.

[10] The MMEP is attached to the Supplemental ROD as Appendix D, and is available on the Authority's website at https://hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/A-10_CVY_ROD_APP_D_MMEP.pdf

The Central Valley Wye Component (SR 152 [North] to Road 11 Alternative) of the Merced to Fresno Section

Docket No. FD 35724, California High-Speed Rail Authority – Construction Authority – in Merced, Madera, and Fresno Counties, Cal.



Appendix B

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Environmental Analysis

MEMORANDUM

TO: Martin Oberman, Chairman

Michelle Schultz, Vice Chairman

Patrick Fuchs, Member

Karen Hedlund, Member

Robert Primus, Member

CC: Mai Dinh, Director, Office of Proceedings

Scott Zimmerman, Deputy Director, Office of Proceedings

FROM: Danielle Gosselin

Director, Office of Environmental Analysis

DATE: November 9, 2022

SUBJECT: Docket No. FD 35724 (Sub-No. 1), California High-Speed Rail Authority – Construction Exemption – in Fresno, Kings, Tulare and Kern Counties, Cal.: Petition to Reopen to Consider the Locally Generated Alternative - **Environmental and Historic Review and OEA Recommendations**

This memorandum summarizes the environmental review conducted for the California High-Speed Rail Authority's (Authority) proposed construction of the Locally Generated Alternative (LGA) modification in the above-mentioned proceeding.[1] As

[1] Should the Authority receive authorization to construct the LGA, it would acquire a common carrier obligation to provide service over the LGA even though it has not expressly sought operating authority. Moreover, if the Authority decides to delegate operational responsibilities for the LGA to another entity, that entity would need to request operating authority from the Board before beginning operations. See Port of

discussed below, the LGA is a modification to a portion of the 114-mile Fresno to Bakersfield Section of the proposed California High-Speed Rail (HSR) project authorized by the Board in 2014. The LGA modification is approximately 23 miles long, or roughly 20 percent of the Fresno to Bakersfield Section. See attached map. The remaining 80 percent of the Fresno to Bakersfield Section is unchanged and unaffected by the Authority's proposed modification. This memorandum also presents the Office of Environmental Analysis' (OEA) final recommendations to the Board regarding adoption of the Supplemental Draft and Final Environmental Impact Statements (EIS) for the LGA modification, the selection of the LGA modification as the preferred and environmentally preferable alternative into the City of Bakersfield, Cal. (City), and environmental mitigation measures.

1.0 INTRODUCTION

On August 12, 2014, the Board granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 for the Authority's construction of the approximately 114-mile Fresno to Bakersfield Section.[2] On September 17, 2021, the Authority filed a petition to reopen the above-referenced proceeding seeking Board approval of a modification to the Fresno to Bakersfield Section that was not previously considered by the Board (i.e., the LGA). In addition, the Authority requests that the Board review and adopt the environmental and historic review of the LGA completed by the Authority, in which OEA participated as a cooperating agency.

In a decision served February 11, 2022, the Board granted the petition to reopen and solicited comments on the transportation merits of the proposed LGA modification.[3] No comments were received.

2.0 ENVIRONMENTAL REVIEW OF THE FRESNO TO BAKERSFIELD SECTION AND THE LGA

The Authority sought approval to construct the Fresno to Bakersfield Section of the HSR system in 2013. The Authority and the Federal Railroad Administration (FRA) conducted a joint environmental review under the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321 – 4370h) with the Board, through OEA, acting as a cooperating agency. In 2014, a Final EIS was issued, and FRA issued its Record of

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Moses Lake—Constr. Exemption—Moses Lake, Wash., FD 34936, slip op. at 2 & n.1 (STB served Aug. 27, 2009) (citing Big Stone-Grant Indus. Dev. & Transp., L.L.C.—Constr. Exemption—Ortonville, Minn., FD 32645 (ICC served Sept. 26, 1995)).

[2] Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal. (August 2014 Decision), FD 35724 (Sub-No. 1) (STB served Aug. 12, 2014). The Fresno to Bakersfield Section is one of eight sections that would comprise Phase 1 of the proposed HSR project.

[3] Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal. (Feb. 2022 Decision), FD 35724 (Sub-No. 1) (STB served Feb. 11, 2022).

Decision (ROD) authorizing the construction and imposed extensive mitigation outlined in its Mitigation & Monitoring Enforcement Plan (MMEP). OEA recommended that the Board adopt the Final EIS and impose the MMEP along with several additional environmental mitigation measures if it authorized the project. In its August 2014 Decision, the Board accepted OEA's recommendations, adopted the Final EIS, imposed the MMEP and OEA's recommended additional mitigation measures, and authorized construction of the Fresno to Bakersfield Section as part of the interstate rail network.

In its petition to reopen, the Authority states that the City filed a lawsuit against the Authority in June 2014, claiming, among other things, that "the Preferred Alternative identified in the Fresno to Bakersfield Section Final EIS would severely affect the City's ability to utilize existing city assets, including its corporation yard, senior housing, and parking facilities at Rabobank Arena, Theatre and Convention Center; would render unusable one of the city's premier health care facilities; and would affect the Bakersfield Commons project, a retail/commercial/residential development." (Pet. 3-4.) After the Board issued its August 2014 Decision, the Authority and the City entered into a settlement agreement, dated December 19, 2014. (Id. at 4.) According to the Authority, as part of the settlement agreement, the Authority agreed "to develop and study alternative routes that would address the City's concerns as well as the design needs of the Authority." (Id.)

The Authority states that, following the settlement agreement, it worked with the City and other stakeholders to develop the LGA that is now the subject of its request to reopen the exemption proceeding. (Id.) The LGA consists of a 23.13-mile alternative alignment from just north of Poplar Avenue in Shafter, Cal., then south to and including a new F Street Station located at the intersection of 34th Street and L Street in the City (see attached map). The LGA would replace the component of the Fresno to Bakersfield Section from just north of Poplar Avenue in Shafter, CA, then south to the Truxton Avenue Station in the City. The Authority refers to that previously approved portion as the "May 2014 Project." The remainder of the Fresno to Bakersfield Section from just north of Poplar Avenue then north to the Downtown Fresno Mariposa Street Station is unchanged and unaffected by the LGA, and the Authority requests no Board action on that portion of the Fresno to Bakersfield Section.

The Authority, as the current lead agency under NEPA,[4] and FRA, as the previous lead agency under NEPA, conducted an environmental review of the LGA (with the Board, through OEA, participating as a cooperating agency). FRA issued a Draft Supplemental EIS in November 2017 for a 60-day public comment period and held a public hearing on December 19, 2017, to receive oral testimony and comments. The

[4] The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being or have been carried out by the State of California pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding (MOU) dated July 23, 2019, which was executed by FRA and the State of California. Pursuant to the MOU, the Authority is the lead federal agency for environmental review under federal environmental laws. Prior to July 23, 2019, FRA was the lead federal agency.

Authority issued a combined Final Supplemental EIS and Supplemental ROD on October 31, 2019. The EISs assess the potential environmental impacts of the LGA and compare those impacts to those of the May 2014 Project.

3.0 AUTHORITY'S SUPPLEMENTAL RECORD OF DECISION

The Authority issued its Supplemental ROD for the LGA on October 31, 2019.[5] In the Supplemental ROD, the Authority approved the LGA including the F Street Station in Bakersfield as its preferred and environmentally preferable alternative for this portion of the Fresno to Bakersfield Section. The remaining portion of the Fresno to Bakersfield Section authorized by the Board in the August 2014 Decision is unchanged and unaffected by the Supplemental ROD. The Authority's Supplemental ROD also imposes extensive mitigation conditions though its MMEP, as amended.

4.0 OVERVIEW OF KEY ENVIRONMENTAL TOPICS

Below, OEA provides an overview of key environmental topics associated with the proposed LGA that are addressed in the Draft and Final Supplemental EISs and the Authority's Supplemental ROD. Generally, the key topics are resource areas that could experience potentially significant impacts (both adverse and beneficial) from construction and operation of the proposed LGA.

Transportation. Construction of the LGA would result in temporary road closures and delays. Once constructed, the LGA would benefit regional traffic safety and circulation by grade separating many roads. Regionally, the LGA is expected to benefit the transportation system by diverting intercity trips from the regional roadway system to high-speed rail. These diverted trips would reduce the overall number of vehicle trips on the regional roadway system. The HSR project would also reduce demand and substitute for commercial air travel in California. However, operation of the Fresno to Bakersfield Section as modified by the LGA would result in 16 roadway segments and intersections operating below level of service standards (established by the Transportation Research Board's *Highway Capacity Manual*). Ten permanent road closures would also result in urban and rural areas where the roads intersect with the LGA (Supp. ROD, p. 4-1; Draft Supp. EIS, p. 8-12). Avoidance, minimization, and mitigation measures imposed by the Authority's ROD, such as requiring roadway widening, restriping, and installation of traffic signals would minimize these potential adverse impacts (Supp. ROD, p. 4-1).

Air Quality and Climate Change. Construction of the LGA would result in an increase in emissions of criteria pollutants and greenhouse gas emissions. However, implementation of mitigation imposed by the Authority would offset construction-related Clean Air Act criteria pollutant emissions to less than significant levels. The Authority would also purchase emission credits to offset the impacts through a Voluntary Emission Reduction Agreement with the San Joaquin Valley Air Pollution Control District (Draft Supp. EIS, pp. 3.3-25 through 3.3-33; Supp. ROD, p. 4-2). As a component of Phase 1 of the HSR project, operation of the LGA would result in a net benefit to air quality because

[5] The Authority's ROD is available on its website at https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/fresno-to-bakersfield-locally-generated-alternative/

it would result in lower mobile source air toxics, greenhouse gases, volatile organic compounds, nitrogen oxides, carbon monoxide, and particulate matter emissions by diverting trips from transportation modes with higher emissions (i.e., automobile trips and commercial air flights) to high-speed rail, which would have lower emissions (Draft Supp. EIS, pp. 3.3-33 through 3.3-44; Supp. ROD, p. 4-2).

Noise and Vibration. Construction activities associated with the LGA would result in noise impacts, but these impacts would be temporary and mitigated through implementation of design features and mitigation measures. After mitigation, the Authority anticipates that construction vibration impacts would be less than significant (Draft Supp EIS, p. 3.4-24; Supp. ROD, p. 4-2). With the operation of up to 225 trains per day once Phase 1 of the HSR system is fully operational from San Francisco to Los Angeles, the LGA would have severe noise impacts on approximately 152 noise-sensitive receptors, including 149 residences, after the mitigation imposed by the Authority is implemented (Draft Supp. EIS, p. 3.4-10; Supp. ROD, p. 4-2). That noise mitigation includes sound barriers, sound insulation, acquisition of noise easements,[6] and special track work at crossovers (Supp. ROD, p. 4-2; MMEP, Table 1, pp. 1-6 and 1-7).

Biological Resources. Although the LGA does not overlap any designated or proposed critical habitat units, LGA construction would result in both permanent and temporary impacts to riparian habitat, and lands that have been determined to support, or could support, special-status species or habitats of concern. However, mitigation measures adopted by the Authority would mitigate these impacts (Supp. ROD, p. 4-3). The Authority's 65 biological mitigation measures include the purchase of credits at habitat mitigation banks, conducting a special-status species re-establishment program, and compliance with certain permit requirements (Supp. ROD, p. 4-3; MMEP, Table 1, pp. 1-8 through 1-44).

Socioeconomics and Communities. Although the LGA would largely follow existing highway and rail corridors, its construction and operation would result in residential, business, and other displacements (Draft Supp. EIS, p. 3.12-46). The LGA would require the displacement of approximately 86 residential units (representing approximately 262 residents) (Draft Supp. EIS, pp. 3.12-52, 3.12-55, and 3.12-58). The residential displacements include 23 units within the community of Oildale, which is home to a large percentage of disabled residents and households with a female head of household. Because these populations are considered sensitive, the Authority's relocation plans and resources would take into account and address the special needs of such households (Draft Supp. EIS, Mitigation Measure SO-MM#1, p. 3.12-64). The Authority's assistance includes locating suitable replacement properties that are comparable to those currently occupied by these residents and constructing suitable replacement facilities if necessary. In cases where residents wish to remain in the immediate vicinity, the Authority would be required to take measures to purchase vacant land or buildings in the area and consult with local authorities over matters such as

[6] The noise easement provision provides that when other noise mitigation is neither effective nor feasible, the Authority could enter into agreements with property owners to financially compensate them for future noise conditions if the property owners agree not to petition the Authority regarding future noise levels and disruptions (Draft Supp. EIS, p. 3.4-44).

zoning, permits, and moving of homes and replacement of services and utilities, as appropriate (MMEP, Table 1, p. 1-45).

The LGA would also require the displacement of approximately 377 commercial and industrial businesses, affecting approximately 3,132 employees. These displacements would include 192 businesses in unincorporated areas of Kern County, 118 in the city of Bakersfield, 25 in the city of Shafter, and 42 in the community of Oildale (Draft Supp. EIS, p.3.12-55). The Authority conducted an assessment in December 2015 to identify the number of suitable properties that could serve as replacement properties for these displaced businesses, and it identified approximately 921 vacant properties, a surplus of 544 over the number of anticipated business displacements (Draft Supp. EIS, pp. 3.12-56 and 3.12-57).

Agricultural Lands. The LGA would result in the permanent conversion of agricultural land to nonagricultural uses, severance of large agricultural properties, and conflicts with farmland protection contracts (Draft Supp. EIS, p. 3.14-29). Approximately 372 acres of Important Farmland, including over 370 acres of Prime Farmland (designated under the Farmland Protection Policy Act, 7 U.S.C. §§ 4201-4209), would be directly converted to nonagricultural use (Draft Supp. EIS, p. 3.14-29). However, these impacts are below Natural Resources Conservation Service thresholds that would otherwise require the consideration of other alternatives (Draft Supp. EIS, p. 3.14-30).

Aesthetics and Visual Resources. Portions of the LGA would be constructed using elevated concrete guideways, elevated grade-separated crossings and retained embankments having an average height of 60 feet. In urban areas where extensive road networks must be maintained, the elevated guideway would be necessary to ensure that a fully grade-separated HSR project is constructed (Draft Supp. EIS, pp. 2-6 through 2-9). These elevated guideways and retained embankments in particular would permanently lower the visual quality in both rural and urban areas. The LGA's new features would contrast with the existing rural views, obstruct scenic views, and introduce new sources of light and glare. The potential visual impacts of the elevated guideways would be particularly evident at the Shafter Museum; Burbank Street and Verdugo Lane in rural San Joaquin Valley; Norris Road in North Bakersfield; Kern River Parkway Bike trail crossing; and Sumner Street at Baker Street in downtown Bakersfield (Draft Supp. EIS, p. 3.16-51). Even with implementation of the Authority's mitigation---which includes consulting with local jurisdictions during the station design process, designing HSR parking structures to integrate visually with adjacent areas, designing elevated guideways and columns with decorative architectural features, and planting trees and other landscape materials to soften and buffer the appearance of HSR structures---some impacts on aesthetics and visual resources would remain (MMEP, Table 1, pp. 1-51 through 1-57; Supp. ROD, p. 4-6).

Environmental Justice. Construction and operation of the LGA would result in disproportionately high and adverse effects on minority and low-income populations in the urban areas of Shafter, Oildale, and Bakersfield. Where mitigation measures adopted by the Authority would not adequately reduce the impacts in areas with minority and low-income populations, disproportionately high and adverse effects on minority and low-income populations would remain with respect to noise, socioeconomics, and aesthetics and visual resources (Draft Supp. EIS, p. 5-51).

In particular, even with mitigation such as noise barriers, potential noise impacts would remain severe for approximately 152 sensitive receptors, the majority of which are located in minority and low-income areas. These receptors would be eligible for either sound insulation or payment of property for noise easements per Mitigation Measure N&V-MM#3. These measures would reduce potential noise impacts but would not completely eliminate disproportionately high and adverse noise impacts on minority and low-income populations. (Draft Supp. EIS, p. 5-52).

As noted in the Socioeconomics discussion above, the LGA would require the displacement of approximately 86 residential units, including 23 units within the community of Oildale, which is home to a large percentage of disabled residents and households with a female head of household. Because these populations are considered sensitive, the Authority's relocation plans and resources would take into account and address the special needs of such households (Draft Supp. EIS, Mitigation Measure SO-MM#1, p. 3.12-64). As noted above, the Authority's mitigation measures include providing special assistance to these residents in locating replacement properties (MMEP, Table 1, p. 1-45). The Authority would also continue to conduct substantial environmental justice outreach activities in adversely affected neighborhoods to obtain resident feedback on potential impacts and suggestions for mitigation measures. Input from these communities would be used to refine the LGA during ongoing engineering design efforts (Supp. ROD, Attachment C, MMEP, p. 1-49, SO-MM#6).

The LGA's guideways with elevated structures, raised embankments, retaining walls, and associated overpasses, would remain as substantial visual and aesthetic impacts even with mitigation measures to minimize potential impacts (Supp. Draft EIS, p. 5-52). Because mitigation measures would not eliminate adverse impacts within areas containing minority and low-income populations when compared to the larger project area, the LGA would have a disproportionately high and adverse impact on environmental justice communities. Because of the substantial nature and height of the elevated HSR structures, which would be up to approximately six stories high, no additional practical mitigation measures were identified in the Supplemental EISs to reduce these potential impacts (Supp. Draft EIS, p. 5-52).

However, to ensure that project-related job opportunities are provided to minority and low-income populations, the Authority has approved a community benefits policy to support employment of individuals who reside in disadvantaged areas and those designated as disadvantaged workers. This would help to remove potential barriers to small businesses, disadvantaged business enterprises, disabled veteran business enterprises, women-owned businesses, and microbusinesses that want to participate in building the HSR project (Draft Supp. EIS, pp. 3.12-49 and 3.12-50).

5.0 THE HISTORIC REVIEW PROCESS

Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) requires federal agencies to "take into account the effect of" their licensing decisions (in this case, whether to grant the Authority's request to reopen and reissue an exemption, also called the "undertaking" under NHPA) on properties included in, or eligible for inclusion in, the National Register of Historic Places (National Register), and prior to the approval of an undertaking, to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. Consultation with the State Historic Preservation Officer (SHPO) is also required. If the undertaking would have an

adverse effect on historic properties, the agency must continue to consult to possibly mitigate the adverse effects.

As the lead federal agency for Section 106 consultation at the time, FRA initiated the Section 106 consultation process for the Fresno to Bakersfield Section prior to OEA's involvement. During that process, FRA consulted with the California SHPO, ACHP, federally recognized Tribal organizations and other interested parties. The parties executed a Programmatic Agreement (PA) setting out a general process for Section 106 compliance for the entire HSR project on July 21, 2011. With the PA set to expire on July 21, 2021, the Signatories to the PA executed the First Amendment to the PA on July 21, 2021. In addition to extending the duration of the PA, the amendment added OEA, for the Board, as an Invited Signatory to the agreement, and designated the Authority as lead federal agency to 106 consultation and implementation.

The Section 106 consultation process, as well as evaluations conducted during the NEPA review, identified properties that are included in, or eligible for inclusion in, the National Register that would be adversely affected by the LGA. Due to access restrictions, surveys for archaeological properties are incomplete; therefore, additional National Register-eligible properties could be present. The regulations implementing Section 106 allow for the development of a Memorandum of Agreement (MOA) when the effects of an undertaking cannot be fully determined prior to approval of an undertaking. When there would be an adverse effect, the MOA can also establish responsibilities for the treatment of historic properties, implementation of mitigation measures, and ongoing consultation efforts. In this case, FRA, the Authority, the Board (through OEA), the U.S. Army Corps of Engineers (USACE), SHPO and ACHP executed an MOA on May 14, 2014, that outlines additional surveys, historic property treatment, mitigation measures and other efforts that will take place prior to construction of the Fresno to Bakersfield Section. Subsequently, the parties executed a First Amendment to the MOA on January 4, 2017, to expand the historic review process to include the LGA. Execution of the MOA and First Amendment to the MOA, their filing with ACHP, and subsequent implementation of their terms, satisfy the requirements of Section 106 (36 C.F.R. § 800.6(c)) for the Fresno to Bakersfield Section, including the LGA, and OEA concludes that no additional mitigation is required.

6.0 OEA'S FINAL ENVIRONMENTAL RECOMMENDATIONS

6.1 Supplemental EIS Adoptions

As a cooperating agency in the Supplemental EIS process for the LGA modification, OEA concludes that: (1) OEA's substantive comments and suggestions on the administrative drafts of the Draft and Final Supplemental EISs were incorporated; (2) the EISs adequately assesses the potential environmental impacts associated with the LGA modification and meet the standards of CEQ's NEPA regulations and the Board's own environmental regulations at 49 C.F.R. Part 1105; and (3) the LGA represents the preferred and environmentally preferable alternative for the 23-mile portion of the Fresno to Bakersfield Section. Accordingly, OEA recommends that, in order to satisfy its NEPA and Section 106 obligations, the Board adopt the Draft and Final Supplemental EISs in any decision granting the Authority's request to construct the LGA modification and

impose the mitigation developed by the Authority, through its MMEP (as amended), as well as the additional mitigation measures recommended by OEA, discussed below.

6.2 Preferred and Environmentally Preferable Alternative

In its Supplemental ROD, the Authority approved the LGA modification including the F Street Station as a replacement for the May 2014 Project including the Truxton Street Station. In making this decision, the Authority noted that the LGA modification best satisfies the purpose, need, and objectives of the proposed action and minimizes potential impacts on the environment by utilizing existing transportation corridors where practicable and incorporating appropriate mitigation measures. Thus, the Authority identifies the LGA modification as both its preferred and environmentally preferable alternative under NEPA (Final Supp. EIS, pp. 8-10 and 8-14). OEA concurs with the Authority's conclusions and summarizes the advantages of the LGA modification over the previously authorized May 2014 Project below.

Although the LGA modification would result in 16 roadway segments and intersections operating below level of service standards compared to 11 under the May 2014 Project, the LGA would only result in 10 permanent road closures compared to 14 for the May 2014 Project (Draft Supp. EIS, p. 8-12). Like the May 2014 Project, overall, the LGA modification would benefit regional traffic safety and circulation by grade separating many roads and would divert intercity trips from the regional road system to high-speed rail (Supp. ROD, p. 4-1).

After mitigation, the LGA modification would impact 152 noise-sensitive receptors, which is approximately half the 305 noise-sensitive receptors that would be impacted by the May 2014 Project. Potential natural resources impacts would be substantially less under the LGA. The LGA modification would directly impact approximately 62 and 990 acres of special status plant and special status wildlife habitat, respectively, compared to 112 and 1,656 acres, respectively, for the May 2014 Project. The LGA modification would also impact 372 acres of Important Farmland, 113 fewer acres than the May 2014 Project (Draft Supp. EIS, p. 8-12).

Regarding potential impacts to waters of the United States, the USACE and USEPA concurred that the LGA modification is the Least Environmentally Damaging Practicable Alternative and therefore, would be consistent with the USACE's Clean Water Act, Section 404 permitting program and the USEPA's Section 404(b)(1) Guidelines (40 C.F.R. Part 230) (Supp. ROD, pp. 38-39).

Regarding socioeconomic impacts, the LGA modification would displace 377 commercial and industrial businesses and 86 housing units. The May 2014 Project would displace a similar number of businesses (i.e., 392) but substantially more housing units (i.e., 384). Both the LGA modification and the May 2014 Project would have disproportionate impacts on minority and low-income communities. The May 2014 Project would impact 8 to 10 housing units (of approximately 25 to 30 housing units) in the environmental justice community of Crome (Final EIS, p. 3.12-62; Draft Supp. EIS, p. S-18)), while the LGA would impact 23 housing units in the environmental justice community of Oildale (Draft Supp. EIS, pp. 8-12 and 8-13). The Authority's MMEP, as amended, includes a mitigation measure to provide enhanced assistance to the dislocated residents of Oildale, including assistance in locating replacement homes or locating

nearby vacant lots to which existing homes could be moved (Draft Supp. EIS, Mitigation Measure SO-MM#1, p. 3.12-64).

6.3 Mitigation

While the Draft and Final Supplemental EISs show that there would be certain unavoidable impacts from the LGA modification (including road closures, residential and business relocations, noise impacts, and impacts to agriculture lands, aesthetic and visual resources, and environmental justice populations), the Authority adopted an approximately 180-page MMEP, as amended, in its Supplemental ROD that specifies means to avoid, minimize or mitigate likely environmental harm caused by construction of the proposed LGA modification.[7] The Authority's Supplemental ROD obligates it to comply with all the mitigation measures in the amended MMEP. OEA believes that the mitigation in the MMEP is adequate to address the potential impacts.

In any decision granting the Authority's request to reopen and modify the exemption previously issued, thereby authorizing construction of the LGA, OEA recommends that the Board impose two mitigation measures to assure compliance with the Authority's final environmental and Section 106 mitigation, as follows:

- The California High-Speed Rail Authority shall comply with the Mitigation & Monitoring Enforcement Plan, as amended, which is included in Appendix C to the Authority's Supplemental Record of Decision, dated October 31, 2019.

- The California High-Speed Rail Authority shall comply with the Programmatic Agreement and Memorandum of Agreement, and subsequent amendments, developed through the Section 106 process of the National Historic Preservation Act.

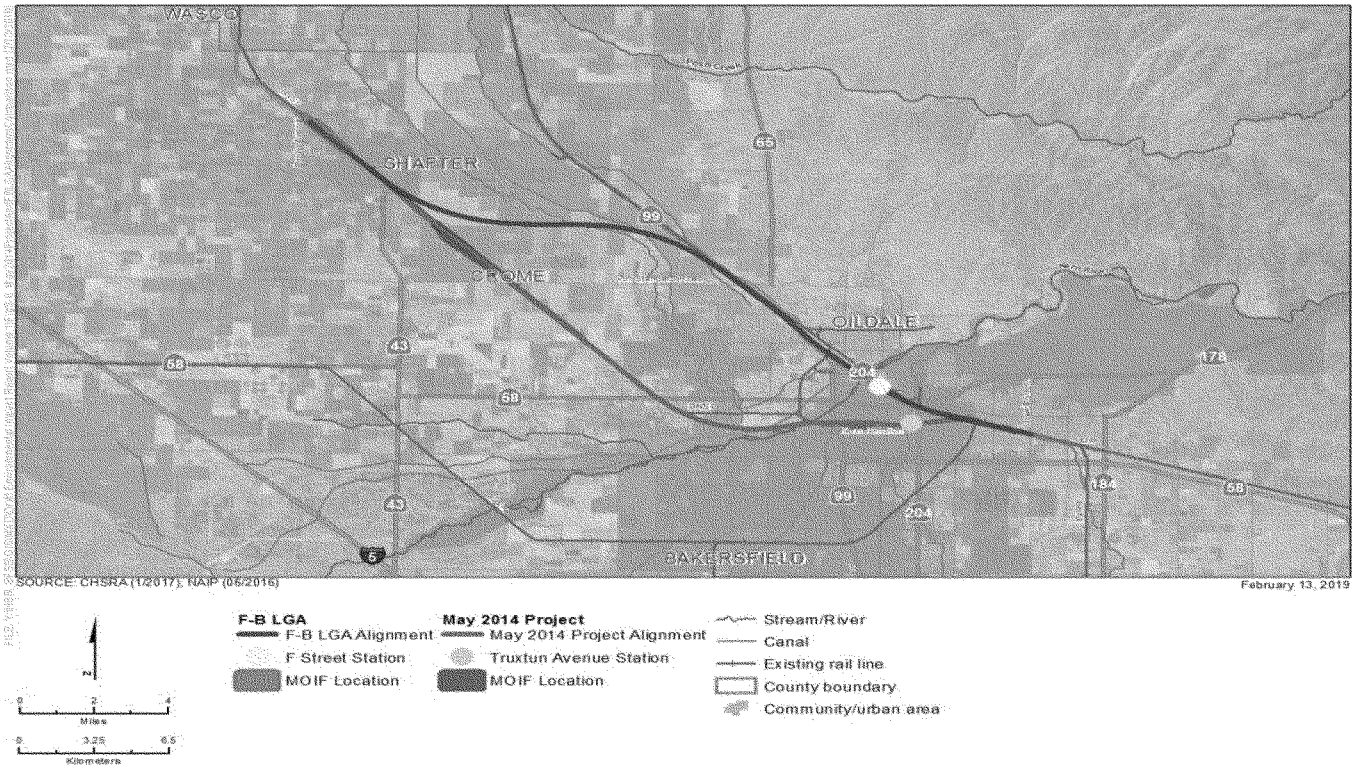
Additionally, in any decision granting the Authority's request for authority to construct the LGA modification, OEA recommends that the Board remove the following mitigation measure imposed in its August 2014 Decision because this measure pertains specifically to the May 2014 Project and would no longer be applicable:

- During project-related construction, the California High-Speed Rail Authority is prohibited from using pile driving within 300 feet of the south side of Mercy Hospital's existing building located at 2215 Truxton Avenue, Bakersfield, California.

[7] The MMEP, as amended, is attached to the Supplemental ROD as Appendix C, and is available on the Authority's website at https://hsr.ca.gov/wp-content/uploads/docs/programs/fresno-baker-eir/FBLGA_ROD_Attachment_C_MMEP.pdf

Figure 1 - Fresno to Bakersfield May 2014 Project and Locally Generated Alternative Comparison

Docket No. FD 35724 (Sub No. 1), California High-Speed Rail Authority – Construction Authority – in Fresno, Kings, Tulare and Kern Counties, Cal.



[FR Doc. 2022–28114 Filed 12–22–22; 8:45 am]

BILLING CODE 4915–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property for land disposal at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

SUMMARY: The FAA proposes to rule and invites public comment on the release and sale of one parcel of land at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Brian Fornwalt, Airport Manager, Liberal Mid-America Regional Airport, 302 Terminal Road, P.O. Box 2199, Liberal, KS 67901, (620) 626–0188.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 1.50 acres of airport property at the Liberal Mid-America Regional Airport (LBL) under the provisions of 49 U.S.C. 47107(h)(2). The Airport Manager has requested from the FAA the release of a 1.50 acre parcel of airport property be released for sale for commercial development. The FAA determined the request to release and sell property at Liberal Mid-America Regional Airport (LBL) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Liberal Mid-America Regional Airport (LBL) is proposing the release and sale of a 1.50 acre parcel of airport property. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject

property will result in the release of land and surface rights at the Liberal Mid-America Regional Airport (LBL) from the conditions of the AIP Grant Agreement Grant Assurances, but retaining the mineral rights. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value and the property will be developed for a commercial business.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, request an appointment and inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Liberal Mid-America Regional Airport.

Issued in Kansas City, MO, on December 14, 2022.

James A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2022–27711 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2022–1273]

Agency Information Collection Activities: Requests for Comments; Approval of Clearance Renewal for Information Collection: For the Information Collection Entitled, Website for Frequency Coordination Request

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to allow renewal of the currently approved information collection via the FAA's deployed Web-based Frequency Coordination system (WebFCR), which collects certain broadcast and transmitter frequency information under OMB control number 2120–0786. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 28, 2022. The collection involves information needed to perform the aeronautical studies, technical evaluations and engineering required to meet the specified requirements for the radio frequency engineering pursuant to the FAA Order. The Federal Aviation Administration (FAA) Order 6050.32.B, chapter 3, section 302, which outlines the US National Organizations, and the role of the National Telecommunications and Information Administration (NTIA) is assigning the Aviation Assignment Group (AAG) of the radio spectrum to FAA which support aeronautical services. Hence, FAA must ''authorize'' aeronautical frequencies of broadcast applications which impact the AAG bands.

DATES: Written comments should be submitted by January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Christopher S. Jones by email at: Christopher S. *Jones@faa.gov*; phone: (202) 267–5926.

By mail: Christopher S. Jones, Spectrum Engineering and Assignment, AJW–191, Room 7E–325, 800 Independence Avenue, Washington DC 20591.

By fax: (202) 267–6056.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0786.

Title: website for Frequency Coordination Request (WebFCR) *webfcr.faa.gov.*

Form Numbers: Historically related to FAA Form 7460–1.

Type of Review: Request for renewal of information collection.

Background: The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on September 28, 2022 (FR 2022–20969). The purpose of the information is to meet the reference 49 U.S.C. Section 44718(c) under Broadcast Applications and Tower Studies states, 'in carrying out laws related to a broadcast application'—the Administrator of the Federal Aviation Administration and the Federal Communications Commission shall take action necessary to coordinate efficiently—(1) The receipt and consideration of, and action on, the application; and (2) The completion of any associated aeronautical study. Currently, transmitter broadcast radio frequency data is collected via OMB Control 2120–0786 to address non-Federal, military, U.S. Federal agency, State and municipalities broadcast applications which require consideration, analysis or aeronautical studies pursuant to 49 U.S.C. 44718(c).

Respondents: Approximately 2400 annually. The Respondents are engineers, analysts, consultants, stakeholders or federal agency managers, including military services, who have a need to transmit on a radio frequency which is within the National Telecommunications and Information Administration's (NTIA) Aviation Assignment Group (AAG) frequency band assigned to the FAA for civil aviation use. The response to this data collection is required for the proponent to obtain FAA concurrence to use a radio frequency that impacts civil aviation. The information collected through the WebFCR portal supports the engineering, modeling, validation and workflow management of the request to evaluate if the request interferes or impacts civil aviation operations pursuant to FAA Order 6050.32B.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 0.2 hours.

Estimated Total Annual Burden: 480 hours.

Issued in Washington, DC on December 20, 2022.

Christopher S. Jones,

Spectrum Engineering and Assignment Navigation Lead, Spectrum Engineering and Assignment Group, AJW–1910.

[FR Doc. 2022–27937 Filed 12–22–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0127]

Controlled Substances and Alcohol Use and Testing: Application for Exemption; The Trucking Alliance

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

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application from The Alliance for Driver Safety & Security, also known as the Trucking Alliance (as referred to herein), for an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) ''to amend the definition of actual knowledge to include the employer's knowledge of a driver's positive hair test, which would require such results be reported to the FMCSA Drug and Alcohol Clearinghouse (''Clearinghouse'') and to inquiring carriers.'' The Trucking Alliance, is comprised of the following motor carriers: Cargo Transporters; Dupre´ Logistics LLC; Frozen Food Express; J.B. Hunt Transport, Inc.; KLLM Transport Services; Knight Transportation; Maverick Transportation LLC; Schneider; Swift Transportation; USXpress; and May Trucking Company. The applicant believes that hair testing enhances public safety by providing a longer detection window for controlled substance use and by minimizing the opportunity for fraud in the specimen collection process. The applicant asserts that because hair testing is more reliable and accurate than urine testing, it is the ''appropriate drug testing method for preemployment and random testing protocols.'' The applicant asserts that there will be no reduction in safety benefits if the exemption is granted. FMCSA analyzed the application and public comments and determined that the Agency lacks the statutory authority to grant the exemption request to amend the definition of actual knowledge to include the employer's knowledge of a driver's positive hair test.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. Email: *richard.clemente@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2022–0127'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''View Related Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2022–0127'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with 49 U.S.C. 31315(b)(6)(A) and 49 CFR 381.315(a), FMCSA must publish a notice of each exemption request in the **Federal Register** (). and provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Federal Regulatory Requirements

For purposes of 49 CFR part 382, subpart B, *actual knowledge,* as defined in 49 CFR 382.107, means an employer's actual knowledge that the driver has engaged in the prohibited use of alcohol or controlled substances. Employers have actual knowledge of prohibited use based any of the following events: they directly observe a driver using alcohol or controlled substances, they receive information provided by the driver's previous employer(s), they are aware that a driver was issued a traffic citation for driving a commercial motor vehicle (CMV) while under the influence of alcohol or controlled substances, or the employee admits alcohol or controlled substance use, except as provided in 49 CFR 382.121. An employer's direct observation of prohibited use does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 49 CFR 382.207. As used in the definition of *actual knowledge,* the term *traffic citation* means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.

Statutory Requirements for FMCSA's Drug and Alcohol Testing Program

FMCSA drug and alcohol use and testing regulations are authorized by the Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, Title V, 105 Stat. 917, at 952, codified at 49 U.S.C. 31306). Section 31306(c)(2) requires that DOT follow the Department of Health and Human Services' (HHS) Mandatory Guidelines for technical and scientific issues related to testing for controlled substances. The Agency acknowledged in its Notice of exemption request (87 FR 52105 (Aug. 24, 2022)) (''the August 24, 2022 Notice'') that FMCSA currently lacks the statutory authority to grant the Trucking Alliance's request for exemption because HHS has not yet issued final Mandatory Guidelines for hair testing. In addition, in section 5402(b)of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114 94, 49 U.S.C. 31306 note) (Dec. 4, 2015)), Congress required HHS ''not later than one year after . . . this Act, . . . issue scientific and technical guidelines for hair testing as a method of detecting the use of controlled substance for purposes of section 31306 of title 49, United State Code.'' The FAST Act also amended OTETA by adding a requirement that FMCSA's drug and alcohol testing regulations permit the use of hair testing as an acceptable alternative to urine testing for pre-employment drug testing, and for random drug testing when the driver was subject to pre-employment hair testing (49 U.S.C. 31306(b)(1)(B)) and that such regulations include an exemption for hair testing for CMV operators with established religious beliefs that prohibit the cutting or removal of hair.

The Conference Report accompanying the FAST Act noted that ''[t]he FMCSA has informed the conferees, and the conferees agree that *nothing in section 5402 authorizes the use of hair testing as an alternative to urine tests until the U.S. Department of Health and Human*

Services establishes federal standards for hair testing'' (emphasis added).[H.R. Rep. 114–357, at 506 (Dec. 1, 2015)] HHS issued proposed Mandatory Guidelines for Federal Workplace Drug Testing Using Hair (HMG) in 2020 (85 FR 56108 (September 10, 2020)). However, HHS has not yet issued a final version of the HMG.

Applicant's Request

The Trucking Alliance applied for ''an exemption from 49 CFR 382.107 to amend the definition of actual knowledge to include the employer's knowledge of a driver's positive hair test, which would require such results be reported to the FMCSA Drug and Alcohol Clearinghouse (''Clearinghouse'') and to inquiring carriers as required to comply with 49 CFR 391.23.''

IV. Method To Ensure an Equivalent or Greater Level of Safety

The applicant believes that public safety is improved using hair testing because drug use is more accurately detected with hair testing than with urine testing. According to the application, the Trucking Alliance motor carrier members that conduct non-DOT hair testing have found it is more effective in eliminating lifestyle drug users from the CMV driver pool, noting it provides ''a better opportunity to learn of such drug usage through hair analysis because of the longer 90-day window for detection.'' The applicant also notes that the collection of hair samples is less invasive than urine collection and minimizes the possibility the sample will be substituted or adulterated since hair collections are directly observed. The applicant, citing studies confirming the efficacy and accuracy of hair testing, asserts that previous concerns that hair testing results in false positive test results for African Americans, have been addressed by improvements in the testing methodology. The applicant also cited court cases upholding the use of hair testing to detect illicit drug use in the workplace and in connection with custody and parole compliance. The application sets forth detailed protocols for the collection and testing of hair samples, including laboratory standards and cut-off levels, which the Trucking Alliance members ''propose'' to follow if the exemption request is granted. The application states that Trucking Alliance members ''are not seeking to be exempt from complying with the Federal controlled substance and alcohol use and testing regulations but merely to allow the compliance to take place in an enhanced form—hair testing combined with urinalysis.''.

V. Public Comments

On August 24, 2022, FMCSA published The Trucking Alliance's application and requested public comment [87 FR 52106]. The Agency received 113 total comments; 31 filed in support, 70 filed in opposition, and 12 other filers had no position either for or against the exemption request.

A common point forwarded by comments in opposition, notably from the Owner-Operator Independent Driver's Association (OOIDA), the International Brotherhood of Teamsters (IBT) and the National Association of Small Trucking Companies (NASTC) is that the FMCSA lacks the current statutory authority to grant the exemption request from the Federal Motor Carrier Safety Regulations (FMCSRs) to amend the definition of actual knowledge to include the employer's knowledge of a driver's positive hair test, which would require such results be reported to the DACH and to inquiring carriers. OOIDA specifically commented: ''as stated in the notice of application for exemption, the Department of Health and Human Services (HHS) has not finalized the September 2020 proposed hair testing guidelines nor have they been adopted by the Department of Transportation. The Clearinghouse must employ proven testing protocols, equipment, and methodology that is scientifically controlled so that all testing follows specific procedures using labs that have been approved by the Substance Abuse and Mental Health Services Administration (SAMHSA). The Clearinghouse should not accept the results of any hair follicle testing considering the inconsistencies and inaccuracies involved.''

Similarly, the IBT commented: '' the applicant makes no effort to explain the application of FMCSA's action to its request, except to note that FMCSA's determination also involved modification of the actual knowledge standard. FMCSA's actions to amend the standard in its 2021 rulemaking have no bearing on OTETA authorities or the respective roles of DOT and HHS in permitting the testing of new specimens, and this argument must be disregarded.'' The National Waste and Recycling Association commented that if approved that hair testing not be mandated for all regulated carriers, and The National School Transportation Association requested that hair testing be an option, not a required method of testing. The Sikh Coalition/North American Punjabi Trucking Association raised the issue of false positives and faith-based accommodations.

Sixty-five other individuals/small motor carriers also opposed the request, many of whom raised the issue of adding to the current driver shortage and supply chain disruption issues indicating that it is extremely difficult to attract and retain drivers in this industry and granting this exemption request will only make it that much harder. Others in opposition claimed that hair testing is not a 100% accurate testing method.

Those filing comments in support of the exemption request include the American Trucking Associations, Inc., the Truckload Carriers Association, the Institute for Safer Truckers/Road Safe America, and the Independent Carrier Safety Association. Including the applicant, the following truckload carriers—most of whom are members of the Trucking Alliance, filed individual comments in support of the request: J.B. Hunt; Knight-Swift Transportation; Maverick Transportation; Werner Enterprises; Schneider; KLLM/Frozen Foods Express; Cargo Transporters; Roehl Transport and Dupre Logistics, LLC. The Trucking Alliance and several of its member companies commented that nothing in the Federal statute prohibits FMCSA from implementing what Congress specifically directed the Secretary of Transportation to do—recognize hair testing as an acceptable alternative to urine testing. Another predominant ''theme'' from supporting comments is that hair drug testing is a proven indicator of prior illegal drug use and, in fact, is a more reliable indicator of illegal drug use than a urinalysis test. Others in support commented that hair testing should be allowed, and positive test results from hair testing should be reported in the DACH.

VI. FMCSA Safety Analysis and Decision

The applicant requests an exemption that amend the definition of ''actual knowledge'' to include the employer's knowledge of driver's non-DOT positive hair test results, which would require such results be reported to the Clearinghouse. FMCSA evaluated the application and public comments. The Agency denies the exemption request because, as explained above in Section III. and in the August 24, 2022 Notice, FMCSA's current statutory authorities do not allow FMCSA to grant the requested exemption. 49 U.S.C. 31306(c)(2) requires that FMCSA follow the HHS scientific and technical guidelines for hair testing, including mandatory guidelines establishing

comprehensive standards and procedures for every aspect of laboratory testing (and ''requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests''), the minimum list of controlled substances for which individuals may be tested, standards for review and certification of laboratories that conduct hair testing, and laboratory protocol and cut-off levels for hair testing to detect controlled substances use. The HHS issued proposed Hair Mandatory Guidelines for Federal Workplace Drug Testing Programs (HMG) in 2020 for public comment but has not issued a final version of the HMG.

The applicant asserts that FMCSA does have the statutory authority to grant its exemption request, citing 49 U.S.C. 31306a(b)(B)(ii), which requires that FMCSA adopt regulations permitting pre-employment hair testing for controlled substances as an alternative to urine testing for CMV operators and for random testing if the operator was subject to pre-employment hair testing. By ignoring the requirement that FMCSA follow the HHS mandatory guidelines for hair testing, set forth in 49 U.S.C. 31306(c)(2), the applicant effectively argues that this provision be read in isolation. This approach disregards an accepted standard of statutory construction, which provides that statutory text must be construed as a whole. The Committee Report accompanying the enactment of 49 U.S.C. 31306a(b)(B)(ii) confirms this is precisely what Congress intended: ''[t]he FMCSA has informed the conferees, and the conferees agree that *nothing in* [31306a(b)(B)(ii)] *authorizes the use of hair testing as an alternative to urine tests until the U.S. Department of Health and Human Services establishes federal standards for hair testing*'' (emphasis added). Accordingly, the Agency currently lacks the authority to permit an employer's actual knowledge of a driver's positive hair test results to be a basis for determining that a driver has violated 49 CFR part 382, subpart B, by engaging in the prohibited use of controlled substances and to permit such results be reported to the Clearinghouse.

For the above reasons, the Trucking Alliance's exemption application is denied.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–27849 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0137]

Pipeline Safety: Random Drug Testing Rate; Management Information System Reporting; and Obtaining Drug and Alcohol Management Information System Sign-In Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will be reduced to 25 percent during calendar year 2023. Operators are reminded that drug and alcohol (D&A) testing information must be submitted for contractors who are performing or are ready to perform covered functions. For calendar year 2022 reporting, the username and password for the Drug and Alcohol Management Information System (DAMIS) will be available in the PHMSA Portal.

DATES: Applicable January 1, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Wayne Lemoi, Drug & Alcohol Program Manager, Office of Pipeline Safety, by phone at 909–937–7232 or by email at *wayne.lemoi@dot.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Calendar Year 2023 Minimum Annual Percentage Rate for Random Drug Testing

Operators of gas, hazardous liquid and carbon dioxide pipeline facilities, liquefied natural gas (LNG) plants, and underground natural gas storage facilities must randomly select and test a percentage of all covered employees for prohibited drug use in accordance with 49 Code of Federal Regulations (CFR) part 199. The Administrator can adjust this random drug testing rate based on the reported positive rate in the industry's random drug tests, which is submitted in operators' annual MIS reports as required by § 199.119(a). In accordance with § 199.105(c)(3), if the reported positive drug test rate is below 1.0 percent for 2 consecutive calendar years, the Administrator can lower the random drug testing rate to 25 percent of all covered employees.

Pursuant to § 199.105(c)(3), the Administrator is lowering the PHMSA minimum annual random drug testing rate for all covered employees to 25 percent in calendar year 2023 because the random drug test positive rate for the pipeline industry was reported at less than 1.0 percent in the consecutive calendar years of 2020 and 2021.

Reminder for Operators To Report Contractor MIS Data

In 2021, PHMSA released new PHMSA Supplemental Instructions for DOT Drug & Alcohol Management Information System Reporting online. These instructions provide operators with the appropriate process for collecting and reporting annual D&A testing data for contractors. The supplemental instructions help ensure that PHMSA can identify all the contractors who performed D&A covered functions for a specific pipeline operator; identify all the pipeline operators for whom a specific contractor performed D&A covered functions; and has received a complete and accurate MIS report for each contractor who performed D&A covered functions on any PHMSA-regulated pipeline or facility in the applicable calendar year.

Pursuant to §§ 199.119(a) and 199.229(a), an operator having more than 50 covered employees is a large operator and an operator having 50 or fewer covered employees is a small operator. While contractor employees are covered employees per the regulations in § 199.3 and must be treated as such with regards to part 199, contractor employees are not included in the calculation to determine if an operator is a large or small operator.

Large operators are always required to submit annual MIS reports whereas small operators are only required to submit MIS reports upon written request from PHMSA. If a small operator has submitted an MIS report for calendar year 2020 or 2021, the PHMSA Portal message may state that no MIS report is required for calendar year 2022. If a small operator has grown to more than 50 covered employees during calendar year 2022, the PHMSA Portal message will include instructions for how to obtain a DAMIS username and password for the 2022 calendar year reporting period.

If an operator is required to submit an MIS report in accordance with part 199, that report is not complete until PHMSA receives an MIS data report for each contractor that performed covered functions as defined in § 199.3. Operators must submit operator and contractor employee testing data in separate MIS reports to avoid duplicative reporting and inaccurate data that could affect the positive rate for the pipeline industry.

Reminder of Method for Operators To Obtain Username and Password for Electronic Reporting

By early January 2023, the username and password required for an operator to access DAMIS and enter calendar year 2022 data will be available to all operator staff with access to the PHMSA Portal. Pipeline operators have been submitting reports required by 49 CFR parts 191 and 195 through the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*) since 2011. PHMSA determined that distributing information via the PHMSA Portal would be more effective than the previous mailing process.

When the DAMIS username and password are available in the PHMSA Portal, all registered users will receive an email to that effect. If operator staff responsible for submitting MIS reports do not receive the DAMIS information, they should coordinate with other registered PHMSA Portal users within their company to obtain the DAMIS username and password. Registered PHMSA Portal users for operators typically include operator staff or consultants who submit annual and incident reports through PHMSA F 7000- and 7100-series forms.

Operators that have not previously registered staff in the PHMSA Portal for the reporting purposes of parts 191 and 195 can register users by following the instructions at: *https://portal.phmsa.dot.gov/PHMSAPortal2/staticContentRedesign/howto/PortalAccountCreation.pdf.*

Issued in Washington, DC, on December 19, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–27906 Filed 12–22–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Superfund; Imported Substances; Procedures for Filing a Petition

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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 public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 23, 2023 to be assured of consideration.

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.

Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Superfund; Imported Substances; Procedures for Filing a Petition.

OMB Number: 1545–2304.

Revenue Procedure Number: 2022–26.

Abstract: Section 4672(a)(2) of the Code allows importers and exporters to petition the Secretary of the Treasury to modify the list of chemical substances subject to the section 4671 excise taxes. The collection of information in this revenue procedure is necessary so that the Secretary of the Treasury has sufficient information to process these determination requests. Petitioners are importers or exporters of chemical substances and interested parties.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and Individuals or households.

Estimated Number of Responses: 1,000.

Estimated Average Time per Response: 45 min.

Estimated Total Annual Burden Hours: 75,000.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–27898 Filed 12–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
Yemen

Lindsay Kitzinger,

Acting International Tax Counsel (Tax Policy).

[FR Doc. 2022–27923 Filed 12–22–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Housing Administration New Account Request, Transition Request, and Transfer Request

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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 public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 23, 2023 to be assured of consideration.

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 the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202)-622–1035, or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (BFS)

Title: FHA New Account Request, Transition Request, and Transfer Request.

OMB Number: 1530–0054.

Form Numbers and Titles: FS Form 5354—FHA Transaction Request, FS Form 5366—FHA New Account Request, FS Form 5367—FHA Debenture Transfer Request.

Abstract: The information is used to (1) establish a book-entry account; (2) change information on a book-entry account; and (3) transfer ownership of a book-entry account on the HUD system, maintained by the Federal Reserve Bank of Philadelphia.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 50.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–27890 Filed 12–22–22; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Superfund; Reverse Like-Kind Exchanges

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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.

DATES: Comments should be received on or before January 23, 2023 to be assured of consideration.

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. Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Reverse Like-Kind Exchanges.

OMB Number: 1545–1701.

Revenue Procedure Number: 2000–37.

Abstract: Revenue Procedure 2000–37 provides a safe harbor for reverse like-kind exchanges in which a transaction using a ''qualified exchange accommodation arrangement'' will qualify for non-recognition treatment under section 1031 of the Internal Revenue Code. Revenue Procedure 2004–51 modifies sections 1 and 4 of Rev. Proc. 2000–37, 2000–2 C.B. 308, to provide that Rev. Proc. 2000–37 does not apply if the taxpayer owns the property intended to qualify as replacement property before initiating a qualified exchange accommodation arrangement (QEAA).

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 1,600.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,200 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–27897 Filed 12–22–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is modifying the system of records entitled, ''Veterans Affairs/Department of Defense Identity Repository (VADIR)-VA'' (138VA005Q), by updating the routine uses and by adding routine use 13. This system of records is an electronic repository of military personnel's military history, payroll information and their dependents' data provided to VA by the Department of Defense's Defense Manpower Data Center (DMDC). The VADIR database repository is used in conjunction with other applications across VA business lines to provide an electronic consolidated view of comprehensive eligibility and benefits utilization data from across VA and Department of Defense (DoD). VA applications use the VADIR database to retrieve profile data, as well as address, military history, and information on compensation and benefits, disabilities, and dependents.

DATES: Comments on this modified system of records 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 modified system of records 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 ''Veterans Affairs/Department of Defense Identity Repository (VADIR)-VA'' (138VA005Q). Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: James Whited, Director, Technical Integration, 1615 Woodward St., Austin,

TX 78741, phone 512–326–6302, *james.whited@va.gov.*

SUPPLEMENTARY INFORMATION: VA has updated the routine uses and descriptions. The amended system of records reflects the updates to the routine uses. Additionally, routine use number 13 is added. This routine use allows VA to enter into Computer Match Agreements (CMAs) with other Federal agencies to determine or verify eligibility of veterans receiving VA benefits or medical care under title 38, U.S.C. No significant alterations have been made to the types, numbers, maintenance or organization of records or to the purpose or procedures for maintaining the information.

In accordance with 5 U.S.C. 552a(r), the notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director, Office of Management and Budget.

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. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on December 13, 2022 for publication.

Dated: December 20, 2022.

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:

Veterans Affairs/Department of Defense Identity Repository (VADIR)—VA (138VA005Q).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Austin Information Technology Center, 1615 East Woodward Street, Austin, Texas 78772.

SYSTEM MANAGER(S):

Alexander Torres, Project Manager, 812 Gilardi Dr., Petaluma, CA 94952, phone (703) 300–5511, *Alexander.Torres@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintaining this system is title 38 U.S.C. 5106.

PURPOSE(S) OF THE SYSTEM:

The purpose of VADIR is to receive electronically military personnel and payroll information from the Department of Defense (DoD) in a centralized VA system and then distribute the data to other VA systems and lines of business who require the information for health and benefits eligibility determinations. This information is provided to VADIR by the Defense Manpower Data Center (DMDC). VADIR will also provide veterans information concerning education benefits usage and death and disability status, as well as personal and demographic information on veterans discharged prior to 1978 to DMDC for reconciliation purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The category of the individuals covered by the VADIR database encompasses veterans, service members, and their dependents. This would include current service members, separated service members, and their dependents; as well as veterans whose VA military service benefits have been sought by others (*e.g.,* burial benefits).

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record, may include identifying information (*e.g.,* name, contact information, Social Security number), association to dependents, cross reference to other names used, military service participation and status information (branch of service, rank, enter on duty date, release from active duty date, military occupations, type of duty, character of service, awards), reason and nature of active duty separation (completion of commitment, disability, hardship, etc.), combat/environmental exposures (combat pay, combat awards, theater location), combat deployments (period of deployment, location/country), Guard/Reserve activations (period of activation, type of activation), military casualty/disabilities (line of duty death, physical examination board status, serious/very serious injury status, DoD rated disabilities), education benefit participation, eligibility and usage, healthcare benefit periods of eligibility (TRICARE, CHAMPVA), and VA compensation (rating, Dependency and Indemnity Compensation (DIC), award amount).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by components of the Department of Defense.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Department of Defense:* VA may disclose the record of an individual included in this system to DoD systems or offices for use in connection with matters relating to one of DoD's programs to enable delivery of healthcare or other DoD benefits to eligible beneficiaries.

2. *Department of Defense Manpower Data Center (DMDC):* VA may disclose the name, address, VA file number, effective date of compensation or pension, current and historical benefit pay amounts for compensation or pension, service information, date of birth, competency payment status, incarceration status, and social security number of veterans and their surviving spouses to the Department of Defense Manpower Data Center (DMDC) to reconcile the amount and/or waiver of service, department and retired pay.

3. *Department of Defense Enrollment Eligibility Reporting System (DEERS):* VA may disclose the name, address, VA file number, date of birth, date of death, social security number, and service information to DoD. DoD will use this information to identify retired veterans and dependent members of their families who have entitlement to DoD benefits but who are not identified in the Department of Defense Enrollment Eligibility Reporting System (DEERS) program and to assist in determining eligibility for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits. This purpose is consistent with 38 U.S.C. 5701.

4. *Federal Agencies, for Research:* VA may disclose information to a Federal agency for the purpose of conducting research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency.

5. *Law Enforcement:* VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

6. *DoJ for Litigation or Administrative Proceeding:* VA may disclose

information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

7. *Nonprofits, for RONA:* To a nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38, provided that the disclosure is limited the names and addresses of present or former members of the armed services or their beneficiaries, the records will not be used for any purpose other than that stated in the request, and the organization is aware of the penalty provision of 38 U.S.C. 5701(f).

8. *Contractors:* VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

9. *Data breach response and remediation, for VA:* VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records, (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. *Data breach response and remediation, for another Federal agency:* VA may disclose information to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. *Congress:* VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

12. *NARA:* VA may disclose information to the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

13. *Federal Agencies, for Computer Matches:* VA may disclose information from this system to other Federal agencies in accordance with a computer matching program to determine or verify eligibility of veterans receiving VA benefits or medical care under title 38.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are transmitted between DMDC and VA over a dedicated telecommunications circuit using approved encryption technologies. Records (or information contained in records) are maintained in electronic format in the VADIR Oracle database. These records cannot be directly accessed by any VA employee or other users. Information from VADIR is disseminated in three ways: (1) Approved VA systems electronically request and receive data from VADIR, (2) data is provided between VADIR and DMDC for reconciliation of records or to identify retired veterans and dependents who have entitlements to DoD benefits but are not identified in DEERS, and (3) periodic electronic data extracts of subsets of information contained in VADIR are provided to approved VA offices/systems. Backups of VADIR data are created regularly and stored in a secure off-site facility.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic files are retrieved using various unique identifiers belonging to the individual to whom the information pertains to include such identifiers as name, claim file number, social security number and date of birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained indefinitely until a records retention schedule is approved by the Archivist of the United States. The records control for the VDR system hardware and user logs is GRS 4.2: Information Access and Protection Records Item 130 located at *https://www.archives.gov/records-mgmt/grs.html.*

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Physical Security: The primary VADIR system is located in the AITC and the backup disaster recovery system is located in the Philadelphia Information Technology Center at Philadelphia, PA. Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons needing access to computer rooms are escorted.

System Security: Access to the VA network is protected by the usage of two factor authentication. Once on the VA network, two factor authentication is required to gain access to the VADIR server and/or database. Access to the server and/or database is granted to only a limited number of system administrators and database administrators. In addition, VADIR has undergone assessment and authorization based on a risk assessment that followed National Institute of Standards and Technology Vulnerability and Threat Guidelines. The system is considered stable and operational and a final Authority to Operate has been granted. The system was found to be operationally secure, with very few exceptions or recommendations for change.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort. The VA regulations implementing the Privacy Act are at 38 CFR 1.575–582.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining

to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. Additionally, to the extent that information contested is identified as data provided by DMDC, which is part of the Defense Logistics Agency (DLA), the DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

74 FR 37093 (July 27, 2009).

[FR Doc. 2022–27988 Filed 12–22–22; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 221214–0271]

RIN 0648–BL52

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island

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

ACTION: Proposed rule; proposed incidental take regulations; proposed letter of authorization; request for comments.

SUMMARY: NMFS has received a request from Revolution Wind, LLC (Revolution Wind), a 50/50 joint venture between Ørsted North America, Inc. (Ørsted) and Eversource Investment, LLC, for Incidental Take Regulations (ITR) and an associated Letter of Authorization (LOA). The requested regulations would govern the authorization of take, by Level A harassment and/or Level B harassment, of small numbers of marine mammals over the course of 5 years (2023–2028) incidental to construction of the Revolution Wind Offshore Wind Farm Project offshore of Rhode Island in a designated lease area on the Outer Continental Shelf (OCS–A–0486), within the Rhode Island-Massachusetts Wind Energy Area (RI/MA WEA). Project activities likely to result in incidental take include pile driving (impact and vibratory), potential unexploded ordnance (UXO/MEC) detonation, and vessel-based site assessment surveys using high-resolution geophysical (HRG) equipment. NMFS requests comments on its proposed rule. NMFS will consider public comments prior to making any final decision on the promulgation of the requested ITR and issuance of the LOA; agency responses to public comments will be summarized in the final notice of our decision. The proposed regulations would be effective October 5, 2023–October 4, 2028.

DATES: Comments and information must be received no later than January 23, 2023.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0127 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of Revolution Wind's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would provide a framework under authority of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to construction of the Revolution Wind Farm Project within the Bureau of Ocean Energy Management (BOEM) Renewable Energy lease area OCS–A 0486 and along export cable corridors to landfall locations in Rhode Island. NMFS received a request from Revolution Wind for 5-year regulations and a Letter of Authorization (LOA) that would authorize take of individuals of four species of marine mammals by Level A harassment and Level B harassment and 12 species by only Level B harassment incidental to Revolution Wind's construction activities. No mortality or serious injury is anticipated or proposed for authorization. Please see the *Legal Authority for the Proposed Action* section below for definitions of harassment.

Legal Authority for the Proposed Action

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, regulations are promulgated, and public notice and an opportunity for public comment are provided.

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 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 below.

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I, provide the legal basis for proposing and, if appropriate, issuing this rule containing 5-year regulations and associated LOA. This proposed rule also establishes required mitigation, monitoring, and reporting requirements for Revolution Wind's activities.

Summary of Major Provisions Within the Proposed Rule

The major provisions of this proposed rule include:

- Establishing a seasonal moratorium on impact pile driving during the months of highest North Atlantic right whale (*Eubalaena glacialis*) presence in the project area (January 1–April 30);
- Establishing a seasonal moratorium on any unexploded ordnances or munitions and explosives of concern (UXOs/MECs) detonations during the months of highest North Atlantic right whale present in the project area (January 1–April 30).

• Requiring that any UXO/MEC detonations may only occur during hours of daylight and not during hours of darkness or nighttime.

• Conducting both visual and passive acoustic monitoring by trained, NOAA Fisheries-approved Protected Species Observers (PSOs) and Passive Acoustic Monitoring (PAM) operators before, during, and after the in-water construction activities;

• Requiring the use of sound attenuation device(s) during all impact pile driving and UXO/MEC detonations to reduce noise levels;

• Delaying the start of pile driving if a North Atlantic right whale is observed at any distance by the PSO on the pile driving or dedicated PSO vessels;

• Delaying the start of pile driving if other marine mammals are observed entering or within their respective clearance zones;

• Shutting down pile driving (if feasible) if a North Atlantic right whale is observed or if other marine mammals enter their respective shutdown zones;

• Implementing soft starts for impact pile driving and using the lowest hammer energy possible;

• Implementing ramp-up for high-resolution geophysical (HRG) site characterization survey equipment;

• Requiring PSOs to continue to monitor for 30 minutes after any impact pile driving occurs and for any and all UXO/MEC detonations;

• Increasing awareness of North Atlantic right whale presence through monitoring of the appropriate networks and VHF Channel 16, as well as reporting any sightings to the sighting network;

• Implementing numerous vessel strike avoidance measures;

• A requirement to implement noise abatement system(s) during all impact pile driving and UXO/MEC detonations;

• Sound field verification requirements during impact pile driving and UXO/MEC detonation to measure in situ noise levels for comparison against the model results; and

• Removing gear from the water during fisheries monitoring research surveys if marine mammals are considered at-risk or are interacting with gear.

Under Section 105(a)(1) of the MMPA, failure to comply with these requirements or any other requirements in a regulation or permit implementing the MMPA may result in civil monetary penalties. Pursuant to 50 CFR 216.106, violations may also result in suspension or withdrawal of the Letter of Authorization (LOA) for the project. Knowing violations may result in criminal penalties, under Section 105(b) of the MMPA.

National Environmental Policy Act (NEPA)

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 evaluate the proposed action (*i.e.,* promulgation of regulations and subsequent issuance of a 5-year LOA) and alternatives with respect to potential impacts on the human environment.

Accordingly, NMFS proposes to adopt BOEM's Environmental Impact Statement (EIS), provided our independent evaluation of the document finds that it includes adequate information analyzing the effects of promulgating the proposed regulations and LOA issuance on the human environment. NMFS is a cooperating agency on BOEM's EIS. BOEM's draft EIS (Revolution Wind Draft Environmental Impact Statement (DEIS) for Commercial Wind Lease OCS–A 0486) was made available for public comment on September 2, 2022 (87 FR 54248), beginning the 45-day comment period ending on October 17, 2022. Additionally, BOEM held three in-person public hearings on October 4, 2022, in Aquinnah, MA, October 5, 2022, in East Greenwich, CT, and October 6, 2022, in New Bedford, MA, and two virtual public hearings on September 29 and October 11, 2022.

Information contained within Revolution Wind's incidental take authorization (ITA) application and this **Federal Register** document collectively provide the environmental information related to these proposed regulations and associated 5-year LOA for public review and comment. NMFS will review all comments submitted in response to this document prior to concluding the NEPA process or making a final decision on the requested 5-year ITA and LOA.

Fixing America's Surface Transportation Act (FAST–41)

This project is covered under Title 41 of the Fixing America's Surface Transportation Act, or ''FAST–41''. FAST–41 includes a suite of provisions designed to expedite the environmental review for covered infrastructure projects, including enhanced interagency coordination as well as milestone tracking on the public-facing Permitting Dashboard. FAST–41 also places a 2-year limitations period on any judicial claim that challenges the validity of a Federal agency decision to issue or deny an authorization for a FAST–41 covered project. 42 U.S.C. 4370m–6(a)(1)(A).

Revolution Wind's proposed project is listed on the Permitting Dashboard, where milestones and schedules related to the environmental review and permitting for the project can be found: *https://www.permits.performance.gov/permitting-projects/revolution-wind-farm-project.*

Summary of Request

On October 8, 2021, Revolution Wind submitted a request for the promulgation of regulations and issuance of an associated 5-year LOA to take marine mammals incidental to construction activities associated with implementation of the Revolution Wind Offshore Wind Farm Project (herein ''the Project'') offshore of Rhode Island, in the BOEM lease area OCS–A–0486.

Revolution Wind's request is for the incidental, but not intentional, taking of a small number of 16 marine mammal species (comprising 16 stocks) by Level A harassment (for four species or stocks) and Level B harassment (for all 16 species or stocks). Neither Revolution Wind nor NMFS expects serious injury or mortality to result from the specified activities based on the implementation of various mitigation measures as described below in the Proposed Mitigation section.

In response to our questions and comments, and following extensive information exchange between Revolution Wind and NMFS, we received subsequent revised applications and/or supplementary materials on January 24, 2022, and February 11, 2022. Revolution Wind submitted a final version of the application on February 23, 2022, which NMFS deemed adequate and complete on February 28, 2022. This final application is available on NMFS' website at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy.*

On March 21, 2022, a notice of receipt (NOR) of the application was published in the **Federal Register** (87 FR 15942), requesting comments and soliciting information related to Revolution Wind's request during a 30-day public comment period. During the NOR public comment period, NMFS received 27 substantive comments from two environmental non-governmental organizations (ENGO) Oceana and the Rhode Island Saltwater Anglers Association (RISSA). NMFS has reviewed all submitted material and has taken these into consideration during the drafting of this proposed

rulemaking. Subsequently, in June 2022, new scientific information was released regarding marine mammal densities (Robert and Halpin, 2022) and, as such, Revolution Wind submitted an Updated Density and Take Estimation Memo in August that included updated marine mammal densities and take estimates. NMFS posted this memo on the NMFS website on August 26, 2022.

NMFS previously issued four Incidental Harassment Authorizations (IHAs) to Ørsted for the taking of marine mammals incidental to marine site characterization surveys (using HRG equipment) of the Revolution Wind's BOEM lease area (OCS–A 0486) and surrounding BOEM lease areas (OCS–A 0487, OCS–A 0500) (see 84 FR 52464, October 2, 2019; 85 FR 63508, October 8 14, 2020; 87 FR 756, January 6, 2022; and 87 FR 61575, October 12, 2022). To date, Ørsted has complied with all IHA requirements (*e.g.,* mitigation, monitoring, and reporting). Information regarding Ørsted's monitoring results may be found in the Estimated Take section, and the full monitoring reports can be found on NMFS' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this ITA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Revolution Wind if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer required.

Description of the Specified Activity

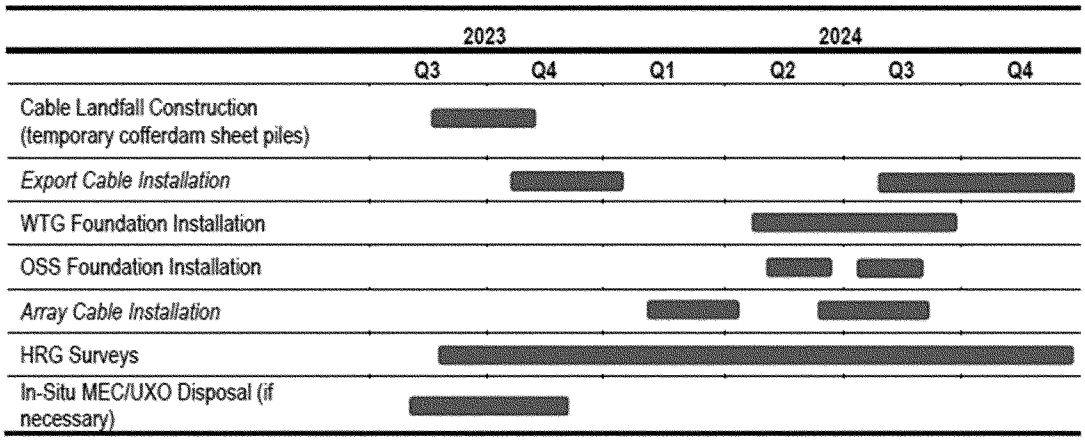
Overview

Revolution Wind has proposed to construct and operate a 704 megawatt (MW) wind energy facility (known as Revolution Wind) in State and Federal waters in the Atlantic Ocean in lease area OCS–A–0486, which would provide power to Rhode Island and Connecticut. Revolution Wind's project would consist of several different types of permanent offshore infrastructure, including wind turbine generators (WTGs; *e.g.,* Siemens Gamesa 11 megawatt (MW)) and associated foundations, offshore substations (OSS), offshore substation array cables, and substation interconnector cables. In their application, Revolution Wind indicated they plan to install up to 100 WTGs and two offshore substations (OSS) via impact pile driving; the temporary installation and removal of two cofferdams to assist in the installation of the export cable route by vibratory pile driving; several types of fishery and ecological monitoring surveys; the placement of scour protection; trenching, laying, and burial activities associated with the installation of the export cable route from OSSs to shore-based converter stations and inter-array cables between turbines; HRG vessel-based site characterization surveys using active acoustic sources with frequencies of less than 180 kilohertz (kHz); and the potential detonation of up to 13 UXO/MECs of different charge weights, as necessary. Vessels would transit within the project area, and between ports and the wind farm to transport crew, supplies, and materials to support pile installation. All offshore cables would connect to onshore export cables, substations, and grid connections, which would be located at Quonset Point in North Kingstown, Rhode Island.

Since submission of the application, Revolution Wind has re-evaluated previous survey data and analyzed additional survey data. On October 13, 2022, Revolution Wind informed NMFS that 21 of the 100 WTG positions are not able to be developed due to installation infeasibility. On November 8, 2022, Revolution Wind provided NMFS with a Reduced WTG Foundation Scenario memo that includes revised exposure and take estimates based on the installation of 79 WTG foundations; therefore, for purposes of this proposed rule, we are analyzing take requests associated with the installation of the reduced number of foundations (*i.e.,* 79 WTG foundations plus two OSS foundations, for a total of 81 foundations). In addition, the amount of trackline within the lease area that would be surveyed using HRG equipment has been reduced to reflect the shorter overall distance of inter-array cables that would be required for 79 rather than 100 WTG foundations. Revolution Wind now estimates that they would survey 9,559 km over 136.6 days rather than 11,600 km over 165.7 days during construction (Year 1) in the lease area. Following construction (*i.e.,* in Years 2–5), Revolution Wind now plans to survey 2,117 km over 30.2 days per year rather than 2,640 km over 37.7 days per year in the lease area. The amount of survey work that would be conducted in the export cable corridor would not change from what was included in the ITR application, despite installation of fewer WTG foundations. Marine mammals exposed to elevated noise levels during impact and vibratory pile driving, potential detonations of UXOs, or site characterization surveys, may be taken, by Level A harassment and/or Level B harassment, depending on the specified activity.

Dates and Duration

Revolution Wind anticipates that activities with the potential to result in harassment of marine mammals would occur throughout all five years of the proposed regulations which, if promulgated, would be effective from October 5, 2023, through October 4, 2028. Installation of monopile foundations, cable landfall construction, and UXO/MEC detonations in the Revolution Wind Farm (RWF) and Revolution Wind Export Cable (RWEC) corridor would occur over approximately 12 to 18 months, from the third quarter (Q3) of 2023 to the fourth quarter (Q4) of 2024 (Figure 1). Through the end of the 5-year effective period of the requested regulations in Q3 2028, HRG surveys could take place within the RWF and RWEC at any time of year; the timeframe for these post-construction surveys is not included in Figure 1. The general construction schedule in Figure 1 and Table 1 presents all of the major project components, including those that may result in take, and those from which incidental take is not expected (*i.e.,* components in italics in Figure 1 and Table 1).



1 - Project components in italics are not expected to result in take.
2 - HRG surveys would occur throughout the LOA's 5-year effective period, through Q3 2028.

Figure 1. Revolution Wind's General Proposed Construction Schedule[1,2]

TABLE 1—REVOLUTION WIND'S CONSTRUCTION AND OPERATIONS SCHEDULE [1]

Project area	Project component	Expected duration and timing
RWF Construction	WTG foundation installation	~5 months Q2–Q3 2024.
	OSS foundation installation	~2–3 days Q2–Q3 2024.
	Array cable installation	~5 months Q1–Q3 2024.
	HRG surveys	Any time of year Q3 2023–Q4 2024.
	In situ UXO/MEC disposal	~ up to 7 days Q3–Q4 2023.
RWEC Construction	Cable landfall installation (temporary cofferdam or casing pipe installation and removal.	~ up to 56 days Q3–Q4 2023.
	Offshore export cable installation	~8 months Q4 2023–Q4 2024.
	HRG surveys	Any time of year Q3 2023–Q4 2024.
	In situ UXO/MEC disposal	~ up to 6 days Q3–Q4 2023.
Operations	HRG surveys	Any time of year Q4 2024–Q3 2028.

[1] Project components in italics are not expected to result in take.

WTG and OSS Pile Installation (Impact Pile Driving)

The installation of 79 WTG and 2 OSS monopiles foundations would be limited to May through December, given the seasonal restriction on impact pile driving in the RWF from January 1–April 30. As described previously, Revolution Wind intends to install all monopile foundations in a single year. However, it is possible that monopile installation would continue into a second year, depending on construction logistics and local and environmental conditions that may influence Revolution Wind's ability to maintain the planned construction schedule.

Installation of a single WTG monopile foundation is expected to require a maximum of 4 hours of active impact hammering, which can occur either in a continuous 4-hour interval or intermittently over a longer time period. For the purposes of acoustic modeling, it was assumed that installation of a single WTG monopile would require a total of 10,740 hammer strikes over 220 minutes (3.7 hours). Revolution Wind assumes that a maximum of three WTG monopile foundations can be driven into the seabed per day, although fewer installations per day may occur depending on logistics and environmental conditions. Installation of each of the two OSS monopile foundations is expected to require a larger number of hammer strikes (11,564) over a longer period (380 minutes, or 6.3 hours), given that the OSS monopile foundation is larger in diameter than the WTG monopile foundation. Revolution Wind has requested 24-hour pile driving, which would consist of intermittent impact pile driving that could occur anytime within a 24-hour timeframe, amounting to a maximum of 12 hours of active pile driving per day to install up to three monopiles. No concurrent impact pile driving (*i.e.,* installing multiple piles at the same time) is planned for this project.

Revolution Wind anticipates that the first WTG would become operational in Q2 of 2024, after installation is completed and all necessary components, such as array cables, OSSs, export cable routes, and onshore substations are installed. Turbines would be commissioned individually by personnel on location, so the number of commissioning teams would dictate how quickly the process would be achieved. Revolution Wind expects that all turbines would be commissioned by Q4 2024.

Potential UXO/MEC Detonations

Revolution Wind anticipates encountering the potential presence of UXOs/MECs in and around the project area during the 5 years of the proposed rule. These UXOs/MECs are defined as explosive munitions (*e.g.,* shells, mines, bombs, torpedoes, *etc.*) that did not explode or detonate when they were originally deployed or that were intentionally discarded to avoid detonations on land. Typically, these munitions could be left behind following Navy military training, testing, or operations. Revolution Wind primarily plans for avoidance or

relocation of any UXOs/MECs found within the project area, when possible. In some cases, it may also be possible that the UXO/MEC could be cut up to extract the explosive components. However, Revolution Wind notes this may not be possible in all cases and in situ disposal may be required. If in situ disposal is required, all disposals would be performed using low-order methods (deflagration), which are considered less impactful to marine mammals, first and then would be elevated up to high-order removal (detonation), if this approach is determined to be necessary. In the event that high-order removal is needed, all detonations would only occur during daylight hours.

Based on preliminary survey data, Revolution Wind conservatively estimates a maximum of 13 days on which UXO/MEC detonation may occur, with up to one UXO/MEC being detonated per day and a maximum of 13 UXOs/MECs being detonated over the entire 5-year period. NMFS notes that UXOs/MECs may be detonated from May through November in any year; however, no UXOs/MECs would be detonated in Federal waters between December 1 and April 30 of any year during the effective period of the proposed rule.

Cable Landfall Construction

Cable landfall construction is one of the first activities scheduled to occur, sometime within the Q3 2023 to Q4 2023 timeframe. Installation of the RWEC landfall would be accomplished using a horizontal directional drilling (HDD) methodology. The drilling equipment would be located onshore and used to create a borehole, one for each cable, from shore to an exit point on the seafloor approximately 250 m (800 ft) offshore. At the seaward exit site for each borehole, construction activities may include a casing pipe scenario, which involves the temporary installation of two casing pipes, each supported by sheet pile goal posts, to collect drilling mud from the borehole exit point. Alternatively, two temporary cofferdams may be installed to create a dry environment from which drilling mud could be collected. Each cofferdam, if required, may be installed as either a sheet-piled structure into the seafloor or a gravity cell cofferdam placed on the seafloor using ballast weight. Only one of these three landfall construction alternatives (*i.e.,* casing pipe scenario, sheet pile cofferdam, or gravity cell cofferdam) would be installed.

Casing Pipe Installation and Removal

The casing pipes would each require up to 3 hours per day of pneumatic impact hammering to install, over a period of two days for each pipe (6 hours total over 4 days for both), depending on the number of pauses required to weld additional sections onto the casing pipe. Removal of the casing pipe would also involve the use of a pneumatic pipe ramming tool, but the pipe would be pulled out of the seabed while hammering was occurring instead of being pushed into it. The same total of 4 days of pneumatic hammering (6 hours total), may be required for removal of both pipes.

Up to six goal posts may be installed to support each casing pipe (12 goal posts total), which would be located between a barge and the penetration point on the seabed. Each goal post would be composed of two vertical sheet piles installed using a vibratory hammer such as an American Piledriving Equipment (APE) model 300 (or similar). A horizontal cross beam connecting the two sheet piles would then be installed to provide support to the casing pipe. For each casing pipe, installation of six goal posts would require up to three days total of vibratory pile driving, or up to 6 days total for both casing pipes. Removal of the goal posts would also involve the use of a vibratory hammer and would likely require approximately the same amount of time as installation (6 days total for both casing pipes). Thus, use of a vibratory pile driver to install and remove the 12 goal posts may occur on up to 12 days at the landfall location.

Cofferdam Installation and Removal

If Revolution Wind selects this alternative, installation of two 50 m x 10 m x 3 m (164 ft x 33 ft x 10 ft) sheet pile cofferdams at the cable landfall construction location near Quonset Point in Kingstown, Rhode Island, may require up to 14 days of vibratory pile driving per cofferdam (28 days total). After the sheet piles are installed, the inside of each cofferdam would be excavated to approximately 10 ft (3 m). Once HDD operations are complete and the cables installed, the cofferdams would be removed, using vibratory hammering, over the course of up to 14 days per cofferdam. Separate cofferdams would be installed and removed for each of the two export cable bundles, amounting to up to 56 days of vibratory hammering at the landfall location.

If Revolution Wind decides to install the gravity cell cofferdam (which would have the same approximate dimensions as the sheet pile cofferdam), the structure would be fabricated onshore, transported to the site on a barge, and then lifted off the barge and placed on the seafloor using a crane. This process would not involve pile driving or other underwater sound producing activities, and is not expected to result in harassment of marine mammals.

Revolution Wind anticipates that impacts from cofferdam installation and removal using sheet piles would exceed any potential impacts for the use of alternative methods (*i.e.,* gravity cell cofferdam, casing pipe scenario), and therefore the cofferdam estimates using the sheet pile approach ensures that the most conservative values are carried forward in analyses for this proposed action.

HRG Surveys

High-resolution geophysical site characterization surveys would occur annually throughout the 5 years the rule and LOA would be effective. The specific duration would be dependent on the activities occurring in that year (*i.e.,* construction versus non-construction year). HRG surveys would utilize up to a maximum of four vessels working concurrently in different sections of the lease area and RWEC corridor. During the first year of construction (when the majority of foundations and cables would be installed), Revolution Wind estimates that 9,669 km would be surveyed over 136.6 days in the lease area, and 5,748 km would be surveyed along the RWEC corridor over 82.1 days, in water depths ranging from 2 m (6.5 ft) to 50 m (164 ft). During non-construction years (the final 4 years in which the regulations and LOA would be effective), Revolution Wind estimates 2,117 km would be surveyed in the lease area over 30.2 days and 1,642 km would be surveyed over 23.5 days along the RWEC corridor each year. Revolution Wind anticipates that each vessel would survey an average of 70 km (44 miles) per day, assuming a 4 km/hour (2.16 knots) vessel speed and 24-hour operations. Each day that a survey vessel covers 70 km (44 miles) of survey trackline is considered a vessel day. For example, Revolution Wind would consider 2 vessels operating concurrently, with each surveying 70 km (44 miles), two vessel days. In some cases, vessels may conduct daylight-only 12-hour nearshore surveys, covering half that distance (35 km or 22 miles). Over the course of 5 years, HRG surveys would be conducted at any time of year for a total of 30,343 km (18,854 miles) over 433.5 vessel days. In this schedule, Revolution Wind accounted for periods of down-time due to

inclement weather or technical malfunctions.

Specific Geographic Region

Revolution Wind would install the RWF in Federal waters within the designated lease area OCS–A 0486 (Figure 2). The 339 square kilometer (km^2) (83,798 acres) lease area is located within the 1,036 km^2 (256,000 acres) RI/MA WEA. The edge of the lease area closest to land is approximately 15 mi (13 nm, 24 km) southeast of the Rhode Island coast. The RWEC corridor would traverse both federal waters and state territorial waters of Rhode Island, extending up to approximately 50 mi (80 km) from the RWF to the RWEC landfall location at Quonset Point in North Kingstown, Rhode Island. Two temporary cofferdams or casing pipes (with associated goal posts) would be installed at Quonset Point to facilitate the sea-to-shore transition for the export cables. Water depths in the lease area range from 24 to 50 m (78.7 to 164.0 ft), averaging 35 m (114.8 ft), while water depths along the RWEC corridor range from 10 to 45 m (32.8 to 147.6 ft). The cable landfall construction area would be approximately 15 m (49.2 ft) in depth.

Revolution Wind's specified activities would occur in the Northeast U.S. Continental Shelf Large Marine Ecosystem (NES LME), an area of approximately 260,000 km^2 from Cape Hatteras in the south to the Gulf of Maine in the north. Specifically, the lease area and cable corridor are located within the Mid-Atlantic Bight subarea of the NE LME which extends between Cape Hatteras, North Carolina, and Martha's Vineyard, Massachusetts, extending eastward into the Atlantic to the 100-m isobath. In the Middle Atlantic Bight, the pattern of sediment distribution is relatively simple. The continental shelf south of New England is broad and flat, dominated by fine grained sediments. Most of the surficial sediments on the continental shelf are sands and gravel. Silts and clays predominate at and beyond the shelf edge, with most of the slope being 70–100 percent mud. Fine sediments are also common in the shelf valleys leading to the submarine canyons, as well as in areas such as the ''Mud Patch'' south of Rhode Island. There are some larger materials, including boulders and rocks, left on the seabed by retreating glaciers, along the coast of Long Island and to the north and east, including in Rhode Island Sound near where the Revolution Wind lease area is located.

In support of the Rhode Island Ocean Special Area Management Plan development process, Codiga and Ullman (2011) reviewed and summarized the physical oceanography of coastal waters off Rhode Island. Conditions off the coast of Rhode Island are shaped by a complex interplay among wind-driven variability, tidal processes, and density gradients that arise from combined effects of interaction with adjacent estuaries, solar heating, and heat flux through the air-sea interface. In winter and fall, the stratification is minimal and circulation is a weak upwelling pattern, directed offshore at shallow depths and onshore near the seafloor; in spring and summer, strong stratification develops due to an important temperature contribution, and a system of more distinct currents occurs. These include the southern New England shelf flow westward along the offshore area, which bifurcates in the east where a portion moves northward as the RIS Current, a narrow flow that proceeds counterclockwise around the perimeter of RIS, likely in association with a tidal mixing front.

The Revolution Wind lease area, located on Cox Ledge, is dominated by complex habitats that support diverse assemblages of fish and invertebrates. Large contiguous areas of complex habitats are located centrally and throughout the entire southern portion of the lease area. Smaller, patchy areas of complex habitats also occur throughout the northern portion of the lease area. Biogeographic patterns in Rhode Island Sound are persistent from year to year, yet variable by season, reflected by the cross-shelf migration of fish and invertebrate species in the spring and fall (Malek *et al.,* 2014).

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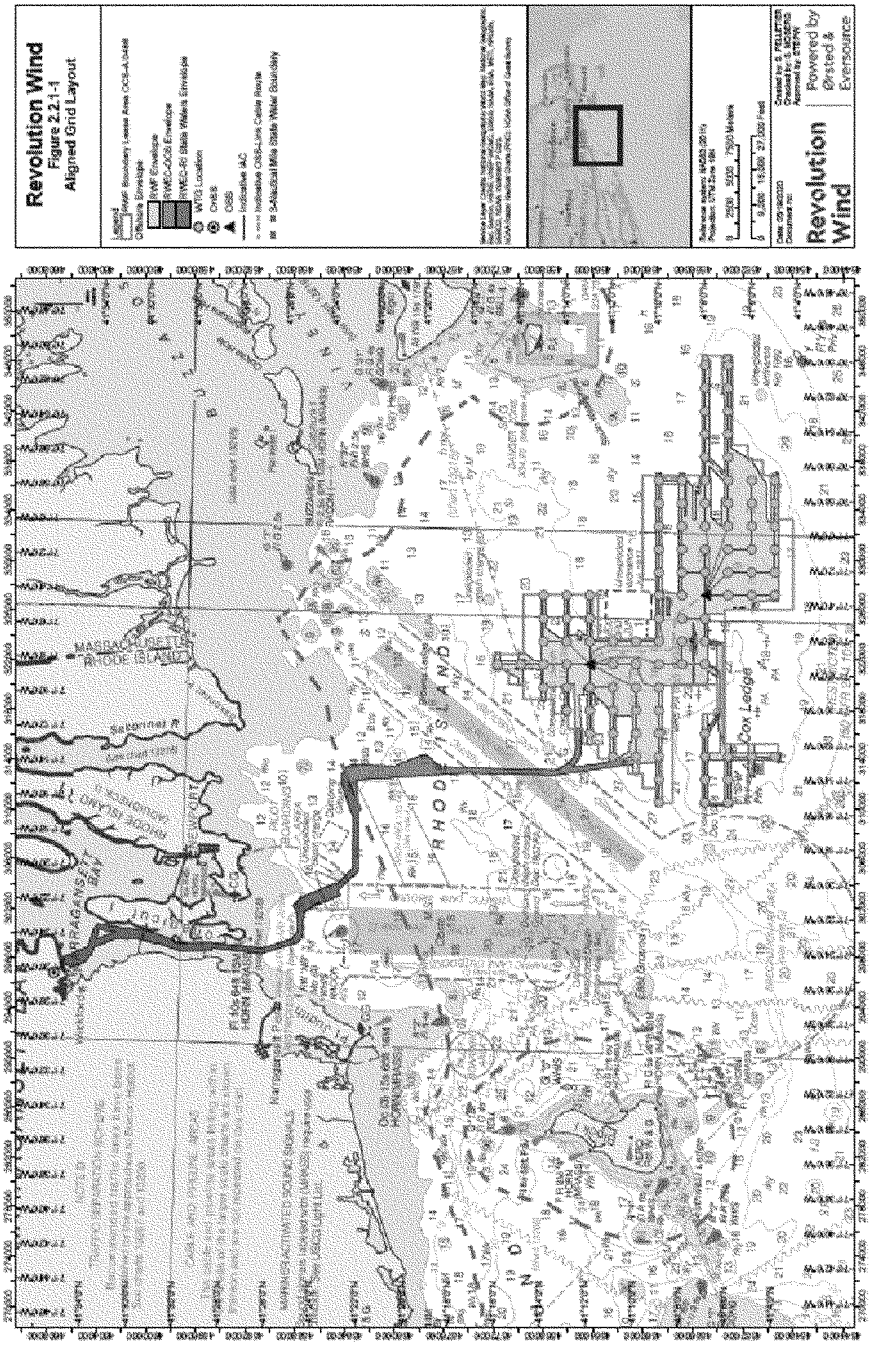

Figure 2. Location of Lease Area OCS-A 0486, Revolution Wind Offshore Wind Farm and Export Cable Routes.

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Detailed Description of Specific Activity

Below, we provide detailed descriptions of Revolution Wind's activities, explicitly noting those that are anticipated to result in the take of marine mammals and for which incidental take authorization is requested. Additionally, a brief explanation is provided for those activities that are not expected to result in the take of marine mammals.

Installation of WTG and OSS Monopile Foundations

Revolution Wind plans to install 81 monopile foundations over approximately one year within the 5-year effective period of the proposed rule. To do so, they would use impact pile driving, which is expected to result

in the incidental take of marine mammals. Pile driving would be limited to the months of May through December, annually, and would primarily occur in Year 1 (and potentially Year 2, should significant schedule delays occur). Monopiles are the only foundation type proposed for the project. As mentioned previously, the 81 monopiles installed to support the 79 WTG and two OSSs would have a maximum diameter of 12 m (39.4 ft) and 15 m (49.2 ft), respectively, and would be driven to a maximum penetration depth of 50 m (164 ft) using an IHC–4000 kilojoules (kJ) impact hammer. The monopiles are tapered such that the top diameter is 7 m (for both WTG and OSS foundations), the bottom diameter is 12-m (WTG) or 15-m (OSS), with both sizes tapering near the water line (referred to as 7/12-m and 7/15-m monopiles herein).

A monopile foundation typically consists of a single steel tubular section, with several sections of rolled steel plate welded together. Schematic diagrams showing potential heights and dimensions of the various components of a monopile foundation are shown in Figures 3 and 4 of Revolution Wind's ITA application.

A typical monopile installation sequence begins with the monopiles being transported directly to the lease area for installation, or to the construction staging port by an installation vessel or a feeding barge. At the foundation installation location, the main installation vessel (heavy lift, or jack-up vessel) upends the monopile in a vertical position in the pile gripper mounted on the side of the vessel. The gripper frame, depending upon its design, may be placed on the seabed scour protection materials to stabilize the monopile's vertical alignment before and during piling. Scour protection is included to protect the foundation from scour development, which is the removal of the sediments near structures by hydrodynamic forces, and consists of the placement of stone or rock material around the foundation. Once the monopile is lowered to the seabed, a temporary steel cap called a helmet would be placed on top of the pile to minimize damage to the head during impact driving. The hydraulic impact hammer is then lifted on top of the pile to commence pile driving with a soft start (see Proposed Mitigation section). The largest impact hammer Revolution Wind expects to use for driving monopiles produces up to 4,000 kJ of energy, however, the required energy to install a monopile may ultimately be far less than 4,000 kJ. The intensity (*i.e.,* hammer energy level) of impact hammering would be gradually increased based on resistance from the sediments (see Estimated Take for the potential hammer schedule and strike rate).

Pile installation would occur during daylight hours and could continue into nighttime hours if pile installation is started 1.5 hours prior to civil sunset. Alternatively, if Revolution Wind submits an Alternative Monitoring Plan (as part of the Pile Driving and Marine Mammal Monitoring Plan) that reliably demonstrates to NMFS that Revolution Wind can effectively visually and acoustically monitor marine mammals during nighttime hours, they may initiate pile driving during night (see Proposed Mitigation section). If NMFS approves Revolution Wind's plan and allows pile driving to occur at night, Revolution Wind plans to install three monopiles per day although, given logistical constraints (*e.g.,* sea state limitations for impact pile driving, weather) and the coordination required, it is possible that fewer than three monopiles would be installed per day.

It is estimated that a single foundation installation sequence would require up to approximately nine hours (one hour pre-start clearance, up to four hours of pile driving, and four hours to move to the next location). Again, no concurrent impact pile driving would occur, regardless of the number of piles installed per day. Once construction begins, Revolution Wind would proceed as rapidly as possible, while meeting all required mitigation and monitoring measures, to reduce the total duration of construction such that work is condensed into summer months when right whale occurrence is expected to be lowest in the project area.

UXO/MEC Detonations

Revolution Wind anticipates the potential for construction activities to encounter UXO/MECs on the seabed within the RWF and along the RWEC corridor. The risk of incidental detonation associated with conducting seabed-altering activities such as cable laying and foundation installation in proximity to UXO/MECs jeopardizes the health and safety of project participants (Revolution Wind 2022). Revolution Wind follows an industry standard As Low as Reasonably Practicable (ALARP) process that minimizes the number of potential detonations (Construction and Operations Plan (COP) Appendix G; Revolution-Wind 2022). For UXO/MECs that are positively identified on the seabed in proximity to planned activities, several alternative strategies would be considered prior to in-situ UXO/MEC disposal. These may include (1) relocating the activity away from the UXO/MEC (avoidance), (2) moving the UXO/MEC away from the activity (lift and shift), (3) cutting the UXO/MEC open to apportion large ammunition or deactivate fused munitions, using shaped charges to reduce the net explosive yield of a UXO/MEC (low-order detonation), or (4) using shaped charges to ignite the explosive materials and allow them to burn at a slow rate rather than detonate instantaneously (deflagration) (Revolution Wind 2022). Only after these alternatives are considered would in-situ high-order UXO/MEC detonation be pursued. To detonate a UXO/MEC, a small charge would be placed on the UXO/MEC and ignited, causing the UXO/MEC to then detonate, which could result in the taking of marine mammals.

To better assess the potential UXO/MEC encounter risk, HRG surveys have been and continue to be conducted to identify potential UXO/MECs that have not been previously mapped. As these surveys and analysis of data from them are still underway, the exact number and type of UXO/MECs in the project area are not yet known. As a conservative approach for the purposes of the impact analysis, Revolution Wind assumed that up to 13 UXO/MEC 454-kg (1,000 pounds; lbs) charges (up to seven UXO/MECs in the RWF and up to six UXO/MECs along the RWEC corridor), which is the largest charge that is reasonably expected to be encountered, may require in situ detonation. Although it is highly unlikely that all 13 charges would weigh 454 kg, this approach was determined to be the most conservative for the purposes of impact analysis. If necessary, these detonations would occur on up to 13 different days (*i.e.,* only one detonation would occur per day). In the event that high-order removal (detonation) is determined to be the preferred and safest method of disposal, all detonations would occur during daylight hours. UXO/MEC detonations would be prohibited from December 1 through April 30 to provide protection for right whales during the timeframe they are expected to occur more frequently in the project area.

Export Cable Landfall Construction

Once construction plans are completed, Revolution Wind would determine whether to install gravity cell cofferdam, sheet pile cofferdams, or the casing pipe scenario. Again, only installation of the latter two alternatives are expected to result in the take of marine mammals. As mentioned previously, the amount of take incidental to installation of the casing

pipe alternative is expected to be less than or equal to, and occur over a much shorter duration than, that from installation of sheet pile cofferdams. Installation of sheet pile cofferdams (described below) was carried forward in the take estimation analyses, given the large size of the Level B harassment zone and the longer duration of the activity (see Estimated Take section). Compared to the sheet pile cofferdam alternative, installation of the casing pipe, described below, produced larger Level A harassment (SEL_{cum}) zones due to the high hammering rate required for the relatively small hammer to install the pipe. The potential for Level A harassment incidental to casing pipe installation is higher than it is for cofferdam installation, assuming a marine mammal remains within the relevant Level A harassment zone for the duration of the installation. However, the short duration of required pneumatic hammering (see below) coupled with implementation of Revolution Wind's proposed mitigation and monitoring measures (*i.e.,* shutdown zones equivalent to the size of the casing pipe Level A harassment zones) would decrease the likelihood of Level A harassment to the extent that neither Revolution Wind nor NMFS anticipates it would occur, nor is it proposed for authorization.

Installation and Removal of Casing Pipes

Installation of two casing pipes would be completed using pneumatic pipe ramming equipment, while installation of sheet piles for goal posts would be completed using a vibratory pile driving hammer (previously described). Casing pipe and sheet pile installations would not occur simultaneously, and would be limited to daylight hours.

The casing pipe would be installed at a slight upward angle relative to the seabed so that the pipe creates a straight alignment between the point of penetration at the seabed and the construction barge. Casing pipe installation would occur from the construction barge and be accomplished using a pneumatic pipe ramming tool (Gundoram Taurus or similar) with a hammer energy of up to 18 kJ. If necessary, additional sections of casing pipe may be welded together on the barge to extend the length of the casing pipe from the barge to the penetration depth in the seabed. As mentioned previously, installation of each casing pipe would require up to 3 hours per day of pneumatic hammering for 2 days, for a total of 6 hours per pipe. Removal of each casing pipe may require use of the pneumatic hammering tool (during which the pipe is pulled from the seabed) for the same amount of time as installation (3 hours of pneumatic hammering for 2 days for each casing pipe; total of 6 hours per pipe).

Up to six goal posts would be installed for each casing pipe, for a total of twelve goal posts. As described previously, each goal post would be composed of 2 vertical sheet piles installed using a vibratory hammer with a horizontal cross beam connecting the two sheet piles. Up to 10 additional sheet piles may be installed per casing pipe to help anchor the barge and support the construction activities. This results in a total of up to 22 sheet piles per casing pipe, for a total of 44 sheet piles to support both casing pipes. Sheet piles used for the goal posts and supports would be up to 30 m (100 ft) long, 0.6 m (2 ft) wide, and 1 inch thick. Installation of the goal posts would require up to 3 days per casing pipe, or up to 6 days total for both casing pipes. Removal of the goal posts would also involve the use of a vibratory hammer and likely require approximately the same amount of time as installation (6 days total for both casing pipes). Thus, use of a vibratory pile driver to install and remove sheet piles may occur on up to 12 days at the landfall location. All of the sheet pile goal posts would be installed first, followed by installation of the casing pipe.

Installation and Removal of Temporary Cofferdams

As an alternative to the casing pipe/goal post scenario described above, two cofferdams may be installed to allow for a dry environment during construction and manage sediment, contaminated soil, and bentonite (drilling mud used during HDD operations). If required, the cofferdams may be installed as either a sheet-piled structure (driven into the sea floor) or a gravity cell cofferdam placed on the seafloor using ballast weight. Regardless of the type of structure, the cofferdams could each measure up to 50 m x 10 m x 3 m (164 ft x 33 ft x 10 ft). If a gravity cell cofferdam was selected for installation, the structure would be fabricated onshore, transported to the site on a barge, and then lifted off the barge and placed on the seafloor using a crane. This process would not involve pile driving or other underwater sound producing activities so is not carried forward into take analyses. Given that the design process for the HDD is still ongoing, Revolution Wind is not able to commit to a particular landfall construction scenario. As the design matures, Revolution Wind would refine the appropriate HDD export cable landfall methodology based on site conditions and state permit requirements.

If cofferdams are installed using sheet piles, a vibratory hammer such as an APE model 200T (or similar) would be used to drive sheet piles of up to 30 m (100 ft) long, 0.6 m (2 ft) wide, and 1 inch thick. The sidewalls and endwall would be driven to a depth of up to 30 ft (9.1 m); sections of the shore-side endwall would be driven to a depth of up to 6 ft (1.8 m) to facilitate the borehole entering underneath the endwall. Installation of each sheet pile cofferdam may take up to 14 days, as would removal, for a total of 28 days per cofferdam or 56 days of vibratory hammer use (installation and removal) for both cofferdams.

HRG Surveys

HRG surveys would be conducted to identify any seabed debris, and to support micro-siting of the WTG and OSP foundations and cable routes. These surveys may utilize active acoustic equipment such as multibeam echosounders, side scan sonars, shallow penetration sub-bottom profilers (SBPs) (*e.g.,* Compressed High-Intensity Radiated Pulses (CHIRPs) non-parametric SBP), medium penetration sub-bottom profilers (*e.g.,* sparkers and boomers), ultra-short baseline positioning equipment, and marine magnetometers, some of which are expected to result in the take of marine mammals. Surveys would occur annually, with durations dependent on the activities occurring in that year (*i.e.,* construction year versus a non-construction year).

As summarized previously, HRG surveys would be conducted using up to four vessels to survey the RWF and RWEC corridor 12–24 hours/day for a total of 345.8 vessel days, operating at any time of the year over the course of five years. On average, 70-line km would be surveyed per vessel each vessel day at approximately 4 km/hour (2.16 knots). Two 12-hr surveys covering 35 km/per day each would count as one vessel day because one complete vessel day is defined by the total kilometers surveyed (*i.e.,*70 km). While the final survey plans would not be completed until construction contracting commences, approximately 50 percent (218.7 days; 15,307 km (9,511 miles)) of the total survey effort would occur during the construction phase (2023–2024). During non-construction periods, an estimated 3,759 km (2,336 miles) would be surveyed over 53.7 days each year in the RWF and along the RWEC corridor. The purpose of surveying during construction years is to monitor

installation activities, provide third-party verification of contractor's work, and assess seabed levels pre-, during, and post-seabed disturbing activities. The purpose of surveying during non-construction years is to monitor seabed levels and scour protection, identify any risks to inter-array and export cable integrity, and conduct seabed clearance surveys prior to maintenance/repair.

Of the HRG equipment types proposed for use, the following have the potential to result in take:

• Shallow penetration sub-bottom profilers (SBPs) to map the near-surface stratigraphy (top 0 to 5 m (0 to 16 ft) of sediment below seabed). A CHIRP system emits sonar pulses that increase in frequency over time. The pulse length frequency range can be adjusted to meet project variables. These are typically mounted on the hull of the vessel or from a side pole.

• Medium penetration SBPs (boomers) to map deeper subsurface stratigraphy as needed. A boomer is a broad-band sound source operating in the 3.5 Hz to 10 kHz frequency range. This system is typically mounted on a sled and towed behind the vessel.

• Medium penetration SBPs (sparkers) to map deeper subsurface stratigraphy as needed. A sparker creates acoustic pulses from 50 Hz to 4 kHz omni-directionally from the source that can penetrate several hundred meters into the seafloor. These are typically towed behind the vessel with adjacent hydrophone arrays to receive the return signals.

Table 2 identifies all the representative survey equipment that operates below 180 kilohertz (kHz) (*i.e.,* at frequencies that are audible and have the potential to disturb marine mammals) that may be used in support of planned HRG survey activities, and are likely to be detected by marine mammals given the source level, frequency, and beamwidth of the equipment. Equipment with operating frequencies above 180 kHz (*e.g.,* side-scan sonar (SSS), multibeam echosounder (MBES)) and equipment that does not have an acoustic output (*e.g.,* magnetometer) would also be used, but are not discussed further because they are outside the general hearing range of marine mammals likely to occur in the project area. No harassment exposures can be reasonably expected from the operation of these sources; therefore, they are not considered further in this proposed action.

TABLE 2—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT

Equipment type	Representative model	Operating frequency (kHz)	Source level SPL_{rms} (dB)	Source level 0-pk (dB)	Pulse duration (ms)	Repetition rate (Hz)	Beamwidth (degrees)	Information source
Sub-bottom Profiler	EdgeTech 216	2–16	195	-	20	6	24	MAN
	EdgeTech 424	4–24	176	-	3.4	2	71	CF
	Edgetech 512	0.7–12	179	-	9	8	80	CF
	GeoPulse 5430A	2–17	196	-	50	10	55	MAN
	Teledyn Benthos CHIRP III—TTV 170	2–17	197	-	60	15	100	MAN
Sparker	Applied Acoustics Dura-Spark UHD (400 tips, 500 J).	0.3–1.2	203	21 1	1.1	4	Omni	CF
Boomer	Applied Acoustics triple plate S-Boom (700–1,000 J).	0.1–5	205	21 1	0.6	4	80	CF

- = not applicable; ET = EdgeTech; J = joule; kHz = kilohertz; dB = decibels; SL = source level; UHD = ultra-high definition; AA = Applied Acoustics; rms = root-mean square; μPa = microPascals; re = referenced to; SPL = sound pressure level; PK = zero-to-peak pressure level; Omni = omnidirectional source.

[a] The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the survey. These include variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. 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.

[b] 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-Boom.

Vessel Activity

During construction and development of the project, associated vessels would slightly increase the volume of traffic in the project area, particularly during the first 12–18 months throughout construction of the RWF and installation of the RWEC. The largest size vessels are expected during the monopile installation phase, with floating/jack-up crane barges, DP-equipped cable laying vessels, and associated tugs and barges transporting construction equipment and materials. Up to 60 vessels may be utilized for construction across various components of the Project including installation of the foundations, WTGs, OSSs, inter-array cables, and OSS-Link Cable (Revolution Wind COP Table 3.3–26; Revolution-Wind 2022). The types of vessels Revolution Wind anticipates using during construction activities and operations, as well as the anticipated number of vessels and vessel trips, are summarized in Tables 3 and 4. The actual number of vessels involved in the Project at one time is highly dependent on the final schedule, the final impacts of boulder clearance and in situ UXO/MEC disposal, the final design of the Project's components, and the logistics needed to ensure compliance with the Jones Act, a Federal law that regulates maritime commerce in the U.S (Revolution Wind, 2022).

During construction, the Project would involve the use of temporary construction areas and construction ports. Revolution Wind is considering multiple port locations and any combination of the ports under consideration may be utilized. The ports that may be used during construction are as follows:

• *Construction Hub:* Port of Montauk (New York), Port Jefferson (New York), Port of Brooklyn (New York), Port of Davisville and Quonset Point (Rhode Island), and/or Port of Galilee (Rhode Island).

• *Foundation Marshaling and Advanced Foundation Component Fabrication:* Port of Providence (Rhode Island), Paulsboro Marine Terminal (New Jersey), and/or Sparrows Point (Maryland).

• *WTG Tower, Nacelle, and Blade Storage, Pre-commissioning, and Marshalling:* Port of Providence (Rhode Island), Port of New London (Connecticut), Port of Norfolk (Virginia), and/or New Bedford Marine Commerce Terminal (Massachusetts).

• *Electrical Components:* Port of Providence (Rhode Island).

Vessels not transporting material from the ports listed above may travel with components and equipment directly to the lease area from locations such as the Gulf of Mexico, Europe, or other worldwide ports. Before arriving at the lease area, a port call for inspections,

crew transfers and bunkering may occur (Revolution Wind 2022).

Construction vessel traffic would result in a relatively localized impact which would occur sporadically throughout the approximate 18-month time period of offshore construction in and around the RWF, temporarily increasing the volume and movement of vessels. Large work vessels for foundation and WTG installation would generally transit to the lease area and remain in the area until installation is complete. These large vessels would move slowly over a short distance between work locations within the lease area. Crew transport vessels would travel between several ports and the RWF over the course of the construction period following mandatory vessel speed restrictions, as described in the Proposed Mitigation section below. These vessels would range in size from smaller crew transport vessels, to tug and barge vessels. However, Revolution Wind has confirmed that construction crews would hotel onboard installation vessels at sea, thus limiting the number of crew vessel transits expected (870 round-trips during the construction and 300 round trips during non-construction years) during the effective period of the proposed rule.

Vessels would comply with NMFS' regulations and state regulations as applicable for North Atlantic right whales (hereinafter ''right whale,'' or ''right whales'') and additional measures included in this proposed rule. The total number of estimated round trips for all vessels during the construction (scheduled for Year 1) and non-construction years (Year 2–5) is 1,406 and 444, respectively.

TABLE 3—TYPE AND NUMBER OF VESSELS, AND NUMBER OF VESSEL TRIPS, ANTICIPATED DURING CONSTRUCTION

[Scheduled for Year 1]

Vessel types	Number of vessels	Number of return trips per vessel type
Wind Turbine Foundation Installation		
Heavy Lift Installation Vessel	1	1
?Heavy Lift Installation Vessel (secondary steel)	1	1
Towing Tug (for fuel barge)	1	10
Anchor Handling Tug	2	50
Vessel for Bubble Curtain	1	20
Heavy Transport Vessel	4	25
Crew Transport Vessel	1	30
PSO Vessel	4	80
Platform Supply Vessel (secondary steel)	2	65
Platform Supply Vessel (completions)	1	20
Fall Pipe Vessel	1	6
Turbine Installation		
Jack-up Installation Vessel	1	20
Fuel Bunkering Vessel	1	8
Towing Tug (for fuel barge)	1	8
Array Cable Installation		
Pre-Lay Grapnel Run	1	4
Boulder Clearance Vessel	1	10
Sandwave Clearance Vessel	1	2
Cable Laying Vessel	1	6
Cable Burial Vessel	1	6
Crew Transport Vessel	1	231
Walk to Work Vessel (SOV)	1	6
Survey Vessel	1	8
DP2 Construction Vessel	1	5
OSS Topside Installation		
Heavy Transport Vessel	1	1
Offshore Export Cable Installation		
Pre-Lay Grapel Run	1	2
Boulder Clearance Vessel	1	3
Sandwave Clearance Vessel	1	1
Cable Lay and Burial Vessel	1	5
Cable Burial Vessel—Remedial	1	1
Cable Lay Barge	1	3
Tug—Small Capacity	2	3
Tug—Large Capacity	1	8
Crew Transport Vessel	1	214
Guard Vessel/Scout Vessel	5	8
Survey Vessel	1	3
DP2 Construction Vessel	1	3
Supply Barge	1	4

TABLE 3—TYPE AND NUMBER OF VESSELS, AND NUMBER OF VESSEL TRIPS, ANTICIPATED DURING CONSTRUCTION—Continued

[Scheduled for Year 1]

Vessel types	Number of vessels	Number of return trips per vessel type
All Construction Activities [1]		
Safety Vessel	2	100
Crew Transport Vessel	3	395
Supply Vessel	1	30
Service Operation Vessel	1	1
Helicopter	1	76

[1] The vessels included in the ''All Construction Activities'' section provide general support across all of the activities in Table 3. The vessels listed in each activity (*e.g.,* ''Wind Turbine Foundation Installation'' are solely utilized for that activity.

TABLE 4—TYPE AND NUMBER OF VESSELS, AND NUMBER OF VESSEL TRIPS, ANTICIPATED DURING SCHEDULED OPERATIONS AND MAINTENANCE ACTIVITIES

[Years 2–5]

Vessel type	Number of vessels	Number of return trips per vessel type per year	Total number of return trips for years 2–5
Service Operation Vessel	1	26	104
Crew Transport Vessel	1	62	248
Shared Crew Transport Vessel	0.5	13	52
Daughter Craft	1	10	40

While marine mammals are known to respond to vessel noise and the presence of vessels in different ways, we do not expect Revolution Wind's vessel operations to result in the take of marine mammals. As existing vessel traffic in the vicinity of the project area off Rhode Island and Massachusetts is relatively high, we expect that marine mammals in the area are likely somewhat habituated to vessel noise. In addition, any construction vessels would be stationary for significant periods of time when on-site and any large vessels would travel to and from the site at relatively low speeds. Project-related vessels would be required to adhere to mitigation measures designed to reduce the potential for marine mammals to be struck by vessels associated with the project; these measures are described further below (see the Proposed Mitigation section). Given the implementation of these measures, vessel strikes are neither anticipated nor proposed to be authorized (see *Potential Effects of Vessel Strike* section).

As part of various vessel-based construction activities, including cable laying and construction material delivery, dynamic positioning thrusters may be utilized to hold vessels in position or move slowly. Sound produced through use of dynamic positioning thrusters is similar to that produced by transiting vessels, and dynamic positioning thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. Sound produced by dynamic positioning thrusters would be preceded by, and associated with, sound from ongoing vessel noise and would be similar in nature; thus, any marine mammals in the vicinity of the activity would be aware of the vessel's presence, further reducing the potential for harassment. Construction-related vessel activity, including the use of dynamic positioning thrusters, is not expected to result in take of marine mammals and Revolution Wind did not request, and NMFS does not propose to authorize, any take associated with construction vessel activity. However, NMFS acknowledges the aggregate impacts of Revolution Wind's vessel operations on the acoustic habitat of marine mammals and has considered it in the analysis.

Revolution Wind has also included the potential use of an Autonomous Surface Vehicle (ASVs), a small unmanned surface vessel or platform, during HRG surveys. Should an ASV be utilized during surveys, it would be positioned within 800 m (2,625 ft) of the primary vessel while conducting survey operations, operated at a slow speed, and would be monitored by PSOs at all times. Revolution Wind did not request take specific to ASVs and NMFS is not proposing to authorize take associated with ASV operation.

Fisheries and Benthic Habitat Monitoring

As described in section 1.1.7 of Revolution Wind's ITA application, the fisheries and benthic monitoring efforts Revolution Wind plans to conduct throughout the proposed rule's period of effectiveness have been designed for the Project in accordance with recommendations set forth in ''Guidelines for Providing Information on Fisheries for Renewable Energy Development on the Atlantic Outer Continental Shelf'' (BOEM 2019). In particular, Revolution Wind's Fisheries and Benthic Monitoring Plan includes four elements: trawl surveys, an acoustic telemetry study, ventless trap surveys, and benthic habitat monitoring. Trawl surveys would be focused on sampling the fish and invertebrate community within the Project area. For the acoustic telemetry study, Highly Migratory Species (bluefin tuna, shortfin mako, and blue sharks) would be tagged during the trawl survey, after which Revolution Wind would use a combination of fixed station receivers and active mobile telemetry to assess the movements of these species. Revolution Wind would deploy up to 100 additional acoustic tags opportunistically for cod caught as part of trawl survey. The ventless trap survey would be conducted twice per month between May and November to investigate the relative abundance of

lobster, Jonah crab, and rock crab. Ten trap trawls (6 ventless and 4 vented) would be fished on a five-day soak time. Finally, hard bottom habitat monitoring would occur, during which Revolution Wind would use a remotely operated vehicle (ROV) and video surveying approach to characterize changes from pre-construction conditions. Soft bottom habitat monitoring would be conducted using Sediment Profile and Plan View Imaging (SPI/PV) to document physical (and biological change related to construction of the Project. Because the gear types and equipment used for the acoustic telemetry study and benthic habitat monitoring do not have components with which marine mammals are likely to interact (*i.e.,* become entangled in or hooked by), these activities are unlikely to have any impacts on marine mammals.

Of the activities described, trawl and ventless trap surveys could have the potential to impact marine mammals through interactions with fishing gear (*i.e.,* entanglement). However, Revolution Wind has proposed, and would be required, to implement Best Management Practices (BMPs) that would minimize this risk to the degree that take of marine mammals is not reasonably anticipated. Given these BMPs (included in the Proposed Mitigation section), neither NMFS nor Revolution Wind anticipates that any take is likely to occur incidental to the activities described herein and in section 1.1.7 of the ITA application (Revolution Wind, 2021). Additionally, Revolution Wind has not requested any take of marine mammals incidental to fisheries surveys and benthic habitat monitoring, nor does NMFS propose to authorize any take given the nature of the activities and, for certain gear types, Revolution Wind's planned mitigation measures. Therefore, aside from the mitigation measures provided in the Proposed Mitigation section, these activities are not analyzed further in this document.

Dredging

Dredging may be used to remove materials from the seafloor in preparation of offshore foundation and export cable locations. There are two fundamental types of dredging that could be used by the Project—mechanical and hydraulic. Mechanical dredging refers to crane-operated buckets, grabs (clamshell), or backhoes used to remove seafloor material. Hydraulic (suction) dredging and controlled flow excavation (CFE) dredging involve the use of a suction to either remove sediment from the seabed or relocate sediment from a particular location on the seafloor. There are a variety of hydraulic and CFE dredge types including trailing suction, cutter-suction, auger suction, jet-lift, and air-lift (Kusel *et al.,* 2021). The sound produced by hydraulic dredging results from the combination of sounds generated by the impact and abrasion of the sediment passing through the draghead, suction pipe, and pump.

NMFS does not expect dredging to generate noise levels that would cause take of marine mammals. Most of the acoustic energy produced by dredging falls below 1 kHz, and is highly unlikely to cause damage to marine mammal hearing (Todd *et al.,* 2015). For example, a study by Reine and Clarke (2014) found that, using a propagation loss coefficient of 15LogR, source levels of dredging operations in the shallow waters (less than 15 m depth) in New York Harbor were measured at and did not exceed 151 dB re 1 μPa, which is not expected to cause hearing shifts in marine mammals. A more recent analysis by McQueen *et al.* (2020) found that, using a maximum sound level of 192 dB re 1 μPa, the resulting isopleths for representative marine mammals (*i.e.,* the harbor seal and harbor porpoise), the resulting isopleths for temporary shifts in hearing would occur less than 20 m and less than 74 m, respectively. Isopleths for permanent shifts occurred at distances of less than 1 m for both marine mammal species.

While NMFS acknowledges the potential for masking or slight behavioral changes to occur during dredging activities (Todd *et al.,* 2015), any effects on marine mammals are expected to be short-term, low intensity, and unlikely to qualify as a take. Given the size of the area in which dredging operations would be occurring, as well as the coastal nature of some of these activities for the nearshore sea-to-shore connection points related to temporary cofferdam installation/removal, NMFS expects that any marine mammals would not be exposed at levels or durations likely to disrupt normal life activities (*i.e.,* migrating, foraging, calving, etc.). Therefore, the potential for take of marine mammals to result from these activities is so low as to be discountable. Revolution Wind did not request, and NMFS does not propose to authorize, any take of marine mammals associated with dredging; dredging activities are not analyzed further in this document.

Boulder Clearance

Boulder clearance may occur prior to and during offshore installation construction activities associated with the RWEC, foundation preparation, and the inter-array cable and OSS-Link cable installation, during which a number of different vessels and equipment types would be utilized. The techniques that may be used to remove or relocate surface or partially embedded boulders and debris, primarily during installation of the RWEC, include using a Boulder Grab or a Boulder Plow. The Boulder Grab would be lowered to the seabed over a targeted boulder, then grab the boulder to relocate it to a site away from the RWEC corridor. Alternatively, boulder clearance could be accomplished using a high-bollard pull vessel with a towed plow generally forming an extended V-shaped configuration, splaying from the rear of the main chassis (*i.e.,* Boulder Plow). The V-shaped configuration displaces any boulders to the extremities of the plow, thus clearing the corridor. Multiple iterations of this process may be required to clear a particular section of the corridor. A tracked plow with a front blade similar to a bulldozer may also be used to push boulders away from the corridor. Based on Revolution Wind's review of site-specific geophysical data, it is assumed that a boulder plow may be used in all areas of higher boulder/debris concentrations, conservatively estimated to be up to 60 percent per cable route of the RWEC and 80 percent of the entire inter-array cable network. Both within these areas of higher boulder and debris concentrations and outside of these areas, a boulder grab may be used to remove larger and/or isolated targets. The size of boulders that can be relocated is dependent on a number of factors including the boulder weight, dimensions, embedment, density and ground conditions. Typically, boulders with dimensions less than 8 ft (2.5 m) can be relocated with standard tools and equipment.

NMFS does not expect boulder clearance to generate noise levels that would cause take of marine mammals. Underwater noise associated with boulder clearance is expected to be similar in nature to the sound produced by the dynamic positioning (DP) cable lay vessels used during cable installation activities within the RWEC. Sound produced by DP vessels is considered non-impulsive and is typically more dominant than mechanical or hydraulic noises produced from the cable trenching or boulder removal vessels and equipment. Therefore, noise produced by the high bollard pull vessel with a towed plow or a support vessel carrying a boulder grab would be comparable to or less than the noise produced by DP vessels,

so impacts are also expected to be similar. Boulder clearance is a discrete action occurring over a short duration resulting in short term direct effects. Additionally, sound produced by boulder clearance vessels and equipment would be preceded by, and associated with, sound from ongoing vessel noise and would be similar in nature; thus, any marine mammals in the vicinity of the activity would be aware of the vessel's presence, further reducing the potential for startle or flight responses on the part of marine mammals. The Revolution Wind DEIS (BOEM, 2022), issued by BOEM on September 2, 2022, discusses boulder clearance in multiple sections, providing summaries of the boulder clearance methodologies described in Revolution Wind's COP. BOEM has deemed boulder clearance activities as a non-noise generating activity; therefore, the DEIS does not describe boulder clearance activities as a source of noise impacts (BOEM, 2022).

While NMFS acknowledges the potential for slight behavioral changes to occur during boulder clearance, any effects on marine mammals are expected to be short-term, low intensity, and unlikely to qualify as a take. Given that boulder clearance is expected to be extremely localized at any given time, NMFS expects that any marine mammals would not be exposed at levels or durations likely to disrupt normal life activities (*i.e.,* migrating, foraging, calving, etc.). Therefore, the potential for take of marine mammals to result from these activities is so low as to be discountable. Revolution Wind did not request, and NMFS does not propose to authorize, any take associated with boulder clearance; therefore, boulder clearance activities are not analyzed further in this document.

Cable Laying and Installation

Cable burial operations would occur both in RWF for the inter-array cables connecting the 79 WTGs to the two OSSs, and in the RWEC corridor for cables carrying power from the OSSs to shore. A single offshore export cable would connect the OSSs to the sea-to-shore transition point in Quonset Point, Rhode Island. All cable burial operations would follow installation of the monopile foundations, as the foundations must be in place to provide connection points for the export cable and inter-array cables.

All cables would be buried below the seabed, when possible, and buried onshore up to the transition joint bays. The targeted burial depths would be determined later by Revolution Wind, following a detailed design and Cable Burial Risk Assessment. This Assessment would note where burial cannot occur, where sufficient depths cannot be achieved, and/or where additional protection is required due to the export cable crossing other cables or pipelines (either related to the Revolution Wind project or not). Burial of cables would be performed by specific vessels, which are described in Table 3.3.10–3 in the Revolution Wind COP, available at: *https://www.boem.gov/renewable-energy/state-activities/revolution-wind-farm-construction-and-operations-plan.*

Cable laying, cable installation, and cable burial activities planned to occur during the construction of Revolution Wind may include the following:

- Jetting;
- Vertical injection;
- Leveling;
- Mechanical cutting;
- Plowing (with or without jet-assistance);
- Pre-trenching; and,
- Controlled flow excavation.

Some dredging may be required prior to cable laying due to the presence of sandwaves. Sandwave clearance may be undertaken where cable exposure is predicted over the lifetime of the Project due to seabed mobility. This facilitates cable burial below the reference seabed. Alternatively, sandwave clearance may be undertaken where slopes become greater than approximately 10 degrees (17.6 percent), which could cause instability to the burial tool. The work could be undertaken by traditional dredging methods such as a trailing suction hopper. Alternatively, controlled flow excavation or a sandwave removal plough could be used. In some cases, multiple passes may be required. The method of sandwave clearance Revolution Wind chooses would be based on the results from the site investigation surveys and cable design. More information on cable laying associated with the proposed project is provided in Revolution Wind's COP (Revolution Wind, 2022) available at *https://www.boem.gov/renewable-energy/state-activities/revolution-wind-farm-construction-and-operations-plan.*

As the noise levels generated from this activity are low, the potential for take of marine mammals to result is discountable (86 FR 8490; February 5, 2021) and Revolution Wind did not request, and NMFS is not proposing to authorize, marine mammal take associated with cable laying. Therefore, cable laying activities are not analyzed further in this document.

Helicopter Flights

Helicopters may be used during RWF construction and operation phases for crew transfer activities to provide a reduction in the overall transfer time, as well as to reduce the number of vessels on the water. Two of the closest ports to the Revolution Wind lease area are the Port of Davisville at Quonset Point, RI, and New Bedford, MA. Both of these are located approximately 45 km (28 mi) from the nearest portion of the lease area and 70–80 km (44–49 mi) from the most distant parts of the lease area. Assuming a vessel speed of 10 knots, a one-way trip from one of these ports by vessel would require between 2.4 and 4.3 hours. Typical crew transfer helicopters are capable of maximum cruising speeds of approximately 140 knots. Assuming a somewhat slower speed of 120 knots, a one-way trip by helicopter would require 12–22 minutes, thus reducing transit time by 92 percent (Revolution Wind, 2022c).

Without the use of helicopters, all crew transfers to/from offshore locations would be conducted by vessel (either a dedicated crew transfer vessel or other project vessel transiting between a port and the offshore location). Tables 3 and 4 reflect the use of helicopters; therefore, if Revolution Wind did not use helicopters, the amount of crew vessel activity would be higher. Use of helicopters may be limited by many factors, such as logistical constraints (*e.g.,* ability to land on the vessels) and weather conditions that affect flight operations (Revolution Wind, 2022c). Helicopter use also adds significant health, safety and environment (HSE) risk to personnel and, therefore, requires substantially more crew training and additional safety procedures (Revolution Wind, 2022c). These factors can result in significant limitations to helicopter usage. To maintain construction schedules and reliable wind farm operations, the necessity for crew transfers, by vessels or helicopter, would remain a core component of offshore wind farm construction and operations.

Helicopters produce sounds that could be audible to marine mammals. Sound generated by aircraft, both fixed wing and helicopters, is produced in air, but can transmit through the water surface and propagate underwater. In general, underwater sound levels produced by fixed wing aircraft and helicopters are typically low-frequency (16–500 Hz) and range between 84–159 dB re 1 μPa (Richardson *et al.,* 1995; Patenaude *et al.,* 2002; Erbe *et al.,* 2018). However, most sound energy from aircraft reflects off the air-water

interface; only sound radiated downward within a 26-degree cone penetrates below the surface water (Urick, 1972). To the extent noise from helicopters transmits from air through the water surface, there is potential to cause temporary changes in behavior and localized displacement of marine mammals (Richardson *et al.,* 1985a; Richardson and Würsig, 1997; Nowacek *et al.,* 2007).

Marine mammals tend to react to aircraft noise more often when the aircraft is lower in altitude, closer in lateral distance, and flying over shallow water (Richardson *et al.,* 1985b; Patenaude *et al.,* 2002). Temporary reactions by marine mammals may include short surfacing, hasty dives, aversion from the aircraft or dispersal from the incoming aircraft (Bel'kovich, 1960; Kleĭnenberg *et al.,* 1964; Richardson *et al.,* 1985a; Richardson *et al.,* 1985b; Luksenburg and Parsons, 2009). The response of marine mammals to aircraft noise largely depends on the species as well as the animal's behavioral state at the time of exposure (*e.g.,* migrating, resting, foraging, socializing) (Würsig *et al.,* 1998). A study conducted in the Beaufort Sea in northern Alaska observed a general lack of reaction in bowhead and beluga whales to passing helicopters (Patenaude *et al.,* 2002). Patenaude *et al.* (2002) reported behavioral responses by only 17 percent of the observed bowhead whales to passing helicopters at altitudes below 150 m and within a lateral distance of 250 m. Similarly, most observed beluga whales did not show any visible reaction to helicopters passing when flight altitudes were over 150 m (Patenaude *et al.,* 2002). Although the sound emitted by aircraft has the potential to result in temporary behavioral responses in marine mammals, project-related aircraft would only occur at low altitudes over water during takeoff and landing at an offshore location where one or more vessels are located. Due to the intermittent nature of helicopter flights, the higher altitude, and the small area potentially ensonified by this sound source, both Revolution Wind and NMFS expect the potential for take of marine mammals incidental to helicopter use to be discountable. The use of helicopters to conduct crew transfers is likely to provide an overall benefit to marine mammals in the form of reduced vessel activity. Revolution Wind did not request, and NMFS is not proposing to authorize, take of marine mammals incidental to Revolution Wind's use of helicopters. This activity is not discussed or analyzed further herein.

Description of Marine Mammals in the Area of Specified Activities

Forty marine mammal species and/or stocks have geographic ranges within the western North Atlantic OCS (Table 5 in Revolution Wind ITA application). However, for reasons described below, Revolution Wind has requested, and NMFS proposes to authorize, take of only 16 species (comprising 16 stocks). Sections 3 and 4 of Revolution Wind's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions in the application, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS's 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's website (*https://www.fisheries.noaa.gov/find-species*).

Table 5 lists all species and stocks for which take is expected and proposed to be 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. 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 16 U.S.C. 1362(20) and 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 5 are the most recent available at the time of publication and are available in NMFS' 2021 SARs (Hayes *et al.,* 2022), available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

TABLE 5—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY REVOLUTION WIND'S ACTIVITIES

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 Artiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale	*Eubalaena glacialis*	Western Atlantic	E, D, Y	368 (0; 364; 2019) [5]	0.7	7.7
Family Balaenopteridae (rorquals):						
Blue whale	*Balaenoptera musculus*	Western North Atlantic	E, D, Y	UNK (UNK; 402; 1980–2008).	0.8	0
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E, D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia	E, D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian Eastern Coastal	-, -, N	21,968 (0.31; 17,002; 2016).	170	10.6

TABLE 5—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY REVOLUTION WIND'S ACTIVITIES—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]
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-, -, Y	1,396 (0; 1,380; 2016)	22	12.15
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E, D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Family Delphinidae:						
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	-, -, N	93,233 (0.71; 54,433; 2016).	544	27
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-, -, N	39,921 (0.27; 32,032; 2016).	320	0
Common bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore	-, -, N	62,851 (0.23; 51,914; 2016).	519	28
Long-finned pilot whales	*Globicephala melas*	Western North Atlantic	-, -, N	39,215 (0.3; 30,627; 2016).	306	29
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-, -, N	35,215 (0.19; 30,051; 2016).	301	34
Common dolphin (short-beaked).	*Delphinus delphis*	Western North Atlantic	-, -, N	172,897 (0.21; 145,216; 2016).	1,452	390
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31; 74,034; 2016).	851	16
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic	-, -, N	27,300 (0.22; 22,785; 2016).	1,389	4,453
Harbor seal	*Phoca vitulina*	Western North Atlantic	-, -, N	61,336 (0.08; 57,637; 2018).	1,729	339

[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: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments* (Hayes et al., 2022). CV is the coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

[5] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for right whales is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

[6] Information on the classification of marine mammal species can be found on the web page for the Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*; Committee on Taxonomy (2022)).

Of the 40 marine mammal species and/or stocks with geographic ranges that include the western North Atlantic OCS (Table 5 in Revolution Wind ITA application), 24 are not expected to be present or are considered rare or unexpected in the project area based on sighting and distribution data; they are, therefore, not discussed further beyond the explanation provided here. The following species are not expected to occur in the project area due to the location of preferred habitat outside the RWF and RWEC corridor, based on the best available information: dwarf and pygmy sperm whales (*Kogia sima and K breviceps*), northern bottlenose whale (*hyperoodon ampullatus*), cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whales (*Mesoplodon densirostris, M. europaeus, M. mirus, and M. bidens*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), short-finned pilot whale (*Globicephala Macrohynchus*), melon-headed whale (*Peponocephala electra*), Fraser's dolphin (*Lagenodelphis hosei*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), Clymene dolphin (*Stenella Clymene*), striped dolphin (*Stenella coeruleoalba*), spinner dolphin (*Stenella longirostris*), rough-toothed dolphin (*Steno bredanensis*), and the coastal migratory stock of common bottlenose dolphins (*Tursiops truncatus truncatus*). The following species may occur in the project area, but at such low densities that take is not anticipated: hooded seal (*Cystophora cristata*) and harp seal (*Pagophilus groenlandica*). There are two pilot whale species, long-finned (*Globicephala melas*) and short-finned (*Globicephala macrorhynchus*), with distributions that overlap in the latitudinal range of the RWF (Hayes *et al.,* 2020; Roberts *et al.,* 2016). Because it is difficult to differentiate between the two species at sea, sightings, and thus the densities calculated from them, are generally reported together as *Globicephala* spp. (Roberts *et al.,* 2016; Hayes *et al.,* 2020). 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.,* 2020). Therefore, NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

In addition, the Florida manatee (*Trichechus manatus;* a sub-species of the West Indian manatee) has been previously documented as an occasional visitor to the Northeast region during summer months (U.S. Fish and Wildlife Service (USFWS), 2022). However, manatees are managed by the USFWS

and are not considered further in this document. More information on this species can be found at the following website: *https://www.fws.gov/species/manatee-trichechus-manatus.*

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 RWF is contained within the RI/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 passive acoustic monitoring (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). The lack of detections of any of the 24 species listed above reinforces the fact that they are not expected to occur in the project area. In addition, none of these species were observed during HRG surveys conducted by Ørsted from 2018 to 2021. As these species are not expected to occur in the project area during the proposed activities (based on acoustic detection and PSO data), NMFS does not propose to authorize take of these species and they are not discussed further in this document.

As indicated above, all 16 species and stocks in Table 5 temporally and spatially co-occur with the activity to the degree that taking is reasonably likely to occur. Five of the marine mammal species for which take is requested have been designated as ESA-listed, including North Atlantic right, blue, fin, sei, and sperm whales. In addition to what is included in Sections 3 and 4 of Revolution Wind's ITA application (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy*), the SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and NMFS' website (*https://www.fisheries.noaa.gov/species-directory/marine-mammals*), we provide further detail below informing the baseline for select species (*e.g.,* information regarding current Unusual Mortality Events (UME) and known important habitat areas, such as Biologically Important Areas (BIAs) (Van Parijs *et al.,* 2015)). There is no ESA-designated critical habitat for any species within the project area.

Under the MMPA, a UME is defined as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response'' (16 U.S.C. 1421h(6)). As of December 2022, seven UMEs in total are considered active, with five of these occurring along the U.S. Atlantic coast for various marine mammal species; of these, the most relevant to the Revolution Wind project are the minke, right, and humpback whale, and phocid seal UMEs, given the prevalence of these species in the project area. More information on UMEs, including all active, closed, or pending, can be found on NMFS' website at *https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events.*

Below we include information for a subset of the species that presently have an active or recently closed UMEs occurring along the Atlantic coast, or for which there is information available related to areas of biological significance. For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters and is a generic stock for management purposes. For humpback and sei whales, NMFS defines stocks on the basis of feeding locations, *i.e.,* Gulf of Maine and Nova Scotia, respectively. However, references to humpback whales and sei whales in this document refer to any individuals of the species that are found in the specific geographic region. Any areas of known biological importance (including the Biologically Important Areas (BIAs) identified in Van Parijs *et al.,* 2015 and LaBrecque *et al.,* 2015) that overlap spatially with the project area are addressed in the species sections below.

North Atlantic Right Whale

The North Atlantic right whale has been listed as an Endangered since 1970. They were recently uplisted from Endangered to Critically Endangered on the International Union for Conservation of Nature (IUCN) Red List of Threatened Species (Cooke, 2020). The uplisting was due to a decrease in population size (Pace *et al.,* 2017), an increase in vessel strikes and entanglements in fixed fishing gear (Daoust *et al.,* 2017; Davies & Brillant, 2019; Knowlton *et al.,* 2012; Sharp *et al.,* 2019), and a decrease in birth rate (Pettis *et al.,* 2021). The Western Atlantic stock is considered depleted under the MMPA (Hayes *et al.,* 2021). There is a recovery plan (NOAA Fisheries 2017) for the North Atlantic right whale, and NMFS completed a 5-year review of the species in 2017 (NOAA Fisheries 2017). In February 2022, NMFS initiated a 5-year review process (*https://www.fisheries.noaa.gov/action/initiation-5-year-review-north-atlantic-right-whale*).

The right whale population had only a 2.8 percent recovery rate between 1990 and 2011 (Hayes *et al.,* 2022). Since 2010, the North Atlantic right whale population has been in decline (Pace *et al.,* 2017), with a 40 percent decrease in calving rate (Kraus *et al.,* 2016). In 2018, no new right whale calves were documented; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed within a calving season. Presently, the best available peer-reviewed population estimate for North Atlantic right whales is 368 per the 2021 SARs (Hayes *et al.,* 2021) (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*). The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to acknowledge that the right whale population estimate is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). We note that this change in abundance estimate would not change the estimated take of right whales or the take NMFS has proposed to authorize as take estimates are based on the habitat density models (Roberts *et al.,* 2016; Roberts and Halpin, 2022).

Right whale presence in the project area is predominately seasonal; however, year-round occurrence is documented (O'Brien *et al.,* 2022, Quintano-Rizzo *et al.,* 2021). As a result of recent years of aerial surveys and PAM deployments within the RI/MA WEA, we have confidence that right whales are expected in the project area, in higher numbers in winter and spring followed by decreasing abundance into summer and early fall. The project area both spatially and temporally overlaps a portion of the migratory corridor BIA and migratory route Seasonal Management Area (SMA), within which right whales migrate south to calving grounds generally in November and December, followed by a northward migration into feeding areas east and north of the project area in March and April (LaBrecque *et al.,* 2015; Van Parijs *et al.,* 2015). While the project does not overlap previously identified critical feeding habitat or a feeding BIA, it is located just west of a more recently described important feeding area south of Martha's Vineyard and Nantucket,

along the western side of Nantucket Shoals. Finally, the project overlaps the Block Island SMA, which may be used by right whales for various activities, including feeding and migration. Due to the current status of North Atlantic right whales, and the overlap of the proposed project with areas of biological significance (*i.e.,* a migratory corridor, SMA), the potential impacts of the proposed project on right whales warrant particular attention.

Elevated right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast, with the leading category for the cause of death for this UME determined to be ''human interaction,'' specifically from entanglements or vessel strikes. As of November 2022, there have been 34 confirmed mortalities (dead stranded or floaters; 21 in Canada; 13 in the United States) and 21 seriously injured free-swimming whales for a total of 55 whales. As of November 15, 2022, the UME also considers animals with sublethal injury or illness bringing the total number of whales in the UME to 92. Approximately 42 percent of the population is known to be in reduced health (Hamilton *et al.,* 2021), likely contributing to the smaller body sizes at maturation (Stewart *et al.,* 2022) and making them more susceptible to threats. More information about the North Atlantic right whale UME is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event.*

North Atlantic right whales may be present in New England waters year-round; however, their presence is limited during summer months. These waters are both a migratory corridor in the spring and early winter and a primary feeding habitat for right whales during late winter through spring. Habitat-use patterns within the region have shifted in relatively recent years (Davis *et al.,* 2020; Quintano-Rizzo *et al.,* 2021; O'Brien *et al.,* 2022). Since 2010, right whales have reduced their use of foraging habitats in the Great South Channel and Bay of Fundy, while increasing their use of habitat within Cape Cod Bay, as well as a region south of Martha's Vineyard and Nantucket Islands, just to the east of the RWF and RWEC corridor (Stone *et al.,* 2017; Mayo *et al.,* 2018; Ganley *et al.,* 2019; Record *et al.,* 2019; Meyer-Gutbrod *et al.,* 2021). Pendleton *et al.* (2022) found that peak use of right whale foraging habitat in Cape Cod Bay has shifted over the past 20 years to later in the spring, likely due to variations in seasonal conditions. Right whales have recently been observed feeding year-round in the region south of Martha's Vineyard and Nantucket with larger numbers in this area in the winter, making it the only known winter foraging habitat for the species (Quintana-Rizzo *et al.,* 2021). Right whale use of habitats such as in the Gulf of St. Lawrence and East Coast mid-Atlantic waters of the have also increased over time (Davis *et al.,* 2017; Davis and Brillant, 2019; Crowe *et al.,* 2021; Quintana-Rizzo *et al.,* 2021). Simard *et al.* (2019) documented the presence of right whales in the southern Gulf of St. Lawrence foraging habitat from late April through mid-January annually from 2010–2018 using passive acoustics, with occurrences peaking in the area from August through November each year (Simard *et al.,* 2019). These shifts in foraging habitat use are likely due to changes in oceanographic conditions and food supply as dense patches of zooplankton are necessary for efficient foraging (Mayo and Marx, 1990; Record *et al.,* 2019). Observations of these transitions in right whale habitat use, variability in seasonal presence in identified core habitats, and utilization of habitat outside of previously focused survey effort prompted the formation of a NMFS' Expert Working Group, which identified current data collection efforts, data gaps, and provided recommendations for future survey and research efforts (Oleson *et al.,* 2020).

In late fall (*i.e.,* November), a portion of the right whale population (including pregnant females) typically departs the feeding grounds in the North Atlantic, moves south along the migratory corridor BIA, including through the project area, to right whale calving grounds off Georgia and Florida. However, recent research indicates understanding of their movement patterns remains incomplete and not all of the population undergoes a consistent annual migration (*e.g.,* Davis *et al.,* 2017; Quintana-Rizzo *et al,* 2021). The results of multistate temporary emigration capture-recapture modeling, based on sighting data collected over the past 22 years, indicate that non-calving females may remain in the feeding grounds, during the winter in the years preceding and following the birth of a calf to increase their energy stores (Gowen *et al.,* 2019).

Within the project area, right whales have primarily been observed during the winter and spring seasons through recent visual surveys (Kraus *et al.,* 2016; Quintana-Rizzo *et al.,* 2021). During aerial surveys conducted in the RI/MA and MA WEAs from 2011–2015, the highest number of right whale sightings occurred in March (n=21), with sightings also occurring in December (n=4), January (n=7), February (n=14), and April (n=14), and no sightings in any other months (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. Despite the lack of visual detection, right whales were acoustically detected in 30 out of the 36 recorded months (Kraus *et al.,* 2016). Since 2017, right whales have been sighted in the southern New England area nearly every month, with peak sighting rates between late winter and spring. Model outputs suggest that 23 percent of the right population is present from December through May, and the mean residence time has tripled to an average of 13 days during these months (Quintano-Rizzo *et al.,* 2021). A hotspot analysis analyzing sighting data in southern New England from 2011–2019 indicated that right whale occurrence in the Revolution Wind project area was highest in the spring (March through May), and that few right whales were sighted in the area during that time frame in summer or winter (Quintano-Rizzo *et al.,* 2021), a time when right whales distribution shifted to the east and south into other portions of the study area.

North Atlantic right whale distribution can also be derived from acoustic data. A review of passive acoustic monitoring data from 2004 to 2014 collected throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range, including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Acoustic monitoring data from 2004 to 2014 indicated that the number of right whale vocalizations detected in southern New England were relatively constant throughout the year, with the exception of August through October when detected vocalizations showed an apparent decline (Davis *et al.,* 2017).

While density data from Roberts *et al.* (2022) confirm that the highest average density of right whales in the project area (both the lease area and RWEC corridor) occurs in March (0.0060 whales/100km^2), which aligns with available sighting and acoustic data, it is clear that that habitat use is changing and right whales are present to some degree in or near the project area throughout the year, most notably south of Martha's Vineyard and Nantucket Islands (Leiter *et al.,* 2017; Stone *et al.,* 2017; Oleson *et al.,* 2020, Quintano-Rizzo *et al.,* 2021). Since 2010, right whale abundances have increased in

Southern New England waters, south of Martha's Vineyard and Nantucket Islands. O'Brien *et al.* (2022) detected significant increases in right whale abundance during winter and spring seasons from 2013–2019, likely due to changes in prey availability. Since 2017, right whales were also detected in small numbers during summer and fall, suggesting that these waters provide year-round habitat for right whales (O'Brien *et al.,* 2022).

NMFS' regulations at 50 CFR 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. As mentioned previously, the Block Island SMA overlaps spatially with the proposed project area (*https://apps-nefsc.fisheries.noaa.gov/psb/surveys/MapperiframeWithText.html*). The SMA is currently active from November 1 through April 30 of each year and may be used by right whales for feeding (although to a lesser extent than the area to the east near Nantucket Shoals) and/or migrating.

Humpback Whale

Humpback whales are a cosmopolitan species found worldwide in all oceans, but were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered.

On September 8, 2016, NMFS divided the once single species into 14 distinct population segments (DPS), removed the species-level listing, and, in its place, listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whales that is expected to occur in the project area. Bettridge *et al.* (2015) estimated the size of the West Indies DPS population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015). In New England waters, feeding is the principal activity of humpback whales, and their distribution in this region has been largely correlated to abundance of prey species (Payne *et al.,* 1986, 1990). Humpback whales are frequently piscivorous when in New England waters, feeding on herring (*Clupea harengus*), sand lance (*Ammodytes spp.*), and other small fishes, as well as euphausiids in the northern Gulf of Maine (Paquet *et al.,* 1997). Kraus *et al.* (2016) observed humpbacks in the RI/MA & MA Wind Energy Areas (WEAs) and surrounding areas during all seasons, but most often during spring and summer months, with a peak from April to June. Acoustic data indicate that this species may be present within the RI/MA WEA year-round, with the highest rates of acoustic detections in the winter and spring (Kraus *et al.,* 2016).

A humpback whale feeding BIA extends throughout the Gulf of Maine, Stellwagen Bank, and Great South Channel from May through December, annually (LeBrecque *et al.,* 2015). However, this BIA is located further east and north of, and thus does not overlap, the project area. The project area does not overlap any critical habitat for the species.

Since January 2016, elevated humpback whale mortalities along the Atlantic coast from Maine to Florida led to the declaration of a UME. Partial or full necropsy examinations have been conducted on approximately half of the 168 known cases (as of December 6, 2022). Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales typically feed in the Gulf of Maine and the waters surrounding New England, but their mating and calving (and general wintering) areas are largely unknown (Hain *et al.,* 1992; Hayes *et al.,* 2018). Recordings from Massachusetts Bay, New York Bight, and deep-ocean areas have detected some level of fin whale singing from September through June (Watkins *et al.,* 1987; Clark and Gagnon, 2002; Morano *et al.,* 2012). These acoustic observations from both coastal and deep-ocean regions support the conclusion that male fin whales are broadly distributed throughout the western North Atlantic for most of the year (Hayes *et al.,* 2019).

Kraus *et al.* (2016) suggest that, compared to other baleen whale species, fin whales have a high multi-seasonal relative abundance in the RI/MA & MA WEAs and surrounding areas. Fin whales were observed in the MA WEA in spring and summer. This species was observed primarily in the offshore (southern) regions of the RI/MA & MA WEAs during spring and was found closer to shore (northern areas) during the summer months (Kraus *et al.,* 2016). Calves were observed three times and feeding was observed nine times during the Kraus *et al.* (2016) study. Although fin whales were largely absent from visual surveys in the RI/MA and MA WEAs in the fall and winter months (Kraus *et al.* 2016), acoustic data indicated that this species was present in these areas during all months of the year.

New England waters represent a major feeding ground for fin whales. The proposed project area would overlap spatially and temporally with approximately 11 percent of a relatively small fin whale feeding BIA (2,933 km^2) offshore of Montauk Point, from March to October (Hain *et al.,* 1992; LaBrecque *et al.,* 2015). A separate larger year-round feeding BIA (18,015 km^2) to the east in the southern Gulf of Maine does not overlap with the project area, and would thus not be impacted by project activities.

Minke Whale

Minke whale occurrence is common and widespread in New England from spring to fall, although the species is largely absent in the winter (Hayes *et al.,* 2021; Risch *et al.,* 2013). Surveys conducted in the RI/MA WEA from October 2011 through June 2015 reported 103 minke whale sightings within the area, predominantly in the spring, followed by summer and fall (Kraus *et al.,* 2016).

There are two minke whale feeding BIAs in the southern and southwestern section of the Gulf of Maine, including Georges Bank, the Great South Channel, Cape Cod Bay, Massachusetts Bay, Stellwagen Bank, Cape Anne, and Jeffreys Ledge from March through November, annually (LeBrecque *et al.,* 2015). However, these BIAs do not overlap the project area, as they are located further east and north. The proposed project area likely serves as a migratory route for minke whales transiting between northern feeding grounds and southern breeding areas.

Since January 2017, elevated minke whale mortalities detected along the

Atlantic coast from Maine through South Carolina resulted in the declaration of a UME. As of December 6, 2022, a total of 135 minke whales have stranded during this UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Seals

Since June 2022, elevated numbers of harbor seal and gray seal mortalities have occurred across the southern and central coast of Maine. This event has been declared a UME. Preliminary testing of samples has found some harbor and gray seals positive for highly pathogenic avian influenza. While the UME is not occurring in the Revolution Wind project area, the populations affected by the UME are the same as those potentially affected by the project.

The above event was preceded by a different UME, occurring from 2018–2020 (closure of the 2018–2020 UME is pending). Beginning in July 2018, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire and Massachusetts. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation encompassed all seal strandings from Maine to Virginia. A total of 3,152 reported strandings (of all species) occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME, which is pending closure. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

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 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 6.

TABLE 6—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.

* 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. Sixteen marine mammal species (14 cetacean species (6 mysticetes and 8 odontocetes) and 2 pinniped species (both phocid seals)) have the reasonable potential to co-occur with the proposed project activities (Table 5).

NMFS notes that in 2019, Southall *et al.* recommended new names for hearing groups that are widely recognized. However, this new hearing group classification does not change the weighting functions or acoustic thresholds (*i.e.,* the weighting functions and thresholds in Southall *et al.* (2019) are identical to NMFS 2018 Revised Technical Guidance). When NMFS updates our Technical Guidance, we will be adopting the updated Southall *et al.* (2019) hearing group classification.

Potential Effects to Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how

those impacts on individuals are likely to impact marine mammal species or stocks. General background information on marine mammal hearing was provided previously (see the Description of Marine Mammals in the Area of the Specified Activities section). Here, the potential effects of sound on marine mammals are discussed.

Revolution Wind has requested authorization to take marine mammals incidental to construction activities in the Revolution Wind project area. In the ITA application, Revolution Wind presented analyses of potential impacts to marine mammals from use of acoustic and explosive sources. NMFS both carefully reviewed the information provided by Revolution Wind, as well as independently reviewed applicable scientific research and literature and other information, to evaluate the potential effects of Revolution Wind's activities on marine mammals, which are presented in this section.

The proposed activities would result in placement of up to 81 permanent foundations and two temporary cofferdams in the marine environment. Up to 13 UXO/MEC detonations may occur intermittently, only as necessary. There are a variety of effects to marine mammals, prey species, and habitat that could occur as a result of these actions.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008), Richardson *et al.* (1995), and Urick (1983).

Sound is a vibration that travels as an acoustic wave through a medium such as a gas, liquid or solid. Sound waves alternately compress and decompress the medium as the wave travels. These compressions and decompressions are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones (underwater microphones). In water, sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam (narrow beam or directional sources) or sound beams may radiate in all directions (omnidirectional sources).

Sound travels in water more efficiently than almost any other form of energy, making the use of acoustics ideal for the aquatic environment and its inhabitants. In seawater, sound travels at roughly 1,500 meters per second (m/s). In -air, sound waves travel much more slowly, at about 340 m/s. However, the speed of sound can vary by a small amount based on characteristics of the transmission medium, such as water temperature and salinity.

The basic components of a sound wave are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. The intensity (or amplitude) of sounds are measured in decibels (dB), which are a relative unit of measurement that is used to express the ratio of one value of a power or field to another. Decibels are measured on a logarithmic scale, so a small change in dB corresponds to large changes in sound pressure. For example, a 10-dB increase is a ten-fold increase in acoustic power. A 20-dB increase is then a 100-fold increase in power and a 30-dB increase is a 1000-fold increase in power. However, a ten-fold increase in acoustic power does not mean that the sound is perceived as being ten times louder. Decibels are a relative unit comparing two pressures, therefore a reference pressure must always be indicated. For underwater sound, this is 1 microPascal (μPa). For in-air sound, the reference pressure is 20 microPascal (μPa). The amplitude of a sound can be presented in various ways; however, NMFS typically utilizes three metrics.

Sound exposure level (SEL) represents the total energy in a stated frequency band over a stated time interval or event, and considers both amplitude and duration of exposure (represented as dB re 1 μPa^2-s). SEL is a cumulative metric; it can be accumulated over a single pulse (for pile driving this is often referred to as single-strike SEL; SEL_{ss}), or calculated over periods containing multiple pulses (SEL_{cum}). Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. The SEL metric is useful because it allows sound exposures of different durations to be related to one another in terms of total acoustic energy. The duration of a sound event and the number of pulses, however, should be specified as there is no accepted standard duration over which the summation of energy is measured. Sounds are typically classified by their spectral and temporal properties.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure. Along with SEL, this metric is used in evaluating the potential for permanent threshold shift (PTS) and temporary threshold shift (TTS). It is also used to evaluate the potential for gastro-intestinal tract injury (Level A harassment) from explosives.

For explosives, an impulse metric (Pa-s), which is the integral of a transient sound pressure over the duration of the pulse, is used to evaluate the potential for mortality (*i.e.,* severe lung injury) and slight lung injury. These thresholds account for animal mass and depth.

Sounds can be either impulsive or non-impulsive. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see NMFS *et al.* (2018) and Southall *et al.* (2007, 2019) for an in-depth discussion of these concepts. Impulsive sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (American National Standards Institute (ANSI), 1986, 2005; Harris, 1998; National Institute for Occupational Safety and Health (NIOSH), 1998; International Organization for Standardization (ISO), 2003) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal

pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features. Impulsive sounds are typically intermittent in nature.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems.

Sounds are also characterized by their temporal component. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). NMFS identifies Level B harassment thresholds based on if a sound is continuous or intermittent.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (International Council for Exploration of the Sea (ICES), 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Underwater ambient sound in the Atlantic Ocean southeast of Rhode Island comprises sounds produced by a number of natural and anthropogenic sources. Human-generated sound is a significant contributor to the acoustic environment in the project location.

Potential Effects of Underwater Sound on Marine Mammals

Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. Broadly, underwater sound from active acoustic sources can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). Potential effects from explosive sound sources can range in severity from behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure, in addition to the contextual factors of the receiver (*e.g.,* behavioral state at time of exposure, age class, etc.). In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We describe below the specific manifestations of acoustic effects that may occur based on the activities proposed by Revolution Wind.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First (at the greatest distance) is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone (closer to the receiving animal) corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. The third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

Potential effects from explosive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015).

Below, we provide additional detail regarding potential impacts on marine mammals and their habitat from noise in general, as well as from the specific activities Revolution Wind plans to conduct, to the degree it is available (noting that there is limited information regarding the impacts of offshore wind construction on cetaceans).

Threshold Shift

Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which NMFS defines as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level, expressed in decibels (NMFS, 2018). Threshold shifts can be permanent, in which case there is an irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range, or temporary, in which there is reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range and the animal's hearing threshold would fully recover over time (Southall *et al.,* 2019). Repeated sound exposure that leads to TTS could cause PTS.

When PTS occurs, there can be physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Henderson *et al.,* 2008). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997; Southall *et al.,* 2019). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40 dB threshold shift approximates a PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974; Henderson *et al.,* 2008). This can also induce mild TTS (a 6 dB threshold shift approximates a TTS onset; *e.g.,* Southall *et al.,* 2019). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds, expressed in the unweighted peak sound pressure level metric (PK), for impulsive sounds (such as impact pile driving pulses) are at least 6 dB higher than the TTS thresholds and the weighted PTS cumulative sound exposure level thresholds are 15 (impulsive sound) to 20 (non-impulsive sounds) dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2019). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, PTS is less likely to occur as a result of these activities, but it is possible and a small amount has been proposed for authorization for several species.

TTS is the mildest form of hearing impairment that can occur during exposure to sound, with a TTS of 6 dB considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000; Finneran *et al.,* 2002).

While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. There is data on sound levels and durations necessary to elicit mild TTS for marine mammals but recovery is complicated to predict and dependent on multiple factors.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and six species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, ring seal, spotted seal, bearded seal, and California sea lion (*Zalophus californianus*)) that were exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise with limited number of exposure to impulsive sources such as seismic airguns or impact pile driving) in laboratory settings (Southall *et al.,* 2019). There is currently no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS or PTS in marine mammals or for further discussion of TTS or PTS onset thresholds, please see Southall *et al.* (2019), and NMFS (2018).

Recent studies with captive odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale) have observed increases in hearing threshold levels when individuals received a warning sound prior to exposure to a relatively loud sound (Nachtigall and Supin, 2013, 2015; Nachtigall *et al.,* 2016a,b,c; Finneran, 2018; Nachtigall *et al.,* 2018). These studies suggest that captive animals have a mechanism to reduce hearing sensitivity prior to impending loud sounds. Hearing change was observed to be frequency dependent and Finneran (2018) suggests hearing attenuation occurs within the cochlea or auditory nerve. Based on these observations on captive odontocetes, the authors suggest that wild animals may have a mechanism to self-mitigate the impacts of noise exposure by dampening their hearing during prolonged exposures of loud sound, or if conditioned to anticipate intense sounds (Finneran, 2018; Nachtigall *et al.,* 2018).

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately predisposed to respond to certain sounds in certain ways) (Southall *et al.,* 2019). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), the similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007; DeRuiter *et al.,* 2013). Individuals (of different age, gender, reproductive status, *etc.*) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior

conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone. For example, Goldbogen *et al.* (2013b) demonstrated that individual behavioral state was critically important in determining response of blue whales to sonar, noting that some individuals engaged in deep (greater than 50 m) feeding behavior had greater dive responses than those in shallow feeding or non-feeding conditions. Some blue whales in the Goldbogen *et al.* (2013b) study that were engaged in shallow feeding behavior demonstrated no clear changes in diving or movement even when received levels were high (~160 dB *re 1*μ*Pa*) for exposures to 3–4 kHz sonar signals, while others showed a clear response at exposures at lower received levels of sonar and pseudorandom noise.

Studies by DeRuiter *et al.* (2012) indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Another study by DeRuiter *et al.* (2013) examined behavioral responses of Cuvier's beaked whales to MF sonar and found that whales responded strongly at low received levels (89–127 dB re 1μPa) by ceasing normal fluking and echolocation, swimming rapidly away, and extending both dive duration and subsequent non-foraging intervals when the sound source was 3.4–9.5 km away. Importantly, this study also showed that whales exposed to a similar range of received levels (78–106 dB re 1μPa) from distant sonar exercises (118 km away) did not elicit such responses, suggesting that context may moderate reactions. Thus, it is known that distance from the source can have an effect on behavioral response that is independent of the effect of received levels (*e.g.,* DeRuiter *et al.,* 2013; Dunlop *et al.,* 2017a; Dunlop *et al.,* 2017b; Falcone *et al.,* 2017; Dunlop *et al.,* 2018; Southall *et al.,* 2019a).

Ellison *et al.* (2012) outlined an approach to assessing the effects of sound on marine mammals that incorporates contextual-based factors. The authors recommend considering not just the received level of sound, but also the activity the animal is engaged in at the time the sound is received, the nature and novelty of the sound (*i.e.,* is this a new sound from the animal's perspective), and the distance between the sound source and the animal. They submit that this ''exposure context,'' as described, greatly influences the type of behavioral response exhibited by the animal. Forney *et al.* (2017) also point out that an apparent lack of response (*e.g.,* no displacement or avoidance of a sound source) may not necessarily mean there is no cost to the individual or population, as some resources or habitats may be of such high value that animals may choose to stay, even when experiencing stress or hearing loss. Forney *et al.* (2017) recommend considering both the costs of remaining in an area of noise exposure such as TTS, PTS, or masking, which could lead to an increased risk of predation or other threats or a decreased capability to forage, and the costs of displacement, including potential increased risk of vessel strike, increased risks of predation or competition for resources, or decreased habitat suitable for foraging, resting, or socializing. This sort of contextual information is challenging to predict with accuracy for ongoing activities that occur over large spatial and temporal expanses. However, distance is one contextual factor for which data exist to quantitatively inform a take estimate, and the method for predicting Level B harassment in this rule does consider distance to the source. Other factors are often considered qualitatively in the analysis of the likely consequences of sound exposure, where supporting information is available.

Friedlaender *et al.* (2016) provided the first integration of direct measures of prey distribution and density variables incorporated into across-individual analyses of behavior responses of blue whales to sonar, and demonstrated a five-fold increase in the ability to quantify variability in blue whale diving behavior. These results illustrate that responses evaluated without such measurements for foraging animals may be misleading, which again illustrates the context-dependent nature of the probability of response.

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). More recent reviews (Nowacek *et al.,* 2007; DeRuiter *et al.,* 2012, 2013; Ellison *et al.,* 2012; Gomez *et al.,* 2016) address studies conducted since 1995 and focused on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. Gomez *et al.* (2016) conducted a review of the literature considering the contextual information of exposure in addition to received level and found that higher received levels were not always associated with more severe behavioral responses and vice versa. Southall *et al.* (2021) states that results demonstrate that some individuals of different species display clear yet varied responses, some of which have negative implications, while others appear to tolerate high levels, and that responses may not be fully predictable with simple acoustic exposure metrics (*e.g.,* received sound level). Rather, the authors state that differences among species and individuals along with contextual aspects of exposure (*e.g.,* behavioral state) appear to affect response probability. The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists, along with contextual factors.

Avoidance and Displacement

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales or humpback whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984; Dunlop *et al.,* 2018). Avoidance is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,*

2000; Morton and Symonds, 2002; Gailey *et al.,* 2007; Dähne *et al.,* 2013; Russel *et al.,* 2016; Malme *et al.,* 1984). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006; Forney *et al.,* 2017). Avoidance of marine mammals during the construction of offshore wind facilities (specifically for impact pile driving) has been previously noted in the literature, with some significant variation in the effects. Most studies focused on harbor porpoises because it is one of the most common marine mammals in European waters (*e.g.,* Tougaard *et al.,* 2009; Dähne *et al.,* 2013; Thompson *et al.,* 2013; Russell *et al.,* 2016; Brandt *et al.,* 2018).

Available information on impacts to marine mammals from pile driving associated with offshore wind is limited to information on harbor porpoises and seals, as the vast majority of this research has occurred at European offshore wind projects where large whales and other odontocete species are uncommon. Harbor porpoises and harbor seals are considered to be behaviorally sensitive species (*e.g.,* Southall *et al.,* 2007) and the effects of wind farm construction in Europe on these species has been well documented. These species have received particular attention in European waters due to their abundance in the North Sea (Hammond *et al.,* 2002; Nachtsheim *et al.,* 2021). A summary of the literature on documented effects of wind farm construction on harbor porpoises and harbor seals is described below.

Brandt *et al.* (2016) summarized the effects of the construction of eight offshore wind projects within the German North Sea (*i.e.,* Alpha Ventus, BARD Offshore I, Borkum West II, DanTysk, Global Tech I, Meerwind Süd/Ost, Nordsee Ost, and Riffgat) between 2009 and 2013 on harbor porpoises, combining PAM data from 2010–2013 and aerial surveys from 2009–2013 with data on noise levels associated with pile driving. Results of the analysis revealed significant declines in harbor porpoise detections during pile driving when compared to 24–48 hours before pile driving began, with the magnitude of decline during pile driving clearly decreasing with increasing distances to the construction site. During the majority of projects, significant declines in detections (by at least 20 percent) were found within at least 5–10 km of the pile driving site, with declines at up to 20–30 km of the pile driving site documented in some cases. Similar results demonstrating the long-distance displacement of harbor porpoises (18–25 km) and harbor seals (up to 40 km) during impact pile driving have also been observed during the construction at multiple other European wind farms (Lucke *et al.,* 2012; Dähne *et al.,* 2013; Tougaard *et al.,* 2009; Haelters *et al.,* 2015; Bailey *et al.,* 2010).

While harbor porpoises and seals tend to move away from wind farm construction activities, the duration of displacement has been documented to be relatively temporary. In two studies at Horns Rev II using impact pile driving, harbor porpoises returned within 1–2 days following cessation of pile driving (Tougaard *et al.,* 2009, Brandt *et al.,* 2011). Similar recovery periods have been noted for harbor seals off of England during the construction of four wind farms (Carroll *et al.,* 2010; Hamre *et al.,* 2011; Hastie *et al.,* 2015; Russell *et al.,* 2016; Brasseur *et al.,* 2010). In some cases, an increase in harbor porpoise activity has been documented inside wind farm areas following construction (*e.g.,* Lindeboom *et al.,* 2011). Other studies have noted longer-term impacts after impact pile driving. Near Dogger Bank in Germany, harbor porpoises continued to avoid the area for over two years after construction began (Gilles *et al.* 2009). Approximately ten years after construction of the Nysted wind farm, harbor porpoise abundance had not recovered to the original levels previously observed, although echolocation activity was noted to have been increasing when compared to the previous monitoring period (Teilmann and Carstensen, 2012). However, overall, there are no indications of a population decline of harbor porpoises in European waters (*e.g.,* Brandt *et al.,* 2016). Notably, where significant differences in displacement and return rates have been identified for these species, the occurrence of secondary project-specific influences such as use of mitigation measures (*e.g.,* bubble curtains, acoustic deterrent devices (ADDs)) or the manner in which species use the habitat in the project area are likely the driving factors of this variation.

NMFS notes the aforementioned studies from Europe involve pile driving of much smaller piles than Revolution Wind proposes to install and, therefore, we anticipate noise levels from impact pile driving to be louder. For this reason, we anticipate that the greater distances of displacement observed in harbor porpoises and harbor seals documented in Europe are more likely to occur off of Rhode Island. However, we do not anticipate any greater severity of response or population level consequences, similar to European findings. In many cases, harbor porpoises and harbor seals are resident to the areas where European wind farms have been constructed. However, harbor porpoises and harbor seals are seasonally present in the project area, predominantly occurring in winter, when impact pile driving would not occur. In summary, we anticipate that harbor porpoises and harbor seals would likely respond to pile driving by moving several kilometers away from the source; however, this impact would be temporary and would not impact any critical behaviors such as foraging or reproduction.

As noted previously, the only studies available on marine mammal responses to offshore wind-related pile driving have focused on species which are known to be more behaviorally sensitive to auditory stimuli than the other species that occur in the project area. Therefore, the documented behavioral responses of harbor porpoises and harbor seals to pile driving in Europe should be considered as a worst-case scenario in terms of the potential responses among all marine mammals to offshore pile driving, and these responses cannot reliably predict the responses that would occur in other marine mammal species.

Avoidance has been documented for other marine mammal species in response to playbacks. DeRuiter *et al.* (2013) noted that distance from a sound source may moderate marine mammal reactions in their study of Cuvier's beaked whales, which showed the whales swimming rapidly and silently away when a sonar signal was 3.4–9.5 km away, while showing no such reaction to the same signal when the signal was 118 km away, even though the received levels were similar. Tyack and Clark (1983) conducted playback studies of Surveillance Towed Array Sensor System (SURTASS) low frequency active (LFA) sonar in a gray whale migratory corridor off California. Similar to North Atlantic right whales, gray whales migrate close to shore (approximately +2 kms) and are low frequency hearing specialists. The LFA sonar source was placed within the gray whale migratory corridor (approximately 2 km offshore) and offshore of most, but not all, migrating whales (approximately 4 km offshore). These locations influenced received levels and distance to the source. For the inshore playbacks, not unexpectedly, when the source level of the playback was louder (*i.e.,* the louder

the received level), whales avoided the source at greater distances. Specifically, when the source level was 170 dB rms and 178 dB rms, whales avoided the inshore source at ranges of several hundred meters, similar to avoidance responses reported by Malme *et al.* (1983, 1984). Whales exposed to source levels of 185 dB rms demonstrated avoidance levels at ranges of +1 km. While there was observed deflection from course, in no case did a whale abandon its migratory behavior.

One consequence of behavioral avoidance results in the altered energetic expenditure of marine mammals because energy is required to move and avoid surface vessels or the sound field associated with *e.g.,* active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or speeds that minimize the cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Miksis-Olds, 2006). Those energetic costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting to active behavioral states, which would imply that they incur an energy cost.

Forney *et al.* (2017) detailed the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking, noting that a lack of observed response does not imply absence of fitness costs and that apparent tolerance of disturbance may have population-level impacts that are less obvious and difficult to document. Avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts. Forney *et al.* (2017) stated that, for these animals, remaining in a disturbed area may reflect a lack of alternatives rather than a lack of effects.

Flight Response

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exists, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Frid and Dill, 2002). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response. The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, beaked whale strandings (Cox *et al.,* 2006; D'Amico *et al.,* 2009). Flight responses of marine mammals have been documented in response to mobile high intensity active sonar (*e.g.,* Tyack *et al.,* 2011; DeRuiter *et al.,* 2013; Wensveen *et al.,* 2019), and more severe responses have been documented when sources are moving towards an animal or when they are surprised by unpredictable exposures (Watkins, 1986; Falcone *et al.,* 2017). Generally speaking, however, marine mammals would be expected to be less likely to respond with a flight response to either stationery pile driving (which they can sense is stationery and predictable) or significantly lower-level HRG surveys, unless they are within the area ensonified above behavioral harassment thresholds at the moment the source is turned on (Watkins, 1986; Falcone *et al.,* 2017). A flight response may also be possible in response to UXO/MEC detonation; however, given a detonation is instantaneous, only one detonation would occur on a given day, only 13 detonations may occur over 5 years, and the proposed mitigation and monitoring would result in any animals being far from the detonation (*i.e.,* the clearance zone extends 10 km from the UXO/MEC location), any flight response would be spatially and temporally limited.

Alteration of Diving and Foraging

Changes in dive behavior in response to noise exposure can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.,* increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship strike. The alerting stimulus was in the form of an 18-minute exposure that included three 2-minute signals played three times sequentially. This stimulus was designed with the purpose of providing signals distinct to background noise that serve as localization cues. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise (both of which were signal types included in the playback experiment), highlighting the importance of the sound characteristics in producing a behavioral reaction. The alerting stimulus signals were relatively brief in duration, similar to the proposed Revolution Wind impact pile driving strikes, UXO detonation, and some HRG acoustic sources. Although source levels for Revolution Wind's activities may exceed the source level of the alerting stimulus, proposed mitigation strategies (further described in the Proposed Mitigation section) would reduce the severity of any responses to the activities. Converse to North Atlantic right whale behavior, Indo-Pacific humpback dolphins have been observed diving for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low-frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). They did, however, produce subtle effects that varied in direction and degree among the individual elephant seals, illustrating the equivocal nature of behavioral effects and

consequent difficulty in defining and predicting them.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006a; Yazvenko *et al.,* 2007; Southall *et al.,* 2019b). An understanding of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal can facilitate the assessment of whether foraging disruptions are likely to incur fitness consequences (Goldbogen *et al.,* 2013b; Farmer *et al.,* 2018; Pirotta *et al.,* 2018; Southall *et al.,* 2019; Pirotta *et al.,* 2021).

Impacts on marine mammal foraging rates from noise exposure have been documented, though there is little data regarding the impacts of offshore turbine construction specifically. Several broader examples follow, and it is reasonable to expect that exposure to noise produced during the 5-years the proposed rule would be effective could have similar impacts.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to air gun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006a; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the air guns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were six percent lower during exposure than control periods (Miller *et al.,* 2009). Miller *et al.* (2009) noted that more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior. We note that the water depths in the project area preclude deep foraging dives for any marine mammal species and sperm whales are not expected to be foraging in the area. However, some temporary disruption to marine mammals that may be foraging in the project area is likely to occur.

Balaenopterid whales (fin and blue whales) exposed to moderate low-frequency active sonar (signals similar to the ATOC sound source) demonstrated no variation in foraging activity (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to the alerting stimulus (described previously) interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received SPLs were similar in the two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. Source levels generated during Revolution Wind's activities would generally meet or exceed the source levels of the signals described by Nowacek *et al.* (2004) (173 dB rms at 1 m) and Croll *et al.* (2001) (155 dB rms increased at 10dB intervals) and noise generated by Revolution Wind's activities would overlap in frequency with the described signals. Blue whales exposed to mid-frequency sonar in the Southern California Bight were less likely to produce low-frequency calls usually associated with feeding behavior (Melcón *et al.,* 2012). However, Melcón *et al.* (2012) were unable to determine if suppression of low frequency calls reflected a change in their feeding performance or abandonment of foraging behavior and indicated that implications of the documented responses are unknown. Further, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. Results from the 2010–2011 field season of a behavioral response study in Southern California waters indicated that, in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2011, 2012, 2019).

Information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal will help better inform a determination of whether foraging disruptions incur fitness consequences. Foraging strategies may impact foraging efficiency, such as by reducing foraging effort and increasing success in prey detection and capture, in turn promoting fitness and allowing individuals to better compensate for foraging disruptions. Surface feeding blue whales did not show a change in behavior in response to mid-frequency simulated and real sonar sources with received levels between 90 and 179 dB re 1 μPa, but deep feeding and non-feeding whales showed temporary reactions, including cessation of feeding, reduced initiation of deep foraging dives, generalized avoidance responses, and changes to dive behavior (DeRuiter *et al.,* 2017; Goldbogen *et al.,* 2013b; Sivle *et al.,* 2015). Goldbogen *et al.* (2013b) indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual whale could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure.

Similarly, while the rates of foraging lunges decrease in humpback whales due to sonar exposure, there was variability in the response across individuals, with one animal ceasing to forage completely and another animal starting to forage during the exposure (Sivle *et al.,* 2016). In addition, almost half of the animals that demonstrated avoidance were foraging before the exposure, but the others were not; the animals that avoided while not feeding responded at a slightly lower received level and greater distance than those that were feeding (Wensveen *et al.,* 2017). These findings indicate the behavioral state of the animal and foraging strategies play a role in the type and severity of a behavioral response. For example, when the prey field was mapped and used as a covariate in examining how behavioral state of blue whales is influenced by mid-frequency sound, the response in blue whale deep-feeding behavior was even more apparent, reinforcing the need for contextual variables to be included when assessing behavioral responses (Friedlaender *et al.,* 2016).

Breathing

Respiration naturally varies with different behaviors and variations in

respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises show increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposure to the same acoustic alarm of a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance of understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Vocalizations (Also see the Auditory Masking Section)

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, production of echolocation clicks, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result directly from increased vigilance (also see the *Potential Effects of Behavioral Disturbance on Marine Mammal Fitness* section) or a startle response, or from a need to compete with an increase in background noise (see Erbe *et al.,* 2016 review on communication masking), the latter of which is described more in the *Auditory Masking* section below.

For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their vocalizations (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004) and blue increased song production (Di Iorio and Clark, 2010), while North Atlantic right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease or reduce sound production during production of aversive signals (Bowles *et al.,* 1994; Thode *et al.,* 2020; Cerchio *et al.,* 2014; McDonald *et al.,* 1995).

Orientation

A shift in an animal's resting state or an attentional change via an orienting response represent behaviors that would be considered mild disruptions if occurring alone. As previously mentioned, the responses may co-occur with other behaviors; for instance, an animal may initially orient toward a sound source, and then move away from it. Thus, any orienting response should be considered in context of other reactions that may occur.

Habituation and Sensitization

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance having a neutral or positive outcome (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Both habituation and sensitization require an ongoing learning process. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; U.S. National Research Council (NRC), 2003; Wartzok *et al.,* 2003; Southall *et al.,* 2019b). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (*e.g.,* Ridgway *et al.,* 1997; Finneran *et al.,* 2003; Houser *et al.,* 2013a,b; Kastelein *et al.,* 2018). Observed responses of wild marine mammals to loud impulsive sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007; Tougaard *et al.,* 2009; Brandt *et al.,* 2011, Brandt *et al.,* 2012, Dähne *et al.,* 2013; Brandt *et al.,* 2014; Russell *et al.,* 2016; Brandt *et al.,* 2018). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the potential importance of frequency output in relation to the species' hearing sensitivity.

Stress Response

An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments, and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress

responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Lusseau and Bejder, 2007; Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. Lusseau and Bejder (2007) present data from three long-term studies illustrating the connections between disturbance from whale-watching boats and population-level effects in cetaceans. In Shark Bay, Australia, the abundance of bottlenose dolphins was compared within adjacent control and tourism sites over three consecutive 4.5-year periods of increasing tourism levels. Between the second and third time periods, in which tourism doubled, dolphin abundance decreased by 15 percent in the tourism area and did not change significantly in the control area. In Fiordland, New Zealand, two populations (Milford and Doubtful Sounds) of bottlenose dolphins with tourism levels that differed by a factor of seven were observed and significant increases in traveling time and decreases in resting time were documented for both. Consistent short-term avoidance strategies were observed in response to tour boats until a threshold of disturbance was reached (average 68 minutes between interactions), after which the response switched to a longer-term habitat displacement strategy. For one population, tourism only occurred in a part of the home range. However, tourism occurred throughout the home range of the Doubtful Sound population, and once boat traffic increased beyond the 68-minute threshold (resulting in abandonment of their home range/preferred habitat), reproductive success drastically decreased (increased stillbirths) and abundance decreased significantly (from 67 to 56 individuals in a short period).

These and other studies lead to a reasonable expectation that some marine mammals would experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003, 2017).

Auditory Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, or navigation) (Richardson *et al.,* 1995; Erbe and Farmer, 2000; Tyack, 2000; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, pile driving) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age, or TTS hearing loss), and existing ambient noise and propagation conditions. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. Masking can lead to behavioral changes including vocal changes (*e.g.,* Lombard effect, increasing amplitude, or changing frequency), cessation of foraging or lost foraging opportunities, and leaving an area, for both signalers and receivers, in an attempt to compensate for noise levels (Erbe *et al.,* 2016) or because sounds that would typically have triggered a behavior were not detected. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which only occurs during the sound exposure. Because masking (without resulting in threshold shift) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009; Matthews *et al.,* 2016) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013; Cholewiak *et al.,* 2018).

The echolocation calls of toothed whales are subject to masking by high-frequency sound. Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.,* adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high-frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

Impacts on signal detection, measured by masked detection thresholds, are not the only important factors to address when considering the potential effects of masking. As marine mammals use sound to recognize conspecifics, prey, predators, or other biologically significant sources (Branstetter *et al.,* 2016), it is also important to understand the impacts of masked recognition thresholds (often called ''informational masking''). Branstetter *et al.,* 2016 measured masked recognition thresholds for whistle-like sounds of bottlenose dolphins and observed that

they are approximately 4 dB above detection thresholds (energetic masking) for the same signals. Reduced ability to recognize a conspecific call or the acoustic signature of a predator could have severe negative impacts. Branstetter *et al.,* 2016 observed that if ''quality communication'' is set at 90 percent recognition the output of communication space models (which are based on 50 percent detection) would likely result in a significant decrease in communication range.

As marine mammals use sound to recognize predators (Allen *et al.,* 2014; Cummings and Thompson, 1971; Curé *et al.,* 2015; Fish and Vania, 1971), the presence of masking noise may also prevent marine mammals from responding to acoustic cues produced by their predators, particularly if it occurs in the same frequency band. For example, harbor seals that reside in the coastal waters off British Columbia are frequently targeted by mammal-eating killer whales. The seals acoustically discriminate between the calls of mammal-eating and fish-eating killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required to attend to all killer whale calls. Similarly, sperm whales (Curé *et al.,* 2016; Isojunno *et al.,* 2016), long-finned pilot whales (Visser *et al.,* 2016), and humpback whales (Curé *et al.,* 2015) changed their behavior in response to killer whale vocalization playbacks; these findings indicate that some recognition of predator cues could be missed if the killer whale vocalizations were masked. The potential effects of masked predator acoustic cues depends on the duration of the masking noise and the likelihood of a marine mammal encountering a predator during the time that detection and recognition of predator cues are impeded.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio.

Masking affects both senders and receivers of acoustic signals and, at higher levels and longer duration, can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009; Cholewiak *et al.,* 2018). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from commercial vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

In addition to making it more difficult for animals to perceive and recognize acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' (or communication space) of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.,* 2006). Most species that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure, and temporal delivery (repetition rate), or ceasing to vocalize.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments are not directly known in all instances, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006; Noren *et al.,* 2017; Noren *et al.,* 2020). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Marine mammals are also known to make vocal changes in response to anthropogenic noise. In cetaceans, vocalization changes have been reported from exposure to anthropogenic noise sources such as sonar, vessel noise, and seismic surveying (see the following for examples: Gordon *et al.,* 2003; Di Iorio and Clark, 2010; Hatch *et al.,* 2012; Holt *et al.,* 2008; Holt *et al.,* 2011; Lesage *et al.,* 1999; McDonald *et al.,* 2009; Parks *et al.,* 2007; Risch *et al.,* 2012; Rolland *et al.,* 2012), as well as changes in the natural acoustic environment (Dunlop *et al.,* 2014). Vocal changes can be temporary, or can be persistent. For example, model simulation suggests that the increase in starting frequency for the North Atlantic right whale upcall over the last 50 years resulted in increased detection ranges between right whales. The frequency shift, coupled with an increase in call intensity by 20 dB, led to a call detectability range of less than 3 km to over 9 km (Tennessen and Parks, 2016). Holt *et al.* (2008) measured killer whale call source levels and background noise levels in the one to 40 kHz band and reported that the whales increased their call source levels by one dB SPL for every one dB SPL increase in background noise level. Similarly, another study on St. Lawrence River belugas reported a similar rate of increase in vocalization activity in response to passing vessels (Scheifele *et al.,* 2005). Di Iorio and Clark (2010) showed that blue whale calling rates vary in association with seismic sparker survey activity, with whales calling more on days with surveys than on days without surveys. They suggested that the whales called more during seismic survey periods as a way to compensate for the elevated noise conditions.

In some cases, these vocal changes may have fitness consequences, such as an increase in metabolic rates and oxygen consumption, as observed in bottlenose dolphins when increasing their call amplitude (Holt *et al.,* 2015). A switch from vocal communication to physical, surface-generated sounds such as pectoral fin slapping or breaching was observed for humpback whales in the presence of increasing natural background noise levels, indicating that adaptations to masking may also move beyond vocal modifications (Dunlop *et al.,* 2010).

While these changes all represent possible tactics by the sound-producing

animal to reduce the impact of masking, the receiving animal can also reduce masking by using active listening strategies such as orienting to the sound source, moving to a quieter location, or reducing self-noise from hydrodynamic flow by remaining still. The temporal structure of noise (*e.g.,* amplitude modulation) may also provide a considerable release from masking through co-modulation masking release (a reduction of masking that occurs when broadband noise, with a frequency spectrum wider than an animal's auditory filter bandwidth at the frequency of interest, is amplitude modulated) (Branstetter and Finneran, 2008; Branstetter *et al.,* 2013). Signal type (*e.g.,* whistles, burst-pulse, sonar clicks) and spectral characteristics (*e.g.,* frequency modulated with harmonics) may further influence masked detection thresholds (Branstetter *et al.,* 2016; Cunningham *et al.,* 2014).

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as vessels. Several studies have shown decreases in marine mammal communication space and changes in behavior as a result of the presence of vessel noise. For example, right whales were observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007) as well as increasing the amplitude (intensity) of their calls (Parks, 2009; Parks *et al.,* 2011). Clark *et al.* (2009) observed that right whales' communication space decreased by up to 84 percent in the presence of vessels. Cholewiak *et al.* (2018) also observed loss in communication space in Stellwagen National Marine Sanctuary for North Atlantic right whales, fin whales, and humpback whales with increased ambient noise and shipping noise. Although humpback whales off Australia did not change the frequency or duration of their vocalizations in the presence of ship noise, their source levels were lower than expected based on source level changes to wind noise, potentially indicating some signal masking (Dunlop, 2016). Multiple delphinid species have also been shown to increase the minimum or maximum frequencies of their whistles in the presence of anthropogenic noise and reduced communication space (for examples see: Holt *et al.,* 2008; Holt *et al.,* 2011; Gervaise *et al.,* 2012; Williams *et al.,* 2013; Hermannsen *et al.,* 2014; Papale *et al.,* 2015; Liu *et al.,* 2017). While masking impacts are not a concern from lower intensity, higher frequency HRG surveys, some degree of masking would be expected in the vicinity of turbine pile driving and concentrated support vessel operation. However, pile driving is an intermittent sound and would not be continuous throughout a day.

Potential Effects of Behavioral Disturbance on Marine Mammal Fitness

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There is little quantitative marine mammal data relating the exposure of marine mammals from sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli may cause animals to abandon nesting and foraging sites (Sutherland and Crockford, 1993); may cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.,* 1996; Feare, 1976; Mullner *et al.,* 2004); or may cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences of animals shifting from one behavioral state (*e.g.,* resting or foraging) to another behavioral state (*e.g.,* avoidance or escape behavior) because of human disturbance or disturbance stimuli.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or subconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging or resting. These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (*e.g.,* multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (*e.g.,* when they are giving birth or accompanied by a calf).

Chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46 percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17 percent reproductive success rate. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou (*Rangifer tarandus caribou*) disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), and caribou disturbed by low-elevation military jet fights (Luick *et al.,* 1996, Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's

time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand while decreasing their caloric intake/energy).

In a study of northern resident killer whales off Vancouver Island, exposure to boat traffic was shown to reduce foraging opportunities and increase traveling time (Williams *et al.,* 2006). A simple bioenergetics model was applied to show that the reduced foraging opportunities equated to a decreased energy intake of 18 percent, while the increased traveling incurred an increased energy output of 3–4 percent, which suggests that a management action based on avoiding interference with foraging might be particularly effective.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant for fitness if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). It is important to note the difference between behavioral reactions lasting or recurring over multiple days and anthropogenic activities lasting or recurring over multiple days. For example, just because certain activities last for multiple days does not necessarily mean that individual animals will be either exposed to those activity-related stressors (*i.e.,* sonar) for multiple days or further, exposed in a manner that would result in sustained multi-day substantive behavioral responses; however, special attention is warranted where longer-duration activities overlay areas in which animals are known to congregate for longer durations for biologically important behaviors.

Stone (2015a) reported data from at-sea observations during 1,196 airgun surveys from 1994 to 2010. When large arrays of airguns were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during an air gun survey monitored whale movements and respirations pre-, during-, and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with survey or vessel sounds.

In order to understand how the effects of activities may or may not impact species and stocks of marine mammals, it is necessary to understand not only what the likely disturbances are going to be, but how those disturbances may affect the reproductive success and survivorship of individuals, and then how those impacts to individuals translate to population-level effects. Following on the earlier work of a committee of the U.S. National Research Council (NRC, 2005), New *et al.* (2014), in an effort termed the Potential Consequences of Disturbance (PCoD), outline an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics. In this framework, behavioral and physiological changes can have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation; they can have indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or increased disease susceptibility affect health, which then affects vital rates; or they can have no effect to vital rates (New *et al.,* 2014). In addition to outlining this general framework and compiling the relevant literature that supports it, the authors chose four example species for which extensive long-term monitoring data exist (southern elephant seals, North Atlantic right whales, *Ziphiidae* beaked whales, and bottlenose dolphins) and developed state-space energetic models that can be used to effectively forecast longer-term, population-level impacts from behavioral changes. While these are very specific models with very specific data requirements that cannot yet be applied broadly to project-specific risk assessments for the majority of species, they are a critical first step towards being able to quantify the likelihood of a population level effect.

Since New *et al.* (2014), several publications have described models developed to examine the long-term effects of environmental or anthropogenic disturbance of foraging on various life stages of selected species (sperm whale, Farmer *et al.* (2018); California sea lion, McHuron *et al.* (2018); blue whale, Pirotta *et al.* (2018a)). These models continue to add to refinement of the approaches to the PCoD framework. Such models also help identify what data inputs require further investigation. Pirotta *et al.* (2018b) provides a review of the PCoD framework with details on each step of the process and approaches to applying real data or simulations to achieve each step.

New *et al.* (2020) found that closed populations of dolphins could not withstand a higher probability of disturbance, compared to open populations with no limitation on food. Two bottlenose dolphin populations in Australia were also modeled over 5 years against a number of disturbances (Reed *et al.,* 2020), and results indicated that habitat/noise disturbance had little overall impact on population abundances in either location, even in the most extreme impact scenarios modeled. By integrating different sources of data (*e.g.,* controlled exposure data, activity monitoring, telemetry tracking, and prey sampling) into a theoretical model to predict effects from sonar on a blue whale's daily energy intake, Pirotta *et al.* (2021) found that tagged blue whales' activity budgets, lunging rates, and ranging patterns caused variability in their predicted cost of disturbance. Dunlop *et al.* (2021) modeled migrating humpback whale mother-calf pairs in response to seismic surveys using both a forwards and backwards approach. While a typical forwards approach can determine if a stressor would have population-level consequences, Dunlop *et al.* demonstrated that working backwards through a PCoD model can be used to assess the ''worst case'' scenario for an interaction of a target species and stressor. This method may be useful for future management goals when appropriate data becomes available to fully support the model. Harbor porpoise movement and foraging were modeled for baseline periods and then for periods with seismic surveys as well; the models demonstrated that the seasonality of the seismic activity was an important predictor of impact (Gallagher *et al.,* 2021).

Nearly all PCoD studies and experts agree that infrequent exposures of a single day or less are unlikely to impact individual fitness, l*et al*one lead to population level effects (Booth *et al.,* 2016; Booth *et al.,* 2017; Christiansen and Lusseau 2015; Farmer *et al.,* 2018; Wilson *et al.,* 2020; 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). NMFS expects that any behavioral responses that would occur due to animals being exposed to construction activity would 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 level are anticipated.

Potential Effects From Explosive Sources

With respect to the noise from underwater explosives, the same acoustic-related impacts described above apply and are not repeated here. Noise from explosives can cause hearing impairment if an animal is close enough to the sources; however, because noise from an explosion is discrete, lasting less than approximately one second, no behavioral impacts below the TTS threshold are anticipated considering that Revolution Wind would not detonate more than one UXO/MEC per day (and no more than 13 only throughout the life of the proposed rule). This section focuses on the pressure-related impacts of underwater explosives, including physiological injury and mortality.

Underwater explosive detonations send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing-related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different densities. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.,* 1973). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with sound energy from detonations can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If a noise is audible to an animal, it has the potential to damage the animal's hearing by causing decreased sensitivity (Ketten, 1995). Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, and damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

Given the mitigation measures proposed, it is unlikely that any of the more serious injuries or mortality discussed above would result from any UXO/MEC detonation that Revolution Wind might need to undertake. PTS, TTS, and brief startle reactions are the most likely impacts to result from this activity.

Potential Effects of Vessel Strike

Vessel collisions with marine mammals, also referred to as vessel strikes or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. Lethal interactions are typically associated with large whales, which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike occurs and, if so, whether it results in injury, serious injury, or mortality (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Pace and Silber, 2005; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 knots.

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these 58 cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 knots. The majority (79 percent) of these strikes occurred at

speeds of 13 knots or greater. The average speed that resulted in serious injury or death was 18.6 knots. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 knots, and exceeded 90 percent at 17 knots. Higher speeds during collisions result in greater force of impact and also appear to increase the chance of severe injuries or death. While modeling studies have suggested that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne 1999; Knowlton *et al.,* 1995), this is inconsistent with Silber *et al.* (2010), which demonstrated that there is no such relationship (*i.e.,* hydrodynamic forces are independent of speed).

In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 knots. The chances of a lethal injury decline from approximately 80 percent at 15 knots to approximately 20 percent at 8.6 knots. At speeds below 11.8 knots, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward 100 percent above 15 knots.

The Jensen and Silber (2003) report notes that the Large Whale Ship Strike Database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, Revolution Wind's personnel are likely to detect any strike that does occur because of the required personnel training and lookouts, along with the inclusion of PSOs (as described in the Proposed Mitigation section), and they are required to report all ship strikes involving marine mammals.

NMFS is not aware of any documented vessel strikes of marine mammals by Revolution Wind or Ørsted during previous site characterization surveys. Given the extensive mitigation and monitoring measures (see the Proposed Mitigation and Proposed Monitoring and Reporting section) that would be required of Revolution Wind, NMFS believes that vessel strike of any marine mammal is not likely to occur, nor are we proposing to authorize take from vessel strikes.

Marine Mammal Habitat

Revolution Wind's proposed construction activities could potentially affect marine mammal habitat through the introduction of impacts to the prey species of marine mammals, acoustic habitat (sound in the water column), and water quality.

The presence of structures such as wind turbines is likely to result in both local and broader oceanographic effects. However, the scale of impacts is difficult to predict and may vary from hundreds of meters for local individual turbine impacts (Schultze *et al.,* 2020) to large-scale dipoles of surface elevation changes stretching hundreds of kilometers (Christiansen *et al.,* 2022).

Effects on Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). The most likely effects on fishes exposed to loud, intermittent, low-frequency sounds are behavioral responses (*i.e.,* flight or avoidance). Short duration, sharp sounds (such as pile driving or air guns) can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to acoustic sources depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality. While it is clear that the behavioral responses of individual prey, such as displacement or other changes in distribution, can have direct impacts on the foraging success of marine mammals, the effects on marine mammals of individual prey that experience hearing damage, barotrauma, or mortality is less clear, though obviously population scale impacts that meaningfully reduce the amount of prey available could have more serious impacts.

In terms of physiology, multiple scientific studies have documented a lack of mortality or physiological effects to fish from exposure to low- and mid-frequency sonar and other sounds (Halvorsen *et al.,* 2012; Jørgensen *et al.,* 2005; Juanes *et al.,* 2017; Kane *et al.,* 2010; Kvadsheim and Sevaldsen, 2005; Popper *et al.,* 2007; Popper *et al.,* 2016; Watwood *et al.,* 2016). Techer *et al.* (2017) exposed carp in floating cages for up to 30 days to low-power 23 and 46 kHz source without any significant physiological response. Other studies have documented either a lack of TTS in species whose hearing range cannot perceive sonar, or for those species that could perceive sonar-like signals, any TTS experienced would be recoverable (Halvorsen *et al.,* 2012; Ladich and Fay, 2013; Popper and Hastings, 2009a, 2009b; Popper *et al.,* 2014; Smith, 2016). Only fishes that have specializations that enable them to hear sounds above about 2,500 Hz (2.5 kHz) such as herring (Halvorsen *et al.,* 2012; Mann *et al.,* 2005; Mann, 2016; Popper *et al.,* 2014) would have the potential to receive TTS or exhibit behavioral responses from Revolution Wind's activities.

In terms of behavioral responses, Watwood *et al.* (2016) documented no behavioral responses by reef fish after exposure to mid-frequency active sonar. Doksaeter *et al.* (2009, 2012) reported no behavioral responses to mid-frequency sonar (such as naval sonar) by Atlantic herring; specifically, no escape reactions (vertically or horizontally) were observed in free swimming herring exposed to mid-frequency sonar transmissions. Based on these results (Doksaeter *et al.,* 2009; Doksaeter *et al.,* 2012; Sivle *et al.,* 2012), Sivle *et al.* (2014) created a model in order to report on the possible population-level effects on Atlantic herring from active sonar. The authors concluded that the use of sonar poses little risk to populations of herring regardless of season, even when the herring populations are aggregated and directly exposed to sonar. Finally, Bruintjes *et al.* (2016) commented that fish exposed to any short-term noise within their hearing range might initially startle, but would quickly return to normal behavior.

Occasional behavioral reactions to activities that produce underwater noise sources are unlikely to cause long-term consequences for individual fish or populations. The most likely impact to fish from impact and vibratory pile driving activities in the RWF would be temporary behavioral avoidance of the area. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration

of individual pile driving events and the relatively small area being affected.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013). As described in the Proposed Mitigation section below, Revolution Wind would utilize a sound attenuation device which would reduce potential for injury to marine mammal prey. Other fish that experience hearing loss as a result of exposure to explosions and impulsive sound sources may have a reduced ability to detect relevant sounds such as predators, prey, or social vocalizations. However, PTS has not been known to occur in fishes and any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Popper *et al.,* 2005; Popper *et al.,* 2014; Smith *et al.,* 2006).

It is also possible for fish to be injured or killed by an explosion from UXO/MEC detonation. The shock wave from an underwater explosion is lethal to fish at close range, causing massive organ and tissue damage and internal bleeding (Keevin and Hempen, 1997). At greater distance from the detonation point, the extent of mortality or injury depends on a number of factors including fish size, body shape, orientation, and species (Keevin and Hempen, 1997; Wright, 1982). Species with gas-filled organs are more susceptible to injury and mortality than those without them (Gaspin, 1975; Gaspin *et al.,* 1976; Goertner *et al.,* 1994). Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

Fish not killed or driven from a location by an explosion might change their behavior, feeding pattern, or distribution. Changes in behavior of fish have been observed as a result of sound produced by explosives, with effect intensified in areas of hard substrate (Wright, 1982). Stunning from pressure waves could also temporarily immobilize fish, making them more susceptible to predation. The abundances of various fish (and invertebrates) near the detonation point for explosives could be altered for a few hours before animals from surrounding areas repopulate the area. However, these populations would likely be replenished as waters near the detonation point are mixed with adjacent waters. Repeated exposure of individual fish to sounds from underwater explosions is not likely and are expected to be short-term and localized. Long-term consequences for fish populations would not be expected.

UXO/MEC detonations would be dispersed in space and time; therefore, repeated exposure of individual fishes are unlikely. Mortality and injury effects to fishes from explosives would be localized around the area of a given in-water explosion, but only if individual fish and the explosive (and immediate pressure field) were co-located at the same time. Repeated exposure of individual fish to sound and energy from underwater explosions is not likely given fish movement patterns, especially schooling prey species. Most acoustic effects, if any, are expected to be short-term and localized. Long-term consequences for fish populations including key prey species within the project area would not be expected.

Required soft-starts would allow prey and marine mammals to move away from the pile-driving 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, in addition to reducing impacts to marine mammals, 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 to pile driving by marine mammal prey are expected to be brief. We expect that other impacts such as stress or masking would occur in fish that serve as marine mammals prey (Popper *et al.,* 2019); however, those impacts would be limited to the duration of impact pile driving and during any UXO/MEC detonations.

In addition to fish, prey sources such as marine invertebrates could potentially be impacted by noise stressors as a result of the proposed activities. Invertebrates appear to be able to detect sounds (Pumphrey, 1950; Frings and Frings, 1967) and are most sensitive to low-frequency sounds (Packard *et al.,* 1990; Budelmann and Williamson, 1994; Lovell *et al.,* 2005; Mooney *et al.,* 2010). Data on response of invertebrates such as squid, another marine mammal prey species, to anthropogenic sound is more limited (de Soto, 2016; Sole *et al.,* 2017b). Data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are likely to detect air gun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). 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. Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.,* 2011; Sole *et al.,* 2013). Cumulatively for squid as a prey species, individual and population impacts from exposure to explosives, like fish, are not likely to be significant, and explosive impacts would be short-term and localized.

There is little information concerning potential impacts of noise on zooplankton populations. However, one recent study (McCauley *et al.,* 2017) investigated zooplankton abundance, diversity, and mortality before and after exposure to air gun noise, finding that the exposure resulted in significant depletion for more than half the taxa present and that there were two to three times more dead zooplankton after air gun exposure compared with controls for all taxa. The majority of taxa present were copepods and cladocerans; for these taxa, the range within which effects on abundance were detected was up to approximately 1.2 km. In order to have significant impacts on r-selected species such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned (McCauley *et al.,* 2017). Therefore, the large scale of effect observed here is of concern—particularly where repeated noise exposure is expected—and further study is warranted.

The presence of large numbers of turbines has been shown to impact meso- and sub-meso-scale water column

circulation, which can affect the density, distribution, and energy content of zooplankton, and thereby their availability as marine mammal prey. The presence and operation of structures such as wind turbines are, in general, likely to result in local and broader oceanographic effects in the marine environment, and may disrupt marine mammal prey such as dense aggregations and distribution of zooplankton through altering the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.,* 2021, Johnson *et al.,* 2021, Christiansen *et al.,* 2022, Dorrell *et al.,* 2022). However, the scale of impacts is difficult to predict and may vary from meters to hundreds of meters for local individual turbine impacts (Schultze *et al.,* 2020) to large-scale dipoles of surface elevation changes stretching hundreds of kilometers (Christiansen *et al.,* 2022).

Revolution Wind intends to install up to 79 turbines in 2024, which would become operational that same year. As described above, there is scientific uncertainty around the scale of oceanographic impacts (meters to kilometers) associated with turbine operation. Revolution Wind is located in a biologically productive area on an inshore temperate shelf sea on the inner portion of the southern New England continental shelf, an area of where the oceanography is dominated by complex interactions among wind-driven and tidal processes, and seasonal variations in solar heating. Shelf waters undergo a pronounced seasonal temperature cycle, influenced largely by air-sea interaction. Seasonality in salinity, associated mainly with spring freshening due to episodic coastal runoff, is less regular than that of temperature, and commonly weaker than inter-annual variability. Stratification, the vertical gradient in density associated with horizontal layering of water such that less dense layers overlie denser layers, results from comparably important influences of river freshening and surface heating. In Rhode Island Sound and the offshore project area during late fall and winter, stratification is minimal and circulation is a weak upwelling pattern directed offshore at shallow depths, and onshore near the seafloor. In spring and summer, strong stratification develops due to solar heating and a system of more distinct currents develops. Over most of the region, tidal currents are generally stronger than or comparable to seasonal mean flow patterns, as are weather-band current variations driven by the wind (Codiga and Ullman, 2010). Regional surface winds in winter average about 4–12 m/s (9–27 mi/hr) east-southeastward and, due to storms, are highly variable with peak speeds up to about 25 m/s (56 mi/hr). Summer winds are much less variable and weaker, averaging 2.5–7.5 m/s (6–17 mi/hr), oriented east-northeastward (Codiga and Ullman 2010). Fall and winter winds promote increased water column mixing, bringing nutrients into the water column for uptake by phytoplankton in Rhode Island Sound and the offshore project area during late fall and winter, stratification is minimal and circulation is a weak upwelling pattern directed offshore at shallow depths, and onshore near the seafloor. In spring and summer, strong stratification develops due to solar heating and a system of more distinct currents develops. Over most of the region, tidal currents are generally stronger than or comparable to seasonal mean flow patterns, as are weather-band current variations driven by the wind (Codiga and Ullman, 2010). Regional surface winds in winter average about 4–12 m/s (9–27 mi/hr) east-southeastward and, due to storms, are highly variable with peak speeds up to about 25 m/s (56 mi/hr). Summer winds are much less variable and weaker, averaging 2.5–7.5 m/s (6–17 mi/hr), oriented east-northeastward (Codiga and Ullman, 2010). Fall and winter winds promote increased water column mixing, bringing nutrients into the water column for uptake by phytoplankton. Seasonal stratification leads to pronounced spring and early fall blooms of phytoplankton and subsequently increased biological productivity of upper trophic level species (Codiga and Ullman, 2010).

In general, the scale of impacts to oceanographic features from offshore wind development is difficult to predict and may vary from hundreds of meters for local individual turbine impacts (Schultze *et al.,* 2020) to large-scale dipoles of surface elevation changes stretching hundreds of kilometers when considering multiple wind farms (Christiansen *et al.,* 2022). We anticipate any impacts to plankton aggregation, and hence availability as marine mammal prey, from turbine presence and operation as a result of oceanographic changes from the RWF (*i.e.,* 79 turbines) would be limited (*e.g.,* Schultze *et al.,* 2020). Overall, the combined impacts of sound exposure, explosions, and oceanographic impacts on marine mammal habitat resulting from the proposed activities would not be expected to have measurable effects on populations of marine mammal prey species. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects.

Acoustic Habitat

Acoustic habitat is the soundscape, which encompasses all of the sound present in a particular location and time, as a whole when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of air gun arrays) or for Navy training and testing purposes (as in the use of sonar and explosives and other acoustic sources). Anthropogenic noise varies widely in its frequency, content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please also see the previous discussion on Masking), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2009; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

The term ''listening area'' refers to the region of ocean over which sources of sound can be detected by an animal at the center of the space. Loss of

communication space concerns the area over which a specific animal signal, used to communicate with conspecifics in biologically important contexts (*e.g.,* foraging, mating), can be heard, in noisier relative to quieter conditions (Clark *et al.,* 2009). Lost listening area concerns the more generalized contraction of the range over which animals would be able to detect a variety of signals of biological importance, including eavesdropping on predators and prey (Barber *et al.,* 2009). Such metrics do not, in and of themselves, document fitness consequences for the marine animals that live in chronically noisy environments. Long-term population-level consequences mediated through changes in the ultimate survival and reproductive success of individuals are difficult to study, and particularly so underwater. However, it is increasingly well documented that aquatic species rely on qualities of natural acoustic habitats, with researchers quantifying reduced detection of important ecological cues (*e.g.,* Francis and Barber, 2013; Slabbekoorn *et al.,* 2010) as well as survivorship consequences in several species (*e.g.,* Simpson *et al.,* 2014; Nedelec *et al.,* 2015).

Sound produced from construction activities in the Revolution Wind project area may be widely dispersed or concentrated in small areas for varying periods. Any anthropogenic noise attributed to construction activities in the project area would be temporary, and the affected area would be expected to immediately return to the original state when these activities cease.

Water Quality

Indirect effects of explosives and unexploded ordnance to marine mammals via sediment are possible in the immediate vicinity of the ordnance. Degradation products of Royal Demolition Explosive are not toxic to marine organisms at realistic exposure levels (Rosen and Lotufo, 2010). Relatively low solubility of most explosives and their degradation products means that concentrations of these contaminants in the marine environment are relatively low and readily diluted. Furthermore, while explosives and their degradation products were detectable in marine sediment approximately 6–12 in (0.15–0.3 m) away from degrading ordnance, the concentrations of these compounds were not statistically distinguishable from background beyond 3–6 ft (1–2 m) from the degrading ordnance (Rosen and Lotufo, 2010). Taken together, it is possible that marine mammals could be exposed to degrading explosives, but it would be within a very small radius of the explosive (1–6 ft (0.3–2 m)).

Equipment types used by Revolution Wind within the project area, including ships and other marine vessels, potentially aircrafts, and other equipment, are also potential sources of by-products. All equipment would be properly maintained in accordance with applicable legal requirements. All such operating equipment would meet Federal water quality standards, where applicable.

Offshore Wind Farm Operational Noise

Although this proposed rulemaking primarily covers the noise produced from construction activities relevant to the Revolution Wind offshore wind facility, operational noise was a consideration in NMFS' analysis of the project, as all 79 turbines would become operational within the effective dates of the rule, beginning no sooner than Q2 2024. It is expected that all turbines would be operational by Q4 2024. Once operational, offshore wind turbines are known to produce continuous, non-impulsive underwater noise, primarily below 8 kHz.

In both newer, quieter, direct-drive systems (such as what has been proposed for Revolution Wind) and older generation, geared turbine designs, recent scientific studies indicate that operational noise from turbines is on the order of 110 to 125 dB re 1 μPa root-mean-square sound pressure level (SPL_{rms}) at an approximate distance of 50 m (Tougaard *et al.,* 2020). Tougaard *et al.* (2020) further noted that sound levels could reach as high as 128 dB re 1 μPa SPL_{rms} in the 10 Hz to 8 kHz range. However, the Tougaard *et al.* (2020) study assumed that the largest monopile-specific WTG was 3.6 MW, which is much smaller than those being considered for the Revolution Wind project. Tougaard further stated that the operational noise produced by WTGs is static in nature and lower than noise produced by passing ships. This is a noise source in this region to which marine mammals are likely already habituated. Furthermore, operational noise levels are likely lower than those ambient levels already present in active shipping lanes, such that operational noise would likely only be detected in very close proximity to the WTG (Thomsen *et al.,* 2006; Tougaard *et al.,* 2020). In addition, Madsen *et al.* (2006) found the intensity of noise generated by operational wind turbines to be much less than the noise produced during construction, although this observation was based on a single turbine with a maximum power of 2 MW. Other studies by Jansen and de Jong (2016) and Tougaard *et al.* (2009) determined that, while marine mammals would be able to detect operational noise from offshore wind farms (again, based on older 2 MW models) for several thousand kilometers, they expected no significant impacts on individual survival, population viability, marine mammal distribution, or the behavior of the animals considered in their study (*i.e.,* harbor porpoises and harbor seals).

More recently, Stöber and Thomsen (2021) used monitoring data and modeling to estimate noise generated by more recently developed, larger (10 MW) direct-drive WTGs. Their findings, similar to Tougaard *et al.* (2020), demonstrated that modern turbine designs could generate higher operational noise levels (170 to 177 dB re 1 μPa SPL_{rms} for a 10 MW WTG) than those previously reported for older models. However, the results in the study by Stöber and Thomsen (2021), have not been validated and were based on a small sample size. NMFS is requiring Revolution Wind to monitor noise generated by turbine operation to better understand noise levels from the advanced design turbines used in the Revolution Wind project (see Proposed Monitoring and Reporting section).

Operational noise was assessed in the DEIS BOEM developed for the Revolution Wind Project, within which BOEM states that operational noise would primarily consist of low-frequency sounds (60 to 300 Hz) and relatively low SPLs. While it is possible that some lower-frequency sounds produced by marine mammal species (*e.g.,* North Atlantic right whale upcalls (Parks *et al.,* 2009)) may fall within similar frequency ranges as operational wind turbine noise, this assessment was based on the older generation of turbines rather than more recent drive shafts. NMFS acknowledges that more research on WTG operational noise should be conducted to fill the current data gaps, including source level characterization and any potential influences on marine mammals and their prey. Revolution Wind did not request take and, based on the relatively small number of turbines and limited duration turbines would be operating within the proposed rule timeframe, NMFS is preliminarily not proposing to authorize take of marine mammals incidental to operational noise from WTGs. Therefore, the topic is not discussed or analyzed further herein.

Reef Effects

The presence of the RWF monopile foundations, scour protection, and cable protection would result in a conversion

of the existing sandy bottom habitat to a hard bottom habitat with areas of vertical structural relief (Revolution Wind, 2022). This could potentially alter the existing habitat by creating an ''artificial reef effect'' that results in colonization by assemblages of both sessile and mobile animals within the new hard-bottom habitat (Wilhelmsson *et al.,* 2006; Reubens *et al.,* 2013; Bergström *et al.,* 2014; Coates *et al.,* 2014).

Artificial structures can create increased habitat heterogeneity important for species diversity and density (Langhamer, 2012). The WTG and OSS foundations would extend through the water column, which may serve to increase settlement of meroplankton or planktonic larvae on the structures in both the pelagic and benthic zones (Boehlert and Gill, 2010). Fish and invertebrate species are also likely to aggregate around the foundations and scour protection which could provide increased prey availability and structural habitat (Boehlert and Gill, 2010; Bonar *et al.,* 2015).

The WTG foundations would have an estimated footprint of approximately 70 acres and the OSS foundations would have an estimated footprint of up to 1.4 acres (COP Table 3.3.4–2) (Revolution-Wind, 2022), providing up to 72 acres of heterogeneous habitat throughout the 20–35-year operational life of this Project. Numerous studies have documented significantly higher fish concentrations, including species like cod and pouting (*Trisopterus luscus*), flounder (*Platichthys flesus*), eelpout (*Zoarces viviparus*), and eel (*Anguila anguilla*), near the foundations than in surrounding soft bottom habitat (Langhamer and Wilhelmsson, 2009; Bergström *et al.,* 2013; Reubens *et al.,* 2013). In the German Bight portion of the North Sea, fish were most densely congregated near the anchorages of jacket foundations, and the structures extending through the water column were thought to make it more likely that juvenile or larval fish encounter and settle on them (Rhode Island Coastal Resources Management Council (RI–CRMC), 2010; Krone *et al.,* 2013). In addition, fish can take advantage of the shelter provided by these structures while also being exposed to stronger currents created by the structures, which generate increased feeding opportunities and decreased potential for predation (Wilhelmsson *et al.,* 2006). The presence of the foundations and resulting fish aggregations around the foundations is expected to be a long-term habitat impact, but the increase in prey availability could potentially be beneficial for some marine mammals.

The most likely impact to marine mammal habitat from the project is expected to be from impact and vibratory pile driving and UXO/MEC detonations, which may affect marine mammal food sources such as forage fish and could also affect acoustic habitat (see the *Auditory Masking* section) effects on marine mammal prey (*e.g.,* fish).

The most likely impact to fish from impact and vibratory pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be relatively minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected. The most likely impacts of prey fish from UXO/MEC detonations, if determined to be necessary, are injury or mortality if they are located within the vicinity when detonation occurs. However, given the likely spread of any UXOs/MECs in the project area, the low chance of detonation (as lift-and-shift and deflagration are the primary removal approaches), and that this area is not a biologically important foraging ground, overall effects should be minimal to marine mammal species. NMFS does not expect HRG acoustic sources to impact fish as most sources operate at frequencies likely outside the hearing range of the primary prey species in the project area. As described previously, the placement and operation of wind turbines can also impact hydrographic patterns, though these impacts assessed through this rule are expected to be minimal given the relatively small number of turbines that would be operational and the short amount of time covered under the rule.

These potential impacts on prey could influence the distribution of marine mammals within the project area, potentially necessitating additional energy expenditure to find and capture prey but, given the temporal and spatial scales anticipated for this project, not to the extent that would impact the reproduction or survival of any individual marine mammal. Although studies assessing the impacts of offshore wind development on marine mammals are limited, the repopulation of wind energy areas by harbor porpoises (Brandt *et al.,* 2016; Lindeboom *et al.,* 2011) and harbor seals (Lindeboom *et al.,* 2011; Russell *et al.,* 2016) following the installation of wind turbines are promising.

Impacts to the immediate substrate during installation of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals.

Revolution Wind would be located within the migratory corridor BIA for North Atlantic right whales; however, the 68,450 acre (277 km^2) lease area occupies a fraction of the available habitat for North Atlantic right whales migrating through the region (66,591,935 acres; 269,488 km^2). In addition, although the project area overlaps with a fin whale feeding BIA (March through October), a significantly larger year-round fin whale feeding BIA is located in the southern Gulf of Maine, to the east and north of the project area.

Based on the information discussed herein, NMFS concludes that any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through the regulations, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Authorized takes would primarily be by Level B harassment, as noise from impact and vibratory pile driving, HRG surveys, and UXO/MEC detonation(s) could result in behavioral disturbance or TTS. Impacts such as masking and TTS can contribute to behavior disturbances. There is also some potential for auditory injury (Level A harassment) of humpback whales, harbor porpoises, and gray and harbor seals (related to each species' hearing sensitivity) to result from impact pile driving and UXO/MEC detonations. For this action, this potential is limited to mysticetes, high-frequency cetaceans, and phocids due to their hearing sensitivities and the nature of the activities. As described below, the larger distances to the PTS thresholds, when considering marine mammal weighting functions, demonstrate this potential. For mid-frequency hearing sensitivities, when thresholds and weighting and the associated PTS zone sizes are considered, the potential for PTS from the noise produced by the project is

negligible. The proposed mitigation and monitoring measures are expected to minimize the amount and severity of such taking to the extent practicable (see Proposed Mitigation).

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. While, in general, mortality and serious injury of marine mammals could occur from UXO/MEC detonation if an animal is close enough to the source, the mitigation and monitoring measures included in the proposed rule would avoid this manner of take.

Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities.

In this case, as described below, there are multiple lines of data with which to address density or occurrence and, for each species and activity, the largest value resulting from the three take estimation methods described below (*i.e.,* density-based, PSO data-based, or mean group size) was carried forward as the amount of requested take, by Level B harassment. The amount of requested take, by Level A harassment, is based solely on density-based exposure estimates.

Below, we describe the acoustic thresholds NMFS uses, discuss the marine mammal density and occurrence information used, and then describe the modeling and methodologies applied to estimate take for each of Revolution Wind's proposed construction activities. NMFS has carefully considered all information and analysis presented by the applicant as well as all other applicable information and, based on the best available science, concurs that the applicant's estimates of the types and amounts of take for each species and stock are complete and accurate.

Marine Mammal Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed to identify the pressure levels above which animals may incur different types of tissue damage (non-auditory injury or mortality) from exposure to pressure waves from explosive detonation. A summary of all NMFS' thresholds can be found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Level B harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source, ambient noise, and the receiving animals (hearing, motivation, experience, demography, behavior at time of exposure, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above the received root-mean-square sound pressure levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above the received RMS SPL 160 dB re: 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources (Table 7). Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

TABLE 7—UNDERWATER LEVEL B HARASSMENT ACOUSTIC THRESHOLDS

[NMFS, 2005]

Source type	Level B harassment threshold (RMS SPL)
Continuous	120 dB re 1 μPa.
Non-explosive impulsive or intermittent	160 dB re 1 μPa.

Revolution Wind's construction activities include the use of continuous (*e.g.,* vibratory pile driving) and intermittent (*e.g.,* impact pile driving, HRG acoustic sources) sources, and, therefore, the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). 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). Revolution Wind's proposed activities include the use of both impulsive and non-impulsive sources.

These thresholds are provided in Table 8 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 8—ONSET OF PERMANENT THRESHOLD SHIFT (PTS)

[NMFS 2018]

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-}pk,flat}$: 219 dB; $L_{E,p,\ LF,24h}$: 183 dB	*Cell 2:* $L_{E,p,\ LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-}pk,flat}$: 230 dB; $L_{E,p,\ MF,24h}$: 185 dB	*Cell 4:* $L_{E,p,\ MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-}pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,\ HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-}pk.flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	*Cell 8:* $L_{E,p,PW,24h:}$ 201 dB.

* Dual metric 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 are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1Pa^{2}s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted 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 thresholds will be exceeded.

Explosive sources—Based on the best available science, NMFS uses the acoustic and pressure thresholds indicated in Tables 9 and 10 to predict the onset of behavioral harassment, TTS, PTS, tissue damage, and mortality.

TABLE 9—PTS ONSET, TTS ONSET, FOR UNDERWATER EXPLOSIVES

[NMFS, 2018]

Hearing group	PTS impulsive thresholds	TTS impulsive thresholds	Behavioral threshold (multiple detonations)
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB.	*Cell 2:* $L_{pk,flat}$: 213 dB; $L_{E,LF,24h}$: 168 dB.	*Cell 3:* $L_{E,LF,24h}$: 163 dB.
Mid-Frequency (MF) Cetaceans	*Cell 4:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB.	*Cell 5:* $L_{pk,flat}$: 224 dB; $L_{E,MF,24h}$: 170 dB.	*Cell 6:* $L_{E,MF,24h}$: 165 dB.
High-Frequency (HF) Cetaceans	*Cell 7:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB.	*Cell 8:* $L_{pk,flat}$: 196 dB; $L_{E,HF,24h}$: 140 dB.	*Cell 9:* $L_{E,HF,24h}$: 135 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 10:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB.	*Cell 11:* $L_{pk,flat}$: 212 dB; $L_{E,PW,24h}$: 170 dB.	*Cell 12:* $L_{E,PW,24h}$: 165 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS/TTS onset.

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, ANSI defines peak sound pressure 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 overall marine mammal 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 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.

Additional thresholds for non-auditory injury to lung and gastrointestinal (GI) tracts from the blast shock wave and/or onset of high peak pressures are also relevant (at relatively close ranges) as UXO/MEC detonations, in general, have potential to result in mortality and non-auditory injury (Table 10). Lung injury criteria have been developed by the U.S. Navy (DoN (U.S. Department of the Navy) 2017a) and are based on the mass of the animal and the depth at which it is present in the water column due to blast pressure. This means that specific decibel levels for each hearing group are not provided and instead the criteria are presented as equations that allow for incorporation of specific mass and depth values. The GI tract injury threshold is based on peak pressure. The modified Goertner equations below represent the potential onset of lung injury and GI tract injury (Table 10).

TABLE 10—LUNG AND G.I. TRACT INJURY THRESHOLDS

[DoN, 2017]

Hearing group	Mortality (severe lung injury) *	Slight lung injury *	G.I. tract injury
All Marine Mammals	*Cell 1:* Modified Goertner model; Equation 1.	*Cell 2:* Modified Goertner model; Equation 2.	*Cell 3:* $L_{pk,flat}$: 237 dB.

* Lung injury (severe and slight) thresholds are dependent on animal mass (Recommendation: Table C.9 from DoN (2017) based on adult and/or calf/pup mass by species).

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, ANSI defines peak sound pressure 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 overall marine mammal generalized hearing range.

Modified Goertner Equations for severe and slight lung injury (pascal-second):

Equation 1: $103M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s.

Equation 2: $47.5M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s.

M animal (adult and/or calf/pup) mass (kg) (Table C.9 in DoN, 2017).

D animal depth (meters).

Below, we discuss the acoustic modeling, marine mammal density information, exposure estimate, and requested take methodologies for each of Revolution Wind's proposed construction activities. NMFS has carefully considered all information and analysis presented by the applicant as well as all other applicable information and, based on the best available science, concurs that the applicant's estimates of the types and amounts of take for each species and stock are complete and accurate.

Marine Mammal Density and Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. As noted above, depending on the species and activity type and as described in the take estimation section for each activity type, take estimates may be based on the Roberts *et al.* (2022) density estimates, marine mammal monitoring results from HRG surveys, or average group sizes.

Regarding habitat-based marine mammal density models for the project area, newer density models became available after Revolution Wind submitted their application (deemed Adequate & Complete on February 28, 2022) and Revolution Wind subsequently provided revised take estimates based on the updated density models, where appropriate. Specifically, in both the original application and the revised take estimates, the densities of marine mammals (individuals per unit area) expected to occur in the activity areas were calculated from habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team (*https://seamap.env.duke.edu/models/Duke/EC/*), which represent the best available science regarding marine mammal occurrence in the project area. Within the original version of the application (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/apply-incidental-take-authorization*), different densities were used for the WTG and OSS foundation installation (Roberts *et al.,* 2016, 2017, 2018, 2020); the export cable landfall (Roberts *et al.,* 2016, 2017, 2018, 2021); the UXO/MEC detonations (Roberts *et al.,* 2016, 2017, 2018, 2021); and the site characterization surveys (Roberts *et al.,* 2016, 2017, 2018, 2021), during both the construction and operation phases.

On June 20, 2022, the Duke Marine Geospatial Ecology Laboratory released a new, and more comprehensive, set of marine mammal density models for the area along the East Coast of the United States (Roberts *et al.,* 2016; Roberts and Halpin, 2022). The differences between the new density data and the older data necessitated the use of updated marine mammal densities and, subsequently, revised marine mammal exposure and take estimates. Revolution Wind was able to use the same density dataset for all of its activities (Roberts *et al.,* 2016; Roberts and Halpin, 2022). Revolution Wind also incorporated updates to how the density data were selected from the model output for each activity, based on discussions with NMFS. For all activities, the width of the perimeter around the activity area used to select density data is now based on the largest exposure range (typically the Level B range) applicable to that activity and then rounded up to the nearest 5-km increment, (which reflects the spatial resolution of the Roberts and Halpin (2022) density models). For example, if the largest exposure range was 7.1 km, a 10-km perimeter around the activity area was created and used to select densities for all species from the Roberts and Halpin (2022) model output. All of this information was provided by Revolution Wind to NMFS as a memo (referred to as the Updated Density and Take Estimation Memo) on August 19, 2022, after continued discussion between Revolution Wind and NMFS, and NMFS has considered it in this analysis. The Updated Density and Take Estimation Memo was made public on NMFS' website on August 26, 2022 (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy*).

In adopting the information presented in the Updated Density and Take Estimation Memo, NMFS has ensured that the tables and figures reflect the latest marine mammal habitat-based density models released by Roberts and Halpin on June 20, 2022.

Immediately below, we describe observational data from monitoring reports and average group size information, both of which are appropriate to inform take estimates for certain activities or species in lieu of density estimates. As noted above, the density and occurrence information type resulting in the highest take estimate was used, and the explanation and results for each activity type are described in the specific activity subsections in the Modeling and Take Estimation section.

For some species, observational data from PSOs aboard HRG and geotechnical (GT) survey vessels indicate that the density-based exposure estimates may be insufficient to account for the number of individuals of a species that may be encountered during the planned activities. PSO data from HRG and GT surveys conducted in the area surrounding the Revolution Wind lease area and RWEC route from October 2018 through February 2021 (AIS-Inc., 2019; Bennett, 2021; Stevens *et al.,* 2021; Stevens and Mills, 2021) were analyzed to determine the average number of individuals of each species observed per vessel day. For each species, the total number of individuals observed (including the ''proportion of unidentified individuals'') was divided by the number of vessel days during which observations were conducted in 2018–2021 HRG surveys (470 vessel days) to calculate the number of individuals observed per vessel day, as shown in the final columns of Tables 7a and 7b in the Updated Density and Take Estimation Memo.

For other less-common species, the predicted densities from Roberts and Halpin (2022) are very low and the resulting density-based exposure estimate is less than a single animal or a typical group size for the species. In such cases, the mean group size was considered as an alternative to the density-based or PSO data-based take estimates to account for potential impacts on a group during an activity. Mean group sizes for each species were calculated from recent aerial and/or vessel-based surveys as shown in Table 11.

TABLE 11—MEAN GROUP SIZES OF SPECIES FOR WHICH INCIDENTAL TAKE IS BEING REQUESTED

Species	Individuals	Sightings	Mean group size	Source
Mysticetes:				
Blue Whale *	3	3	1.0	Palka *et al.* (2017).
Fin Whale *	155	86	1.8	Kraus *et al.* (2016).
Humpback Whale	160	82	2.0	Kraus *et al.* (2016).
Minke Whale	103	83	1.2	Kraus *et al.* (2016).
North Atlantic Right Whale *	145	60	2.4	Kraus *et al.* (2016).
Sei Whale *	41	25	1.6	Kraus *et al.* (2016).
Odontocetes:				
Atlantic Spotted Dolphin	1,334	46	29.0	Palka *et al.* (2017).
Atlantic White-Sided Dolphin	223	8	27.9	Kraus *et al.* (2016).
Bottlenose Dolphin	259	33	7.8	Kraus *et al.* (2016).
Common Dolphin	2,896	83	34.9	Kraus *et al.* (2016).
Harbor Porpoise	121	45	2.7	Kraus *et al.* (2016).
Pilot Whales	117	14	8.4	Kraus *et al.* (2016).
Risso's Dolphin	1,215	224	5.4	Palka *et al.* (2017).
Sperm Whale*	208	138	1.5	Palka *et al.* (2017).
Pinnipeds:				
Seals (Harbor and Gray)	201	144	1.4	Palka *et al.* (2017).

* Denotes species listed under the Endangered Species Act.

The estimated exposure and take tables for each activity present the density-based exposure estimates, PSO-date derived take estimate, and mean group size for each species. The amount of Level B harassment take requested is based on the largest of these three values, which is considered the maximum amount of take by Level B harassment that is reasonably likely to occur. As mentioned previously, the amount of take by Level A harassment requested is based strictly on density-based exposure modeling results.

Modeling and Take Estimation

Revolution Wind estimated potential density-based exposures in two separate ways, depending on the activity. For WTG and OSS monopile foundation installation, sophisticated sound and animal movement modeling was conducted to more accurately account for the movement and behavior of marine mammals and their exposure to the underwater sound fields produced during impact pile driving, as described below. For landfall construction activities, HRG surveys, and in-situ UXO/MEC disposal (*i.e.,* detonation), takes are estimated by multiplying the expected densities of marine mammals in the activity area(s) by the area of water likely to be ensonified above harassment threshold levels in a single day (24-hour period). The result is then multiplied by the number of days on which the activity is expected to occur, resulting in a density-based exposure estimate for each activity. Again, in some cases, these results directly inform the take estimates while, in other cases, adjustments are made based on monitoring results or average group size.

Below, we describe, in detail, the approach used to estimate take, in consideration of the acoustic thresholds and appropriate marine mammal density and occurrence information described above for each of the four different activities (WTG/OSS foundation installation, UXO/MEC detonation, landfall construction activities, and HRG surveys). The activity-specific exposure estimates (as relevant to the analysis) and activity-specific take estimates are also presented, alongside the combined totals annually, across the entire 5-year proposed project, and as the maximum take of marine mammals that could occur within any one year.

WTG and OSS Monopile Foundation Installation

Here, for WTG and OSS monopile foundation installation, we describe the models used to predict sound propagation and animal movement and the inputs to those models, the density and/or occurrence information used to support the take estimates for this activity type, and the resulting acoustic and exposure ranges, exposures, and takes proposed for authorization.

As indicated previously, Revolution Wind initially proposed to install up to 100 WTGs and 2 OSSs in the RWF (*i.e.,* a maximum of 102 foundations) but has recently informed NMFS that, due to installation feasibility issues, they would be removing 21 turbine locations from their project, reducing the total number of turbines from 100 to 79. Therefore, in this section, we present the acoustic and exposure for Revolution Wind's proposal of up to 79 WTF foundations and 2 OSS foundations.

The full installation parameters for each size monopile are described below. The two impact pile driving installation acoustic modeling scenarios are:

(1) 7/12-m diameter WTG monopile foundation: A total of 10,740 hammer strikes per pile modeled over 220 minutes (3.7 hours); and,

(2) 7/15-m diameter OSS foundation: A total of 11,564 hammer strikes per pile modeled over 380 minutes (6.3 hours).

Representative hammering schedules (Table 12), including increasing hammer energy with increasing penetration depth, were modeled because maximum sound levels usually occur during the last stage of impact pile driving, where the greatest resistance is typically encountered (Betke, 2008). The hammering schedule includes a soft start, or a period of hammering at a reduced hammer energy (relative to full operating capacity). Sediment types with greater resistance (*e.g.,* gravel versus sand) require hammers that deliver higher energy strikes and/or an increased number of strikes relative to installations in softer sediment. The project area includes a predominantly sandy bottom habitat, which is considered a softer sediment, based on HRG survey data collected in the lease area (see Appendices X1 and X2 of Revolution Wind's 2022 Construction and Operations Plan; Revolution Wind, 2022).

TABLE 12—HAMMER ENERGY SCHEDULES FOR MONOPILE INSTALLATION [1]

Monopile foundations (7/12-m diameter)			OSS foundations (7/1-m diameter)		
Hammer: IHC S–4000			Hammer: IHC S–4000		
Energy level (kilojoule, kJ)	Strike count	Pile penetration depth (m)	Energy level (kilojoule, kJ)	Strike count	Pile penetration depth
1,000	1,705	0–6	1,000	954	0–5
2,000	3,590	6–24	2,000	2,944	5–17
3,000	2,384	24–36	3,000	4,899	17–36
4,000	3,061	36–50	4,000	2,766	36–50
Total	10,740	50		11,563	50

[1] Modeled strike rate (min^{-1}) for both schedules = 50.

Revolution Wind would install monopiles vertically to a penetration depth of 50 m; therefore, the model includes this assumption. While pile penetration depth among the foundation positions might vary slightly, this value was chosen as a reasonable penetration depth for the purposes of acoustic modeling based on Revolution Wind's engineering designs. All modeling was performed assuming that only one pile is driven at a time (as Revolution Wind would not conduct concurrent monopile installations), up to three WTG foundations would be installed per day, and no more than one OSS foundation would be installed per day.

Additional modeling assumptions based on Revolution Wind's engineering designs for monopile installation were as follows:

- Both WTG and OSS
  - Impact pile driver: IHC S–4000 (4000 kilojoules (kJ) rated energy; 1977 kilonewtons (kN) ram weight)
  - Helmet weight: 3234 kN
- WTG only
  - Tapered 7/12-m steel cylindrical piling with 16-cm thick wall
  - Pile length: 110 m
- OSS only
  - Tapered 7/15-m cylindrical piling with 20-cm thick wall
  - Pile length: 120 m

Sound fields produced during monopile installation were estimated by first computing the force at the top of each pile associated with typical hammers using the GRLWEAP 2010 wave equation model (GRLWEAP, Pile Dynamics 2010), which produced forcing functions. The resulting forcing functions were used as inputs to JASCO Applied Sciences' (JASCO) Pile Driving Source Model (PDSM) to compute the monopile vibrations (*i.e.,* sounds) caused by hammer impact. To accurately calculate propagation metrics of an impulsive sound, a time-domain representation of the pressure wave in the water was used. To model the sound waves associated with the monopile vibration in an acoustic propagation model, the monopiles are represented as vertical arrays of discrete point sources. These discrete sources are distributed throughout the length of the monopile below the sea surface and into the sediment with vertical separation of 3 m. The length of the acoustic source is adjusted for the site-specific water depth and penetration at each energy level, and the section length of the monopile within the sediment is based on the monopile hammering schedule (Table 12). Pressure signatures for the point sources are computed from the particle velocity at the monopile wall up to a maximum frequency of 2,048 Hz. This frequency range is suitable because most of the sound energy generated by impact hammering of the monopiles is below 1 kHz. The results of this source level modeling were then incorporated into acoustic propagation models. The modeled source spectra are provided in Figures 10–14 of Appendix A of Revolution Wind's application (Kusel *et al.,* 2021).

Underwater sound propagation (*i.e.,* transmission loss) at frequencies of 10 Hz to 2 kHz was predicted with JASCO's Marine Operations Noise Model (MONM) and full-wave Range-dependent Acoustic Model (RAM) parabolic equation (PE) model (FWRAM). MONM computes acoustic propagation via a wide-angle PE solution to the acoustic wave equation (Collins, 1993) based on a version of the U.S. Naval Research Laboratory's RAM, which has been modified to account for a solid seabed (Zhang and Tindle, 1995; Kusel *et al.,* 2021). The PE method has been extensively benchmarked and is widely employed in the underwater acoustics community (Collins *et al.,* 1996) and has been validated against experimental data in several underwater acoustic measurement programs by JASCO. MONM incorporates the following site-specific environmental properties: a bathymetric grid of the modeled area, underwater sound speed as a function of depth, and seabed type (a geoacoustic profile based on the overall stratified composition of the seafloor).

For impulsive sounds from impact pile driving, time-domain representations of the sounds generated in the water are required for calculating SPL and peak pressure level. Synthetic pressure waveforms were computed using FWRAM, which is a time-domain acoustic model based on the same wide-angle PE algorithm as MONM. Unlike MONM, FWRAM computes pressure waveforms via Fourier synthesis of the modeled acoustic transfer function in closely spaced frequency bands (Kusel *et al.,* 2021). FWRAM computes these synthetic pressure waveforms versus range and depth for range-varying marine acoustic environments, utilizing the same environmental inputs as MONM (bathymetry, water sound speed profile, and seabed geoacoustic profile). Because the monopile is represented as a linear array and FWRAM employs the array starter method to accurately model sound propagation from a spatially distributed source (MacGillivray and Chapman, 2012), using FWRAM ensures accurate characterization of vertical directivity effects in the near-field zone.

At frequencies less than 2 kHz, MONM computes acoustic propagation via a wide-angle PE solution to the acoustic wave equation based on a version of the U.S. Naval Research Laboratory's RAM modified to account for an elastic seabed. MONM–RAM incorporates bathymetry, underwater sound speed as a function of depth, and a geo-acoustic 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 modeling component incorporates bathymetry and underwater sound speed as a function of depth with a simplified representation of the sea bottom, as sub-bottom 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).

Two WTG and three OSS locations within the RWF were selected for acoustic modeling to provide representative propagation conditions and sound fields (see Figure 2 in Kusel *et al.,* 2021). The two WTG locations were selected to represent the relatively shallow (36.8 m) northwest section of the RWF to the somewhat deeper (41.3 m) southeast section. The three potential OSS locations (of which only two would be used to install the two OSS foundations) selected occupy similar water depths (33.7, 34.2, and 34.4 m). The acoustic propagation fields applied to exposure modeling (described below) were those conservatively based on the WTG (1 of 2) and OSS (1 of 3) locations resulting in the largest fields. In addition to bathymetric and seabed geoacoustic data specific to the specific locations within the RWF, acoustic propagation modeling was conducted separately for ''summer'' (April through November) and ''winter'' (December through March) using representative sound velocity profiles for those timeframes (based on in situ measurements of temperature, salinity, and pressure within the water column) to account for variations in the acoustic propagation conditions between summer and winter.

The estimated pile driving schedules (Table 12) were used to calculate the SEL sound fields at different points in time during both WTG and OSS monopile foundation installation. Models are more efficient at estimating SEL than SPL_{rms}. Therefore, conversions may sometimes be necessary to derive the corresponding SPL_{rms}. Acoustic propagation was modeled for a subset of sites using the 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 was used to develop azimuth-, range-, and depth-dependent conversion factors (Kusel *et al.,* 2021). These conversion factors were used to calculate the broadband SPL_{rms} from the broadband SEL prediction.

Revolution Wind modeled both acoustic ranges and exposure ranges. Acoustic ranges represent the distance to a harassment threshold based on sound propagation through the environment (*i.e.,* independent of any receiver) while exposure range represents the distance at which an animal can accumulate enough energy to exceed a Level A harassment threshold in consideration of how it moves through the environment (*i.e.,* using movement modeling). In both cases, the sound level estimates are calculated from three-dimensional sound fields and then, at each horizontal sampling range, the maximum received level that occurs within the water column is used as the received level at that range. These maximum-over-depth (R_{max}) values are then compared to predetermined threshold levels to determine exposure and acoustic ranges to Level A harassment and Level B harassment isopleths. However, the ranges to a threshold typically differ among radii from a source, and also might not be continuous along a radii because sound levels may drop below threshold at some ranges and then exceed threshold at farther ranges. To minimize the influence of these inconsistencies, 5 percent of the farthest such footprints were excluded from the model data. The resulting range, $R_{95\%}$, was chosen to identify the area over which marine mammals may be exposed above a given threshold, because, regardless of the shape of the maximum-over-depth footprint, the predicted range encompasses at least 95 percent of the horizontal area that would be exposed to sound at or above the specified threshold. The difference between R_{max} and $R_{95\%}$ depends on the source directivity and the heterogeneity of the acoustic environment. $R_{95\%}$ excludes ends of protruding areas or small isolated acoustic foci not representative of the nominal ensonified zone. For purposes of calculating take by Level A harassment and Level B harassment, Revolution Wind applied $R_{95\%}$ exposure ranges (described below), not acoustic ranges, to estimate take and determine mitigation distances for the reasons described below.

In order to best apply the (SEL_{cum}) harassment thresholds for PTS, it is necessary to consider animal movement, as the results are based on how sound moves through the environment between the source and the receiver. Applying animal movement and behavior within the modeled noise fields provides the exposure range, which allows for a more realistic indication of the distances at which PTS acoustic thresholds are reached that considers the accumulation of sound over different durations (note that in all cases the distance to the peak threshold is less than the SEL-based threshold).

As described in Section 2.6 of Appendix A of Revolution Wind's ITA application, for modeled animals that have received enough acoustic energy to exceed a given Level A harassment threshold, the exposure range for each animal is defined as the closest point of approach (CPA) to the source made by that animal while it moved throughout the modeled sound field, accumulating received acoustic energy. The resulting exposure range for each species is the 95th percentile of the CPA distances for all animals that exceeded threshold levels for that species (termed the 95 percent exposure range ($ER_{95\%}$)). The $ER_{95\%}$ ranges are species-specific rather than categorized only by functional hearing group, which allows for the incorporation of more species-specific biological parameters (*e.g.,* dive durations, swim speeds, *etc.*) for assessing the impact ranges in the model. Furthermore, because these $ER_{95\%}$ ranges are species-specific, they can be used to develop mitigation monitoring or shutdown zones.

Sound exposure modeling, like JASCO's Animal Simulation Model Including Noise Exposure (JASMINE), involves the use of a three-dimensional computer simulation in which simulated animals (animats) move through the modeled marine environment over time in ways that are defined by the known or assumed movement patterns for each species derived from visual observation, animal borne tag, or other similar studies. 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 animats (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 sound field produced by the activity, in this case impact pile driving, is then added to the modeling environment at the location and for the duration of time anticipated for one or more pile installations. At each time step in the simulation, each animat records the received sound levels at its location resulting in a sound exposure history for each animat. These exposure histories are then analyzed to determine whether and how many animats (*i.e.,* simulated animals) were exposed above harassment threshold levels. Finally, the density of animats used in the modeling environment, which is usually much higher than the actual density of marine mammals in the activity area so that the results are more statistically robust, is compared to the actual density of marine mammals anticipated to be in the project area.

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 densities for an animal results in the mean number of animats expected to be exposed over the duration of the project. Due to the probabilistic nature of the process, fractions of animats may be predicted to exceed threshold. If, for example, 0.1 animats are predicted to exceed threshold in the model, that is interpreted as a 10-percent chance that one animat 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 animat exceeding the threshold. Similarly, a mean number prediction of 33.11 animats can be interpreted as re-running the simulation where the number of animats exceeding the threshold may differ in each simulation but the mean number of animats over all of the simulations is 33.11. A portion of an individual marine mammal cannot be taken during a project, so it is common practice to round mean number animat 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. A more detailed description of this method is available in Appendix A of Revolution Wind's application.

For Revolution Wind's proposed project, JASMINE animal movement model was used to predict both the $ER_{95\%}$ ranges and the probability of marine mammal exposure to impact pile driving sound generated by monopile installation. Sound fields generated by the acoustic propagation modeling described above 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 16 marine mammal species expected to occur in the project area. 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. The parameters used in JASMINE describe animat movement in both the vertical and horizontal planes (*e.g.,* direction, travel rate, ascent and descent rates, depth, bottom following, reversals, inter-dive surface interval). More information regarding modeling parameters can be found Appendix A of the ITA application.

The mean numbers of animats that may be exposed to noise exceeding acoustic thresholds were calculated based on installation of 1, 2, or 3 WTG foundations and, separately, 1 or 2 OSS foundations in 24 hours. Animats were modeled to move throughout the three-dimensional sound fields produced by each construction schedule for the entire construction period. For PTS exposures, both SPL_{peak} and SPL_{cum} were calculated for each species based on the corresponding acoustic criteria. Once an animat is taken within a 24-hour period, the model does not allow it to be taken a second time in that same period but rather resets the 24-hour period on a sliding scale across 7 days of exposure. For Level A harassment, an individual animat's exposure levels are summed over that 24-hour period to determine its total received energy, and then compared to the appropriate PTS threshold. Takes by behavioral disturbance are predicted when an animat is modeled to come within the area ensonified by sound levels exceeding the corresponding Level B harassment thresholds. Please note that animal aversion was not incorporated into the JASMINE model runs that were the basis for the take estimate for any species. See Appendix A of the ITA application for more details on the JASMINE modeling methodology.

Revolution Wind would employ a noise abatement system during all impact pile driving of monopiles. Noise abatement systems, such as bubble curtains, are sometimes used to decrease the sound levels radiated from a source. In modeling the sound fields produced by Revolution Wind's proposed activities, hypothetical broadband attenuation levels of 0 dB, 6 dB, 10 dB, 12 dB, 15 dB, and 20 dB for were modeled to gauge effects on the ranges to thresholds given these levels of attenuation. Although six attenuation levels were evaluated, Revolution Wind anticipates that the noise abatement system ultimately chosen will be capable of reliably reducing source levels by 10 dB; therefore, modeling results assuming 10-dB attenuation are carried forward in this analysis. Recently reported in situ measurements during installation of large monopiles (approximately 8 m) for more than 150 WTGs in comparable water depths (greater than 25 m) and conditions in Europe indicate that attenuation levels of 10 dB are readily achieved (Bellmann, 2019; Bellmann *et al.,* 2020) using single big bubble curtains (BBCs) as a noise abatement system. Designed to gather additional data regarding the efficacy of BBCs, the Coastal Virginia Offshore Wind (CVOW) pilot project systematically measured noise levels resulting from the impact driven installation of two 7.8 m monopiles, one with a noise abatement system (double bubble curtain (dBBC)) and one without (CVOW, unpublished data). Although many factors contributed to variability in received levels throughout the installation of the piles (*e.g.,* hammer energy, technical challenges during operation of the dBBC), reduction in broadband SEL using the dBBC (comparing measurements derived from the mitigated and the unmitigated monopiles) ranged from approximately 9 to 15 dB. The effectiveness of the dBBC as a noise abatement measure was found to be frequency dependent, reaching a maximum around 1 kHz; this finding is consistent with other studies (*e.g.,* Bellman, 2014; Bellman *et al.,* 2020). The noise measurements were incorporated into a dampened cylindrical transmission loss model to estimate distances to Level A harassment and Level B harassment isopleths. The estimated distances for the monopile with the dBBC were more than 90 percent (Level A) and 74 percent (Level B) smaller than those

estimated for the unmitigated pile (CVOW). Modeling results assuming different amounts of attenuation can be found in Appendix A of Revolution Wind's ITA application. Additional information related to Revolution Wind's proposed use of noise abatement systems is provided in the Proposed Mitigation, and Proposed Monitoring and Reporting sections.

As described more generally above, updated Roberts *et al.* (2022) habitat-based marine mammal density models provided the densities used to inform and scale the marine mammal exposure estimates produced by the JASMINE model. For monopile installation, specifically, mean monthly densities for all species were calculated by first selecting density data from 5 x 5 km (3.1 x 3.1 mile) grid cells (Roberts *et al.,* 2016; Roberts and Halpin, 2022) both within the lease area and out to 10 km (6.2 mi) from the perimeter of the lease area. This is a reduction from the 50 km (31 mi) perimeter used in the ITR application. The relatively large area selected for density estimation encompasses and extends approximately to the largest estimated exposure acoustic range ($ER_{95\%}$) to the isopleth corresponding to Level B harassment, assuming no noise attenuation) (see Tables 19 and 20 of the ITA application) for all hearing groups using the unweighted threshold of 160 dB re 1 μPa (rms). Please see Figure 6 in Revolution Wind's Updated Density and Take Estimation Memo for an example of a density map showing Roberts and Halpin (2022) density grid cells overlaid on a map of the RWF.

Although there is some uncertainty in the monopile foundation installation schedule, Revolution Wind anticipates that it would occur over approximately one month provided good weather conditions and no unexpected delays. The exposure calculations were thus conducted using marine mammal densities from the month with the highest average density estimate for each species, based on the assumption that all 79 WTG and two OSS foundations would be installed in the highest density month (78 WTG monopile (3 per day for 26 days), 1 WTG monopile (1 per day for 1 day) and 2 OSS monopile foundations (1 per day for 2 days)). Due to differences in the seasonal migration and occurrence patterns, the month selected differs for each species. The estimated monthly density of seals provided in Roberts and Halpin (2022) includes all seal species present in the region as a single guild. To split the resulting ''seal'' density-based exposure estimate by species (harbor and gray seals), the estimate was multiplied by the proportion of the combined abundance attributable to each species. Specifically, the SAR N_{best} abundance estimates (Hayes *et al.,* 2021) for the two species (gray seal = 27,300, harbor seal = 61,336; total = 88,636) were summed and divided the total by the estimate for each species to get the proportion of the total for each species (gray seal = 0.308; harbor seal = 0.692). The total estimated exposures value based on the pooled seal density provided by Roberts and Halpin (2022) was then multiplied by these proportions to get the species-specific exposure estimates. Monthly densities were unavailable for pilot whales, so the annual mean density was used instead. The blue whale density was considered too low to be carried into exposure estimation so the amount of blue whale take Revolution Wind requested (see Estimated Take) is instead based on group size. Table 13 shows the maximum average monthly densities by species that were incorporated in exposure modeling to obtain conservative exposure estimates.

TABLE 13—MAXIMUM AVERAGE MONTHLY MARINE MAMMAL DENSITIES (ANIMALS PER Km²) WITHIN AND AROUND THE LEASE AREA OUT TO 10 Km (6.2 Mi)

Marine mammal species	Monopile foundations
	Highest density
Blue whale [1] [2].	
Fin whale [1]	0.0029 (July).
Humpback whale	0.0021 (May).
Minke whale	0.0174 (May).
North Atlantic right whale [1].	0.0026 (December).
Sei whale [1]	0.0013 (May).
Atlantic spotted dolphin.	0.0005 (October).
Atlantic white-sided dolphin.	0.0174 (May).
Bottlenose dolphin	0.0091 (August).
Common dolphin	0.0743 (December)
Harbor porpoise	0.0515 (December).
Pilot whales [3]	0.0007 (annual).
Risso's dolphin	0.0017 (December).
Sperm whale [1]	0.0004 (August).
Seals (Harbor and Gray).	0.2225 (May).

[1] Listed as Endangered under the Endangered Species Act.

[2] Exposure modeling for the blue whale was not conducted because impacts to those species approach zero due to their low predicted densities in the Project; therefore, were excluded from all quantitative analyses and tables based on modeling results.

[3] Roberts and Halpin (2022) does not distinguish between short- and long-finned pilot whales, thus the pooled density provided represents both species.

For the exposure analysis, it was assumed that a maximum of three WTG monopile foundations may be driven in 24 hours, presuming installations are permitted to continue in darkness. It is unlikely that this installation rate would be consistently possible throughout the RWF construction phase, but this scenario was considered to have the greatest potential impact on marine mammals and was, therefore, carried forward into take estimation. Exposure ranges ($ER_{95\%}$) to the Level A SEL_{cum} thresholds and Level B SPL_{rms} threshold resulting from animal exposure modeling for installation of one (for comparative purposes) or three (assumed for exposure modeling) WTG foundations and one OSS foundation per day (assumed for exposure modeling), assuming 10-dB of attenuation, for the summer (when Revolution Wind intends to install the majority of monopile foundations) and winter are shown in Tables 14 and 15. Any activities conducted in the winter (December) would utilize monitoring and mitigation measures based on the exposure ranges ($ER_{95\%}$) calculated using winter sound speed profiles. Revolution Wind does not plan to install two OSS foundations in a single day, therefore, modeling results are provided for installation of a single OSS foundation per day. Exposure ranges were also modeled assuming installation of two WTG foundations per day (not shown here); see Appendix A of Revolution Wind's ITA application for those results. Meaningful differences (greater than 500 m) between species within the same hearing group occurred for low-frequency cetaceans, so exposure ranges are shown separately for those species (Tables 14 and 15). For mid-frequency cetaceans and pinnipeds, the largest value among the species in the hearing group was selected to be included in Tables 14 and 15.

TABLE 14—EXPOSURE RANGES[1] ($ER_{95\%}$) TO LEVEL A (SEL_{cum}) THRESHOLDS FOR INSTALLATION OF ONE AND THREE 7/12-m WTG MONOPILES (10,740 STRIKES) OR ONE 7/15-m OSS MONOPILE (11,564 STRIKES) DURING SUMMER AND WINTER ASSUMING 10-dB ATTENUATION

Hearing group	SEL_{cum} threshold (dB re 1 μPa²·s)	Range (km)					
		WTG monopile 1 pile/day		WTG monopile 3 piles/day		OSS monopile 1 pile/day	
		Summer	Winter	Summer	Winter	Summer	Winter
Low-frequency	183	.....	.....	.....	.....	.....	.....
Fin Whale*	.....	2.15	3.53	2.23	4.38	1.57	2.68
Humpback Whale	.....	2.46	4.88	2.66	6.29	1.79	3.56
Minke Whale	.....	1.32	3.03	1.51	3.45	0.94	1.81
North Atlantic Right Whale*	.....	1.85	3.42	1.93	3.97	1.25	2.66
Sei Whale*	.....	1.42	2.82	1.81	3.67	1.22	2.05
Mid-frequency	185	0	0.01	0.02	0.02	0	0
High-frequency	155	1.28	2.29	1.34	2.33	0.83	1.25
Phocid pinnipeds	185	0.6	0.73	0.44	0.81	0.37	0.37

* Denotes species listed under the Endangered Species Act.
[1] Exposure ranges are a result of animal movement modeling.

TABLE 15—EXPOSURE RANGES[1] ($ER_{95\%}$) TO THE LEVEL B (SPL_{rms}) ISOPLETH FOR INSTALLATION OF ONE AND THREE 7/12-m WTG MONOPILES OR ONE 7/15-m OSS MONOPILE DURING SUMMER AND WINTER ASSUMING 10-dB ATTENUATION

Hearing group	Range (km)					
	WTG monopile 1 pile/day		WTG monopile 3 piles/day		OSS monopile 1 pile/day	
	Summer	Winter	Summer	Winter	Summer	Winter
Fin Whale*	3.72	4.05	3.76	4.09	3.62	3.88
Humpback Whale	3.75	4.15	3.72	4.11	3.61	3.87
Minke Whale	3.71	4.07	3.63	4.07	3.56	3.84
North Atlantic Right Whale*	3.70	4.06	3.67	3.95	3.51	3.75
Sei Whale*	3.66	4.11	3.67	4.02	3.58	3.92
Mid-frequency	3.69	4.07	3.67	4.03	3.63	3.81
High-frequency	3.71	4.00	3.62	4.03	3.50	3.91
Phocid pinnipeds	3.79	4.21	3.80	4.23	3.75	4.02

* Listed as Endangered under the Endangered Species Act.
[1] Exposure ranges are a result of animal movement modeling.

As mentioned previously, acoustic ranges ($R_{95\%}$) were also modeled. These distances were not applied to exposure estimation, but were used to define the Level B harassment zones for all species (see Proposed Mitigation) for WTG and OSS foundation installation in summer and winter (in parentheses):

- *WTG monopile:* 3,833 m (4,271 m)
- *OSS monopile:* 4,100 m (4, 698 m)

Finally, the results of marine mammal exposure modeling, assuming 10-dB attenuation, for installation of 79 WTG and 2 OSS monopile foundations are shown in columns 2 and 3 of Table 16; these values assume that all 81 foundations (79 WTGs and 2 OSSs) would be installed in a single year, and form the basis for the amount of take incidental to construction of the RWF requested by Revolution Wind and proposed for authorization by NMFS. Columns 4 and 5 show what the take estimates would be if the PSO data or average group size, respectively, were used to inform the take by Level B harassment in lieu of the density and exposure modeling. The last column represents the take that NMFS is proposing for authorization, which is based on the highest of the three estimates shown in columns 3, 4, and 5. The Level A exposure estimates shown in Table 16 are based only on the Level A SEL_{cum} threshold and associated exposure ranges (Table 14), as the very short distances to isopleths based on the Level A SPL_{pk} thresholds (Table 14 in the ITA application) resulted in no meaningful likelihood of take from exposure to those sound levels. The Level B exposure estimates shown in Table 16 are based on the exposure ranges resulting from sound exposure modeling using the unweighted 160 dB SPL_{rms} criterion (Table 15).

TABLE 16—ESTIMATED TAKE, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, FOR 79 (7/12-m) WTG AND TWO (7/15-m) OSS MONOPILE FOUNDATION INSTALLATIONS ASSUMING 10-dB ATTENUATION

Species	Exposure modeling take estimates[1]		PSO data take estimate	Mean group size	Maximum annual level B take
	Level A (SPL_{cum})	Level B (SPL_{rms})			
Blue Whale*	N/A	N/A	.....	1.0	1
Fin Whale*	6.4	14.9	15.8	1.8	16

TABLE 16—ESTIMATED TAKE, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, FOR 79 (7/12-m) WTG AND TWO (7/15-m) OSS MONOPILE FOUNDATION INSTALLATIONS ASSUMING 10-dB ATTENUATION—Continued

Species	Exposure modeling take estimates [1]		PSO data take estimate	Mean group size	Maximum annual level B take
	Level A (SPL_{cum})	Level B (SPL_{rms})			
Humpback Whale	6.5	11.5	47.1	2.0	48
Minke Whale	60.9	191.2	5.8	1.2	192
North Atlantic Right Whale *	17.5	21.6	1.4	2.4	22
Sei Whale *	2.5	7.8	0.4	1.6	8
Atlantic Spotted Dolphin	0.0	0.0	.....	29.0	29
Atlantic White-Sided Dolphin	0.1	199.5	4.6	27.9	200
Bottlenose Dolphin	0.0	68.8	51.4	7.8	69
Common Dolphin	0.0	1,327.6	1,308.9	34.9	1,328
Harbor Porpoise	320.9	661.0	1.3	2.7	661
Pilot Whales	0.0	5.5	.....	8.4	9
Risso's Dolphin	0.0	15.5	3.6	5.4	16
Sperm Whale *	0.0	2.8	.....	1.5	3
Gray Seal	4.9	253.8	3.5	1.4	311
Harbor Seal	32.0	894.8	4.6	1.4	895

* Denotes species listed under the Endangered Species Act.
[1] Exposure estimates assume all piles will be installed in a single year.

Potential UXO/MEC Detonations

To assess the impacts from UXO/MEC detonations, JASCO conducted acoustic modeling based on previous underwater acoustic assessment work that was performed jointly between NMFS and the United States Navy. JASCO modeled the acoustic ranges generated by UXO/MEC detonations, including three sound pressure metrics (peak pressure level, sound exposure level, and acoustic impulse) to the thresholds presented previously in Tables 9 and 10. Charge weights of 2.3 kgs, 9.1 kgs, 45.5 kgs, 227 kgs, and 454 kgs, which is the largest charge the Navy considers for the purposes of its analyses (see the Description of the Specified Activities section), were modeled to determine the ranges to mortality, gastrointestinal injury, lung injury, PTS, and TTS thresholds. First, the source pressure function used for estimating peak pressure level and impulse metrics was calculated with an empirical model that approximates the rapid conversion of solid explosive to gaseous form in a small bubble under high pressure, followed by exponential pressure decay as that bubble expands (Hannay and Zykov, 2022). This initial empirical model is only valid close to the source (within tens of meters), so alternative formulas were used beyond those distances to a point where the sound pressure decay with range transitions to the spherical spreading model. The SEL and SPL thresholds for injury and behavioral disturbance occur at distances of many water depths in the relatively shallow waters of the project (Hannay and Zykov, 2022). As a result, the sound field becomes increasingly influenced by the contributions of sound energy reflected from the sea surface and sea bottom multiples times. To account for this, propagation modeling was carried out in decidecade frequency bands using JASCO's MONM, as described in the WTG and OSS Foundation Installation section above. This model applies a parabolic equation approach for frequencies below 4 kHz and a Gaussian beam ray trace model at higher frequencies (Hannay and Zykov, 2022). In the Revolution Wind project's location, sound speed profiles generally change little with depth, so these environments do not have strong seasonal dependence. The propagation modeling was performed using an average sound speed profile for summer, which is representative of the most likely time of year (May through November) UXO/MEC detonation activities would occur, if necessary. Please see Appendix B of Revolution Wind's application for more technical details about the modeling methods, assumptions and environmental parameters used as inputs (Hannay and Zykov, 2022).

The type and net explosive weight of UXO/MECs that may be detonated are not known at this time. To capture a range of potential UXO/MECs, five categories or ''bins'' of net explosive weight established by the U.S. Navy (2017a) were selected for acoustic modeling (Table 17). These charge weights were modeled at four different locations off Rhode Island, consisting of different depths (12 m (Site S1), 20 m (Site S2), 30 m (Site S3), and 45 m (Site S4)). The sites were deemed to be representative of both the export cable route and the lease area. Two are located along the RWEC corridor (Sites S1 and S2) and two are located inside the RWF (Sites S3 and S4). The locations for these modeling sites are shown in Figure 1 of Appendix B in Revolution Wind's application.

- Shallow water export cable route (ECR): Site S1; In the channel within Narragansett Bay (12 m depth);
- Shallow water ECR: Site S2; Intermediate waters outside of Narragansett Bay (20 m depth);
- Shallow water lease area: Site S3; Shallower waters in the southern portion of the Hazard Zone 2 area (30 m depth);
- Deeper water lease area: Site S4; Deeper waters in northern portion of the Hazard Zone 2 area (45 m depth).

TABLE 17—NAVY ''BINS'' AND CORRESPONDING MAXIMUM CHARGE WEIGHTS (EQUIVALENT TNT) MODELED

Navy bin designation	Maximum equivalent (kg)	Weight (TNT) lbs
E4	2.3	5

TABLE 17—NAVY "BINS" AND CORRESPONDING MAXIMUM CHARGE WEIGHTS (EQUIVALENT TNT) MODELED—Continued

Navy bin designation	Maximum equivalent (kg)	Weight (TNT) lbs
E6	9.1	20
E8	45.5	100
E10	227	500
E12	454	1000

Below, in Table 18, we present distances to PTS and TTS thresholds for only the 454 kg UXO/MEC, as this has the greatest potential for these impacts and is what is used to estimate take. NMFS notes that it is extremely unlikely that all UXO/MECs for which Revolution Wind deems detonation necessary would consist of this 454 kg charge weight. However, it is not currently known how easily Revolution Wind would be able to identify the size and charge weights of UXOs/MECs in the field. Therefore, for this action, NMFS has proposed to require Revolution Wind to implement mitigation measures assuming the largest E12 charge weight as a conservative approach. We do note that if Revolution Wind is able to reliably demonstrate that they can easily and accurately identify charge weights in the field, NMFS will consider mitigation and monitoring zones based on UXO/MEC charge weight for the final rulemaking rather than assuming the largest charge weight in every situation.

To further reduce impacts to marine mammals, Revolution Wind would additionally deploy a noise abatement system during detonation events, similar to that described for monopile installation, and expects that this system would be able to achieve 10-dB attenuation. This expectation is based on an assessment of UXO/MEC clearance activities in European waters, as summarized by Bellman and Betke (2021).

Due to the implementation of mitigation and monitoring measures, the potential for mortality and non-auditory injury is low and Revolution Wind did not request, and we are not proposing to authorize, take by mortality or non-auditory injury. For this reason we are not presenting all modeling results here; however, they can be found in Appendix B of the ITA application.

For the RWEC, the largest distances to the PTS (Table 18) and TTS (Table 20) SEL thresholds were selected among the modeling results for Sites S1 and S2. The distances were not always consistently larger for one site versus the other, so the results in Tables 18 and 20 represent a mixture of the two sites. This same approach was used to determine the largest distances to these thresholds for the lease area (Tables 19 and 21). For all species, the distance to the SEL thresholds exceeded that for the peak thresholds (Table 29 in Appendix B of the ITA application). Model results for all sites and all charge weights can be found in Appendix B of Revolution Wind's application. Further, Revolution Wind presented the results for both mitigated and unmitigated scenarios in the ITA application and the August 2022 Updated Densities and Takes Estimation Memo. Since that time, Revolution Wind has committed to the use of a noise abatement system during all detonations, and plans to achieve a 10-dB noise reduction as minimum. As a result, the Updated Densities and Take Estimation Memo mitigated UXO/MEC scenario is the one carried forward here. Therefore, only the attenuated results are presented in Tables 18–21 and were carried forward into the exposure and take estimation. Additional information can be found in JASCO's UXO/MEC report and the Revised Density and Take Estimate Memo on NMFS' website (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy*).

NMFS notes that the more detailed results for the mortality and non-auditory injury analysis for marine mammals for onset gastrointestinal injury, onset lung injury, and onset of mortality can be found in Appendix B of the ITA application, which can be found on NMFS' website. NMFS preliminarily concurs with Revolution Wind's analysis and does not expect or propose to authorize any non-auditory injury, serious injury, or mortality of marine mammals from UXO/MEC detonation. The modeled distances to the mortality threshold for all UXO/MECs sizes for all animal masses are small (*i.e.,* 5–353 m; see Tables 35–38 in Appendix B of Revolution Wind's application), as compared to the distance/area that can be effectively monitored. The modeled distances to non-auditory injury thresholds range from 5 to 648 m (see Tables 30–34 in Appendix B of the application). Revolution Wind would be required to conduct extensive monitoring using both PSOs and PAM operators and clear an area of marine mammals prior to detonating any UXO. Given that Revolution Wind would be employing multiple platforms to visually monitor marine mammals as well as passive acoustic monitoring, it is reasonable to assume that marine mammals would be reliably detected within approximately 660 m of the UXO/MEC being detonated such that the potential for mortality or non-auditory injury is considered *de minimis*.

To estimate the maximum ensonified zones that could result from UXO/MEC detonations, the largest E12 $R_{95\%}$ to PTS and TTS threshold isopleths within the RWEC, Tables 18 and 20, respectively, were used as radii to calculate the area of a circle ($pi \times r^2$ where r is the range to the threshold level) for each marine mammal hearing group. The results represent the largest area potentially ensonified above threshold levels from a single detonation within the RWEC corridor. The same method was used to calculate the maximum ensonified area from a single detonation in the lease area, based on the distances in Tables 19 and 21. Again, modeling results are presented here for mitigated (*i.e.,* using a noise abatement system) detonations of UXO/MECs (Tables 18–21). The results for unmitigated detonations can be found in Tables 44–48 in the ITA application. As noted previously, Revolution Wind has committed to the mitigated scenario; therefore, for take estimation, Revolution Wind assumes that a minimum of 10-dB of noise produced by a detonation would be attenuated using a noise abatement system. Thus, the mitigated maximum ensonified area for each hearing group for the largest UXO/MEC class was used for take estimation.

TABLE 18—LARGEST SEL-BASED $R_{95\%}$ PTS-ONSET RANGES (IN METERS) FROM SITES S1 AND S2 (RWEC) MODELED DURING UXO/MEC DETONATION, ASSUMING 10-dB ATTENUATION

Marine mammal hearing group	Distance (m) to PTS threshold during E12 (454 kg) detonation		Maximum ensonified zone (km^2)
	R_{max}	$R_{95\%}$	
Low-frequency cetaceans	4,270	3,780	44.9
Mid-frequency cetaceans	535	461	0.67
High-frequency cetaceans	6,960	6,200	121
Phocid pinnipeds (in water)	1,830	1,600	8.04

TABLE 19—LARGEST SEL-BASED $R_{95\%}$ PTS-ONSET RANGES (IN METERS) SITES S3 AND S4 (LEASE AREA) MODELED DURING UXO/MEC DETONATION, ASSUMING 10-dB ATTENUATION

Marine mammal hearing group	Distance (m) to PTS threshold during E12 (454 kg) detonation		Maximum ensonified zone (km^2)
	R_{max}	$R_{95\%}$	
Low-frequency cetaceans	3,900	3,610	40.9
Mid-frequency cetaceans	484	412	0.53
High-frequency cetaceans	6,840	6,190	12.0
Phocid pinnipeds (in water)	1,600	1,480	6.88

TABLE 20—LARGEST SEL-BASED $R_{95\%}$ TTS-ONSET RANGES (IN METERS) FROM SITES S1 AND S2 (RWEC) MODELED DURING UXO/MEC DETONATION, ASSUMING 10-dB ATTENUATION

Marine mammal hearing group	Distance (m) to TTS threshold during E12 (454 kg) detonation		Maximum ensonified zone (km^2)
	R_{max}	$R_{95\%}$	
Low-frequency cetaceans	13,200	11,900	445
Mid-frequency cetaceans	2,820	2,550	4.40
High-frequency cetaceans	15,400	14,100	624
Phocid pinnipeds (in water)	7,610	6,990	153

TABLE 21—LARGEST SEL-BASED $R_{95\%}$ TTS-ONSET RANGES (IN METERS) FROM SITES S3 AND S4 (LEASE AREA) MODELED DURING UXO/MEC DETONATION, ASSUMING 10-dB ATTENUATION

Marine mammal hearing group	Distance (m) to TTS threshold during E12 (454 kg) detonation		Maximum ensonified zone (km^2)
	R_{max}	$R_{95\%}$	
Low-frequency cetaceans	13,500	11,800	437
Mid-frequency cetaceans	2,730	2,480	19.3
High-frequency cetaceans	15,600	13,700	589
Phocid pinnipeds (in water)	7,820	7,020	155

Regarding the marine mammal density and occurrence data used in the take estimates for UXO/MECs, to avoid any in situ detonations of UXO/MECs during periods when North Atlantic right whale densities are highest in and near the RWEC corridor and lease area, Revolution Wind has opted for a temporal restriction to not detonate in Federal waters from December 1 through April 30 annually. Accordingly, for each species, they selected the highest average monthly marine mammal density between May and November (Roberts and Halpin (2022)) to conservatively estimate exposures from UXO/MEC detonation for a given species in any given year (*i.e.,* assumed all 13 UXO/MECs would be detonated in the month with the greatest average density). This approach is similar to what was used for determining the most appropriate species densities for monopile foundation installation. Furthermore, given that UXOs/MECs detonations have the potential to occur anywhere within the project area, a 15 km (9.32 mi) perimeter was applied around the lease area (reduced from the 50 km (31 mi) perimeter in the ITA application) and a 10 km (6.2 mi) perimeter was applied to the RWEC corridor (see Figures 12 and 13 of the Updated Density and Take Estimation Memo). In some cases where monthly densities were unavailable, annual densities were used instead for certain species (*i.e.,* blue whales, pilot whale *spp.*).

Table 22 provides those densities and the associated months in which the species-specific densities are highest for

the RWEC corridor and lease area, respectively.

TABLE 22—MAXIMUM OF AVERAGE MONTHLY MARINE MAMMAL DENSITIES (INDIVIDUALS/km²) WITHIN 15 Km OF THE RWEC CORRIDOR AND LEASE AREA (MAY–NOVEMBER), AND ASSOCIATED MONTH

Species	RWEC		Lease area	
	Maximum density	Maximum density month	Maximum density	Maximum density month
Blue whale *	0.0000	Annual	0.0000	Annual.
Fin whale *	0.0015	July	0.0029	July.
Humpback whale	0.0014	May	0.0020	May.
Minke whale	0.0110	May	0.0167	May.
North Atlantic right whale *	0.0009	May	0.0019	May.
Sei whale *	0.0007	May	0.0012	May.
Atlantic spotted dolphin	0.0002	October	0.0007	October.
Atlantic white-sided dolphin	0.0086	May	0.0175	May.
Bottlenose dolphin	0.0047	July	0.0093	August.
Common dolphin	0.0389	November	0.0762	September.
Harbor porpoise	0.0218	May	0.0392	May.
Pilot whales	0.0001	Annual	0.0007	Annual.
Risso's dolphin	0.0003	November	0.0006	November.
Sperm whale *	0.0002	August	0.0004	August.
Grey Seal	0.0769	May	0.0692	May.
Harbor Seal	0.1728	May	0.1554	May.

* Denotes species listed under the Endangered Species Act.

To estimate take incidental to UXO/MEC detonations in the RWEC corridor, the maximum ensonified areas based on the largest $R_{95\%}$ to Level A harassment (PTS) and Level B harassment (TTS) thresholds (assuming 10-dB attenuation) from a single detonation in the RWEC corridor, shown in Tables 18 and 20, were multiplied by six (the estimated number of UXOs/MECs that may be encountered in the RWEC corridor) and then multiplied by the marine mammal densities shown in Table 22, resulting in the take estimates in Table 23. For the lease area, the same method was applied, using the maximum ensonified areas in Tables 19 and 21 multiplied by seven (the estimated number of UXOs/MECs that may be encountered in the lease area) and then multiplied by the marine mammal densities shown in Table 22, resulting in the values shown in the columns for the lease area (with the heading ''LA'') of Table 23. Again, Revolution Wind based the amount of requested take on the number of exposures estimated assuming 10-dB attenuation using a noise abatement system because they believe consistent, successful implementation of this mitigation measure would be possible.

Revolution Wind has proposed mitigation and monitoring measures intended to avoid Level A take of most species, and the extent and severity of Level B harassment (see Proposed Mitigation and Proposed Monitoring and Reporting sections below). However, given the relatively large distances to the high-frequency cetacean Level A harassment (PTS, SEL_{cum}) isopleth applicable to harbor porpoises, and the difficulty detecting this species at sea, Revolution Wind is requesting take by Level A harassment of 49 harbor porpoises. Similarly, seals are difficult to detect at longer ranges and, although the distance to the phocid hearing group SEL PTS threshold is not as large as that for high-frequency cetaceans, it may not be possible to detect all seals within the threshold distances even with the proposed monitoring measures. Therefore, in addition to the requested Level B harassment in Table 23, Revolution Wind requested Level A harassment of three gray seals and five harbor seals. However, NMFS has adjusted the amount of take proposed for authorization to seven gray seals and 16 harbor seals to correct for Revolution Wind's arithmetic error in the application and Updated Density and Take Estimation memo when summing the density-based Level A exposures for the lease area and export cable route for each species.

TABLE 23—TOTAL (5-YEAR) AND MAXIMUM ANNUAL AMOUNT OF LEVEL A HARASSMENT (PTS) AND LEVEL B HARASSMENT PROPOSED TO BE AUTHORIZED FROM 13 UXO/MEC DETONATIONS ASSUMING 10-dB ATTENUATION

Species	Level A Take		Total Level A density-based take estimate	Level B Take		Total Level B density-based take estimate	PSO Data take estimate	Mean group size	Maximum annual Level A take	Maximum annual Level B take	5-year total (Level A + Level B)
	LA [1]	ECR [2]		LA	ECR						
Mysticetes:											
Blue Whale *	0.0	0.0	0.0	0.0	0.0	0.1		1.0	0	1	1
Fin Whale *	0.8	0.4	1.2	8.9	7.8	16.7	2.5	1.8	0	17	17
Humpback Whale	0.6	0.4	0.9	6.1	5.3	11.4	7.6	2.0	0	12	12
Minke Whale	4.8	3.0	7.7	51.1	44.6	95.7	0.9	1.2	0	96	96
North Atlantic Right Whale *	0.6	0.2	0.8	6.0	5.2	11.2	0.2	2.4	0	12	12
Sei Whale *	0.4	0.2	0.5	3.8	3.3	7.0	0.1	1.6	0	8	8
Odontocetes:											
Atlantic Spotted Dolphin	0.0	0.0	0.0	0.1	0.1	0.2		29.0	0	29	29
Atlantic White-Sided Dolphin	0.1	0.0	0.1	2.4	2.1	4.5	0.7	27.9	0	28	28

TABLE 23—TOTAL (5-YEAR) AND MAXIMUM ANNUAL AMOUNT OF LEVEL A HARASSMENT (PTS) AND LEVEL B HARASSMENT PROPOSED TO BE AUTHORIZED FROM 13 UXO/MEC DETONATIONS ASSUMING 10-dB ATTENUATION—Continued

Species	Level A Take		Total Level A density-based take estimate	Level B Take		Total Level B density-based take estimate	PSO Data take estimate	Mean group size	Maximum annual Level A take	Maximum annual Level B take	5-year total (Level A + Level B)
	LA [1]	ECR [2]		LA	ECR						
Bottlenose Dolphin	0.0	0.0	0.1	1.3	1.1	2.4	8.3	7.8	0	9	9
Common Dolphin	0.3	0.2	0.4	10.3	9.3	19.6	210.1	34.9	0	211	211
Harbor Porpoise	33.1	15.8	48.9	161.9	147.0	308.9	0.2	2.7	49	309	358
Pilot Whales	0.0	0.0	0.0	0.1	0.1	0.2	.....	8.4	0	9	9
Risso's Dolphin	0.0	0.0	0.0	0.1	0.1	0.2	0.6	5.4	0	6	6
Sperm Whale *	0.0	0.0	0.0	0.1	0.0	0.1	.....	1.5	0	2	2
Pinnipeds:											
Gray Seal	3.3	3.7	7	75.0	63.7	138.7	0.6	0.4	7	139	146
Harbor Seal	7.5	8.3	15.8	168.5	143.2	311.6	0.7	1.0	16	312	328

* Denotes species listed under the Endangered Species Act.
[1] LA = Lease Area.
[2] ECR = Export Cable Route.

Temporary Cofferdam Installation and Removal

Acoustic modeling, using JASCO's MONM–BELLHOP model (used for modeling impact pile driving), was performed for Ørsted's Sunrise Wind Farm project to determine distances to the Level A harassment and Level B harassment isopleths resulting from installation of steel sheet piles to construct cofferdams and installation of casing pipes using pneumatic hammering (Kusel *et al.,* 2022b). Revolution Wind would install the same type of sheet piles and casing pipe in a similar location using the exact same methods as Sunrise Wind used to inform a published analysis, therefore the modeling results described for Sunrise Wind (Kusel *et al.,* 2022b) and presented here are considered applicable to Revolution Wind's project. For take assessment purposes, the sheet pile cofferdam scenario results in a larger amount of take by Level B harassment and is, therefore, analyzed further in the Estimated Take section. This is because acoustic propagation modeling predicts that the distance to the Level B harassment threshold isopleth produced by vibratory pile driving is approximately 10 km, while the distance to the same isopleth produced by pneumatic hammering is approximately 0.92 km. The sheet pile cofferdam scenario would require up to 56 days of vibratory hammer use for installation and removal, while the casing pipe scenario would require up to 12 days of vibratory pile driving (plus 8 days of pneumatic hammering). The larger number of total days of pile driving for the sheet pile cofferdam scenario coupled with the fact that vibratory pile driving on all of those days would produce the larger Level B harassment zone means the anticipated take, by Level B harassment, from the sheet pile cofferdam scenario would necessarily be higher and is, therefore, carried forward as the more conservative Level B harassment assumption. The acoustic ranges to the Level A harassment (SEL_{cum}) thresholds from impact pile driving (pneumatic hammering) of the casing pipe are estimated to be the following for each hearing group: low frequency = 3.87 km, mid frequency = 0.23 km, high frequency = 3.95 km, and phocid pinnipeds = 1.29 km. Level A harassment (SPL_{pk}) thresholds are not expected to be generated by pneumatic hammering. The estimated distances to Level A harassment SEL_{cum} thresholds are larger than the distance to the Level B harassment threshold (920 m). This is due to the high strike rate of the pneumatic hammer resulting in a high number of accumulated strikes per day. However, cetaceans are not expected to occur frequently close to this nearshore site, and individuals of any species (including seals) are not expected to remain within the estimated SEL_{cum} threshold distances for the entire 3-hour duration of hammering in a day. Given that work would occur within Narragansett Bay, the short duration of pneumatic hammering, and the implementation of mitigation and monitoring measures (including shutdown zones equivalent to the size of the Level A harassment zones), Level A harassment incidental to casing pipe installation is not expected or proposed for authorization. In addition, given the nature of vibratory pile driving and the small distances to Level A harassment thresholds (5–190 m), sheet pile cofferdam installation is also not expected to result in Level A harassment. Revolution Wind did not request, nor is NMFS proposing to authorize, any Level A harassment incidental to installation of sheet pile cofferdams or the casing pipe scenario.

In summary, the Level B harassment zone produced by vibratory pile driving (9.74 km) is significantly larger than that produced by pneumatic hammering (0.92 km). Additionally, as mentioned previously, the sheet pile cofferdam scenario would require up to a total of 56 days of vibratory pile driving for installation and removal, while the casing pipe scenario would require up to 24 days of vibratory pile driving plus 8 days of pneumatic hammering. The larger spatial impact combined with the longer duration of sheet pile cofferdam installation would produce a larger amount of Level B harassment; therefore, this landfall construction activity was carried forward as the most conservative scenario.

JASCO used its MONM–BELLHOP to predict acoustic propagation for frequencies between 5 Hz and 25 kHz produced by vibratory pile driven installation of the steel sheet piles that would be used to construct temporary cofferdams (Kusel *et al.,* 2022b). Acoustic propagation modeling was based on a winter sound speed profile, which was deemed both conservative and appropriate for the Revolution Wind project because use of the profile generates larger distances to Level A harassment and Level B harassment isopleths (versus those generated using a summer sound speed profile). Additional modeling assumptions are included in Table 24.

Decidecade band SEL levels were obtained from vibratory pile driving measurements available in the literature (Illingworth and Rodkin, 2017). The Illingworth and Rodkin (2017) measurements are for vibratory driving of four 12-in wide connected sheet piles (48 inch/122 cm total width) using an APE Model 300 vibratory hammer

(1842.0 kN centrifugal force). Illingworth and Rodkin (2017) included SEL at 10 m from the pile in the frequency band 5–25,000 Hz. The average (from 10 piling measurements) maximum broadband SEL was 182.7 dB re 1 μPa²·s. For modeling of vibratory driving of sheet piles at the HDD location, SEL band levels were corrected for spherical spreading (+20 dB, corresponding to 10 m range) (Kusel *et al.,* 2021).

Additional details on the acoustic modeling conducted for the Sunrise Wind project can be found in the Sunrise Wind Farm Project Underwater Noise and Exposure Modeling report available on NMFS' website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-sunrise-wind-llc-construction-and-operation-sunrise-wind.*

TABLE 24—SHEET PILE INSTALLATION ACOUSTIC MODELING ASSUMPTIONS

Parameter	Model input
Vibratory Hammer	APE 300.
Pile Type	Sheet Pile.
Pile Length	30 m.
Pile Width	0.6 m.
Pile Wall Thickness	2.54 cm.
Seabed Penetration	10 m.
Time to Install 1 Pile	2 hrs.
Number of Piles per Day	4.

Similar to the modeling approach for impact pile driving, distances to harassment thresholds are reported as $R_{95\%}$ values (Table 25). Distances to the Level A harassment threshold are relatively small, ranging from 5 m for low-frequency cetaceans to 190 m for high-frequency cetaceans. The distance to the Level B harassment threshold is 9,740 m for all species.

TABLE 25—ACOUSTIC RANGES ($R_{95\%}$) IN METERS TO LEVEL A HARASSMENT (PTS) AND LEVEL B HARASSMENT THRESHOLDS FROM VIBRATORY PILE DRIVING, ASSUMING A WINTER SOUND SPEED PROFILE

	$R_{95\%}$ (m)	
Marine mammal hearing group	Level A harassment SEL_{cum} thresholds (dB re 1 μPa²·s)	Level B harassment SPL_{rms} threshold (120 dB re 1 μPa)
Low-frequency	5	9,740
Mid-frequency	.....	9,740
High-frequency	190	9,740
Phocid pinniped	10	9,740

Accounting for the effects that nearby land would have on sound propagation using a geographic information system (GIS) (ESRI, 2017) results in a reduction in the estimated area of 54.1 km² (20.9 mi²) potentially being ensonified above the 120 dB threshold. As a cautionary approach, this 54.1 km² (20.9 mi²) includes some areas beyond 9.74 km (6.05 mi) from the landfall location and reflects the maximum area potentially ensonified above threshold levels from construction activities at that site, including if a larger vibratory pile driving hammer were to be used.

Regarding how density and occurrence information was applied in estimating take for these activities, the export cable landfall construction work would take place near Quonset Point in North Kingstown, Rhode Island, which is within Narragansett Bay. However, the habitat-based marine mammal densities from Roberts and Halpin (2022) do not include waters within Narragansett Bay. As an alternative, densities calculated from the area immediately outside of Narragansett Bay were used in exposure estimation. This is a conservative approach since there have been few reported sightings of marine mammals, other than seals, within Narragansett Bay (Raposa, 2009).

To select marine mammal density grid cells from the Roberts and Halpin (2022) data representative of the area just outside of Narragansett Bay, a zone representing the ensonified area plus a 5-km buffer from the mouth of Narragansett Bay was created in GIS (ESRI, 2017). This buffer was then intersected with the density grid cells for each individual species to select those near the mouth of Narragansett Bay (Figure 8 in Revolution Wind's Updated Density and Take Estimation Memo). Since the timing of landfall construction could vary somewhat from the proposed schedule, the maximum average monthly density from January through December for each species was selected (Table 26) and used to estimate exposures from landfall construction.

TABLE 26—MAXIMUM AVERAGE MONTHLY MARINE MAMMAL DENSITIES IN AND NEAR THE MOUTH OF NARRAGANSETT BAY AND THE MONTH IN WHICH EACH MAXIMUM DENSITY OCCURS

Species	Maximum monthly density (Ind/km^2)	Maximum density month
Mysticetes		
Blue Whale *	0.0000	Annual.
Fin Whale *	0.0000	
Humpback Whale	0.0004	December.
Minke Whale	0.0005	May.
North Atlantic Right Whale *	0.0002	March.
Sei Whale *	0.0002	April.
Odontocetes		
Atlantic Spotted Dolphin	0.0000	
Atlantic White-Sided Dolphin	0.0004	November.
Bottlenose Dolphin	0.0002	September.
Common Dolphin	0.0065	November.
Harbor Porpoise	0.0125	December.
Pilot Whales	0.0000	
Risso's Dolphin	0.0000	
Sperm Whale *	0.0000	
Pinnipeds		
Gray seal	0.128	October.
Harbor seal	0.204	October.

* Denotes species listed under the Endangered Species Act.

Cable Landfall Construction Take Estimation

Given the short duration of the activity and shallow, coastal location, animat exposure modeling was not conducted for cofferdam installation and removal to determine potential exposures from vibratory pile driving. Rather, the modeled acoustic ranges to Level A harassment and Level B harassment isopleths were used to calculate the area around the cofferdam predicted to be ensonified daily to levels that exceed the thresholds, or the Ensonified Area. The Ensonified Area was calculated as the following:

*Ensonified Area = pi*r*^{2},

Where *r* is the linear acoustic range from the source to the Level A harassment and Level B harassment isopleths.

To calculate density-based exposures estimates incidental to installation of two cofferdams, the average marine mammal densities from Table 26 were multiplied by the daily ensonified area (54.1 km^2) for installation of sheet piles. Given that use of the vibratory hammer during cofferdam installation and removal may occur on up to 56 days, the daily estimated take was multiplied by 56 to produce the results shown in Table 27. However, as noted above, to be conservative, Revolution Wind has requested take by Level B harassment based on the highest exposures predicted among the density-based, PSO-based, or average group size-based estimates; the take proposed for authorization is indicated in column 5 of Table 27 below. Mysticete whales are unlikely to occur in the immediate vicinity of the activity or within Narragansett Bay (Raposa, 2009); therefore, Revolution Wind is not requesting and NMFS is not proposing to authorize, take of these species. Given the small distances to Level A harassment isopleths (shown in Table 25), Level A harassment incidental to this activity is not anticipated, even absent mitigation. Therefore, Revolution Wind is not requesting and NMFS is not proposing to authorize Level A take.

TABLE 27—ESTIMATED LEVEL B HARASSMENT INCIDENTAL TO COFFERDAM CONSTRUCTION

Species	Density-based take estimate	PSO data take estimate	Mean group size	Highest level B take
Odontocetes:				
Atlantic Spotted Dolphin	0.1	.....	29.0	29
Atlantic White-Sided Dolphin	1.2	3.2	27.9	28
Bottlenose Dolphin	0.5	35.5	7.8	36
Common Dolphin	19.6	904.9	34.9	905
Harbor Porpoise	37.8	0.9	2.7	38
Pilot Whales	0.0	.....	8.4	9
Risso's Dolphin	0.1	2.5	5.4	6
Sperm Whale *	0.1	.....	1.5	2
Pinnipeds:				
Gray Seal	353.5	2.5	1.4	354
Harbor Seal	794.3	3.2	1.4	795

* Denotes species listed under the Endangered Species Act.

HRG Surveys

Revolution Wind's proposed HRG survey activity includes the use of impulsive (*i.e.,* boomers and sparkers) and non-impulsive (*e.g.,* CHIRP SBPs) sources. NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise from the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Revolution Wind's application for details of a quantitative exposure analysis (*i.e.,* calculated distances to Level A harassment isopleths and Level A harassment exposures). Revolution Wind did not request, and NMFS is not proposing to authorize, take by Level A harassment incidental to HRG surveys.

For HRG surveys, in order to better consider the narrower and directional beams of some of the sources, NMFS has developed a tool for determining the sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency-dependent absorption and some directionality to refine estimated ensonified zones. Revolution Wind used NMFS' methodology with additional modifications to incorporate a seawater absorption formula and account for energy emitted outside of the primary beam of the source. For sources that operate with different beamwidths, the maximum beam width was used, and the lowest frequency of the source (refer back to Table 2) was used when calculating the frequency-dependent absorption coefficient.

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 ranges to the Level A harassment and Level B harassment isopleths. 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. Revolution Wind utilized the following criteria for selecting the appropriate inputs into the NMFS User Spreadsheet Tool (NMFS, 2018):

(1) For equipment that was measured in Crocker and Fratantonio (2016), the reported SL for the most likely operational parameters was selected.

(2) For equipment not measured in Crocker and Fratantonio (2016), the best available manufacturer specifications were selected. Use of manufacturer specifications represent the absolute maximum output of any source and do not adequately represent the operational source. Therefore, they should be considered an overestimate of the sound propagation range for that equipment.

(3) For equipment that was not measured in Crocker and Fratantonio (2016) and did not have sufficient manufacturer information, the closest proxy source measured in Crocker and Fratantonio (2016) was used.

The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the HRG surveys. These included variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. 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. 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 joules (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 source level; therefore, the single maximum source level value was used for both operational levels of the S-Boom.

Table 2 identifies all the representative survey equipment that operates below 180 kHz (*i.e.,* at frequencies that are audible and have the potential to disturb marine mammals) that may be used in support of planned survey activities, and are likely to be detected by marine mammals given the source level, frequency, and beamwidth of the equipment.

Results of modeling using the methodology described above indicated that, of the HRG equipment planned for use by Revolution Wind that has the potential to result in Level B harassment of marine mammals, sound produced by the Applied Acoustics sparkers and Applied Acoustics triple-plate S-boom would propagate furthest to the Level B harassment isopleth (141 m; Table 28). For the purposes of take estimation, it was conservatively assumed that sparkers and/or boomers would be the dominant acoustic source for all vessel days (although, again, this may not always be the case). Thus, the range to the isopleth corresponding to the threshold for Level B harassment for and the boomer and sparkers (141 m) was used as the basis of take calculations for all marine mammals. This is a conservative approach, as the actual sources used on individual vessel days, or during a portion of a vessel day, may produce smaller distances to the Level B harassment isopleth.

TABLE 28—DISTANCES TO THE LEVEL B HARASSMENT THRESHOLDS FOR EACH HRG SOUND SOURCE OR COMPARABLE SOUND SOURCE CATEGORY FOR EACH MARINE MAMMAL HEARING GROUP

Equipment type	Representative model	Level B (m)
		All (SPL_{rms})
Sub-bottom Profiler	EdgeTech 216	9
	EdgeTech 424	4
	Edgetech 512	6
	GeoPulse 5430A	21
	Teledyn Benthos CHIRP III—TTV 170	48
Sparker	Applied Acoustics Dura-Spark UHD (700 tips, 1,000 J)	34
	Applied Acoustics Dura-Spark UHD (400 tips, 500 J)	141
	Applied Acoustics Dura-Spark UHD (400 tips, 500 J)	141
Boomer	Applied Acoustics triple plate S-Boom (700–1,000 J)	141

To estimate densities for the HRG surveys occurring both within the lease area and within the RWEC based on Roberts and Halpin (2022), a 5-km (3.11 mi) perimeter was applied around each area (see Figures 10 and 11 of the Updated Density and Take Estimation Memo). Given this work could occur year-round, the annual average density for each species was calculated using average monthly densities from January through December (Table 29).

TABLE 29—ANNUAL AVERAGE MARINE MAMMAL DENSITIES ALONG THE RWEC CORRIDOR AND LEASE AREA

Species	RWEC corridor annual average density (Ind/km²)	Lease area annual average density (Ind/km²)
Mysticetes:		
Blue Whale *	0.0000	0.0000
Fin Whale *	0.0008	0.0016
Humpback Whale	0.0008	0.0010
Minke Whale	0.0022	0.0044
North Atlantic Right Whale *	0.0011	0.0027
Sei Whale *	0.0003	0.0004
Odontocetes:		
Atlantic Spotted Dolphin	0.0000	0.0001
Atlantic White-Sided Dolphin	0.0038	0.0090
Bottlenose Dolphin	0.0021	0.0049
Common Dolphin	0.0202	0.0409
Harbor Porpoise	0.0191	0.0316
Pilot Whales	0.0001	0.0005
Risso's Dolphin	0.0001	0.0003
Sperm Whale *	0.0001	0.0001
Pinnipeds:		
Seals (Harbor and Gray)	0.1477	0.1182

* Denotes species listed under the Endangered Species Act.

The maximum range (*i.e.,* 141 m) to the Level B harassment threshold and the estimated trackline distance traveled per day by a given survey vessel (*i.e.,* 70 km) were 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 HRG sound source over a 24-hr period. The ZOI for each piece of equipment operating at or below 180 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.

The largest daily ZOI (19.8 km²), associated with the proposed use of boomers and sparkers, was applied to all planned vessel days.

Potential Level B density-based harassment exposures are estimated by multiplying the average annual density of each species within the survey area by the daily ZOI. That product was then multiplied by the number of planned vessel days in each sector during the approximately 1-year construction timeframe (82.1 in RWEC corridor, 165.7 in lease area), and the product was rounded to the nearest whole number. These results are shown in columns 2 (lease area) and 3 (RWEC corridor) of Table 30. Similar to the approach described above, to be conservative, Revolution Wind has requested take by Level B harassment based on the highest exposures predicted by the density-based, PSO based, or average group size-based estimates, and the take proposed for authorization is indicated in column 7 of Table 30 below.

TABLE 30—ESTIMATED TAKE, BY LEVEL B HARASSMENT, INCIDENTAL TO HRG SURVEYS DURING THE CONSTRUCTION PERIOD

[Year 1]

Construction phase density-based exposures by survey area			Total density-based take estimate	PSO data take estimate	Mean group size	Highest Level B take
Species	Lease area	RWEC corridor				
Mysticetes:						
Blue Whale *	0.0	0.0	0.0	.....	1.0	1
Fin Whale *	4.4	1.4	5.8	6.6	1.8	7
Humpback Whale	2.8	1.2	4.0	16.5	2.0	17
Minke Whale	11.8	3.7	15.5	5.9	1.2	16
North Atlantic Right Whale *	7.4	1.8	9.2	.....	2.4	10
Sei Whale *	1.1	0.4	1.6	.....	1.6	2
Odontocetes:						
Atlantic Spotted Dolphin	0.3	0.1	0.3	.....	29.0	29
Atlantic White-Sided Dolphin	24.5	6.5	31.0	.....	27.9	31
Bottlenose Dolphin	13.2	3.8	17.0	100.1	7.8	101
Common Dolphin	110.5	33.5	144.0	2,353.4	34.9	2,354
Harbor Porpoise	85.4	30.9	116.3	.....	2.7	117
Pilot Whales	1.4	0.1	1.5	.....	8.4	9

TABLE 30—ESTIMATED TAKE, BY LEVEL B HARASSMENT, INCIDENTAL TO HRG SURVEYS DURING THE CONSTRUCTION PERIOD—Continued

[Year 1]

Construction phase density-based exposures by survey area			Total density-based take estimate	PSO data take estimate	Mean group size	Highest Level B take
Species	Lease area	RWEC corridor				
Risso's Dolphin	0.8	0.2	1.0	2.3	5.4	6
Sperm Whale *	0.4	0.1	0.5	.....	1.5	2
Pinnipeds:						
Gray Seal	98.5	75.5	174.0	7.1	1.4	174
Harbor Seal	221.2	169.6	390.9	11.2	1.4	391

* Denotes species listed under the Endangered Species Act.

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor proposed to be authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* pre-start clearance and shutdown measures), discussed in detail below in the Proposed Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably expected outcome of the survey activity. No serious injury or mortality is anticipated or proposed to be authorized for this activity.

As mentioned previously, HRG surveys would also routinely be carried out during the period of time following construction of the RWF and RWEC corridor which, for the purposes of exposure modeling, Revolution Wind assumed to be four years. Revolution Wind estimates that HRG surveys would cover 2,117 km within the lease area and 1,642 km along the RWEC corridor annually. Assuming 70 km are surveyed per day, this amounts to 30.2 days of survey activity in the lease area and 23.5 days of survey activity along the RWEC each year, or 214.8 days total for the 4-year timeframe following the construction period (assuming all construction activities occur in a single year). Density-based take was estimated using the same approach outlined above by multiplying the daily ZOI by the annual average densities and separately by the number of vessel days planned for the RWEC and lease area; the results are shown in columns 2 and 3, respectively, in Table 31. Using the same approach described above, Revolution Wind estimated a conservative amount of annual take, by Level B harassment, based on the highest exposures predicted by the density-based, PSO-based, or average group size-based estimates. The highest predicted exposure value was multiplied by four to yield the amount of take Revolution Wind requested and that is proposed for authorization, shown in column 8 of Table 31 below.

TABLE 31—ESTIMATED TAKE, BY LEVEL B HARASSMENT, FROM HRG SURVEYS DURING NON-CONSTRUCTION YEARS (YEARS 2–5) AND TOTAL 4-YEAR TAKE

Annual operations phase density-based exposures by survey area			Annual total density-based exposures	Annual PSO data take estimate	Mean group size	Highest annual Level B take (years 2–5)	4-Year Level B take
Species	Lease area	RWEC corridor					
Mysticetes:							
Blue Whale *	0.0	0.0	0.0	.....	1.0	1	4
Fin Whale *	1.0	0.4	1.3	1.6	1.8	2	8
Humpback Whale	0.6	0.4	1.0	4.0	2.0	5	20
Minke Whale	2.6	1.0	3.6	1.5	1.2	4	16
North Atlantic Right Whale *	1.6	0.5	2.1	.....	2.4	3	12
Sei Whale *	0.3	0.1	0.4	.....	1.6	2	8
Odontocetes:							
Atlantic Spotted Dolphin	0.1	0.0	0.1	.....	29.0	29	116
Atlantic White-Sided Dolphin	5.4	1.8	7.2	.....	27.9	28	112
Bottlenose Dolphin	2.9	1.0	3.9	24.6	7.8	25	100
Common Dolphin	24.5	9.4	33.8	578.0	34.9	579	2,316
Harbor Porpoise	18.9	8.9	27.8	.....	2.7	28	112
Pilot Whales	0.3	0.0	0.3	.....	8.4	9	36
Risso's Dolphin	0.2	0.1	0.2	0.6	5.4	6	24
Sperm Whale *	0.1	0.0	0.1	.....	1.5	2	8
Pinnipeds:							
Gray Seal	27.2	21.1	48.3	1.7	1.4	49	196
Harbor Seal	61.1	47.5	108.6	2.7	1.4	109	436

* Denotes species listed under the Endangered Species Act.

Total Proposed Take Across All Activities

Level A harassment and Level B harassment proposed take numbers for the combined activities of impact pile driving (assuming 10-dB of sound attenuation) during the installation of monopiles; vibratory pile driving for cofferdam installation and removal; HRG surveys; and potential UXO/MEC detonation(s) (assuming 10-dB attenuation) are provided by year in Table 32. The mitigation and monitoring measures provided in the Proposed Mitigation and Proposed Monitoring and Reporting sections are activity-specific and are designed to minimize acoustic exposures to marine mammal species.

The take numbers NMFS proposes for authorization (Table 32) are considered conservative for the following key reasons:

- Proposed take numbers assume installation of three piles per day to estimate the potential for Level A harassment, and assumed all foundation piles (n=81) would be installed in the month with the highest average annual density for each marine mammal species;
- Proposed take numbers for vibratory pile driving assume that two sheet pile temporary cofferdams will be installed (versus the alternative installation of a gravity cell cofferdam, for which no take is anticipated);
- Proposed take numbers for pile driving are conservatively based on the highest average monthly densities across the proposed construction months; and,
- Proposed Level A harassment take numbers do not fully account for the likelihood that marine mammals would avoid a stimulus when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury, or the effectiveness of the proposed monitoring and mitigation measures (with the exception of North Atlantic right whales, given the extensive mitigation measures proposed for this species).

The Year 1 take estimates include 218.7 days of HRG surveys, impact installation of WTG and OSS foundations, cofferdam installation/removal, and mitigated UXO/MEC detonations. Year 2 includes 53.7 days of HRG surveys, and potential impact installation of WTG and OSS monopile foundations, depending on whether or not delays in the schedule for Year 1 occur. Years 3, 4, and 5 each include 53.7 days of HRG surveys. Although temporary cofferdam installation/removal could occur in Year 2, all of the proposed takes were allocated to Year 1 as this represents the most accurate construction scenario. All impact pile driving activities for the WTGs and OSSs could also occur outside of Year 1; however, all of the takes were allocated to Year 1 as this represents the most likely scenario.

TABLE 32—ESTIMATED LEVEL A HARASSMENT AND LEVEL B HARASSMENT TAKES FOR ALL ACTIVITIES PROPOSED TO BE CONDUCTED DURING THE REVOLUTION WIND OFFSHORE WIND ENERGY FACILITY PROJECT

[2023–2028]

Species	NMFS stock abundance	Year 1 (maximum)		Year 2		Year 3		Year 4		Year 5		5-Year total	
		Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B
Mysticetes:													
Blue Whale*	[1] 412	0	3	0	1	0	1	0	1	0	1	0	7
Fin Whale*	6,802	0	40	0	2	0	2	0	2	0	2	0	48
Humpback Whale	1,396	7	77	0	5	0	5	0	5	0	5	7	97
Minke Whale	21,968	0	304	0	4	0	4	0	4	0	4	0	32
North Atlantic Right Whale*	368	0	44	0	3	0	3	0	3	0	3	0	56
Sei Whale*	6,292	0	18	0	2	0	2	0	2	0	2	0	26
Odontocetes:													
Atlantic Spotted Dolphin	39,921	0	87	0	29	0	29	0	29	0	29	0	203
Atlantic White-sided Dolphin	93,233	0	260	0	28	0	28	0	28	0	28	0	372
Bottlenose Dolphin	62,851	0	180	0	25	0	25	0	25	0	25	0	280
Common Dolphin	172,974	0	3,913	0	579	0	579	0	579	0	579	0	6,229
Harbor Porpoise	95,543	49	1,125	0	28	0	28	0	28	0	28	49	1,237
Pilot Whales	68,139	0	27	0	9	0	9	0	9	0	9	0	63
Risso's Dolphin	35,215	0	28	0	6	0	6	0	6	0	6	0	52
Sperm Whale*	4,349	0	7	0	2	0	2	0	2	0	2	0	15
Pinnipeds:													
Gray Seal	27,300	7	978	0	49	0	49	0	49	0	49	7	1,174
Harbor Seal	61,336	16	2,393	0	109	0	109	0	109	0	109	16	2,829

* Listed as Endangered under the Endangered Species Act (ESA).

[1] The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

In making the negligible impact determination and the necessary small numbers finding, NMFS assesses the greatest number of proposed take of marine mammals that could occur within any one year, which in the case of this rule is based on the predicted Year 1 for all species. In this calculation, the maximum estimated number of Level A harassment takes in any one year is summed with the maximum estimated number of Level B harassment takes in any one year for each species to yield the highest amount of estimated take that could occur in any year. We recognize that certain activities could shift within the 5-year effective period of the rule; however, the rule allows for that flexibility and the takes are not expected to exceed those shown in Table 33 in any year.

TABLE 33—MAXIMUM NUMBER OF REQUESTED TAKES (LEVEL A HARASSMENT AND LEVEL B HARASSMENT) THAT COULD OCCUR IN ANY ONE YEAR OF THE PROJECT

Species	NMFS stock abundance	Maximum annual take proposed for authorization			
		Max Level A harassment	Max Level B harassment	Max annual take (max Level A harassment + max Level B harassment)	Total percent stock taken based on maximum annual take [1]
Mysticetes:					
Blue Whale *	[2] 412	0	3	3	0.73
Fin Whale *	6,802	0	40	40	0.59
Humpback Whale	1,396	7	77	94	6.67
Minke Whale	21,968	0	304	304	1.38
North Atlantic Right Whale *	368	0	44	44	12.0
Sei Whale *	6,292	0	18	18	0.29
Odontocetes:					
Atlantic Spotted Dolphin	39,921	0	87	87	0.22
Atlantic White-sided Dolphin	93,233	0	260	260	0.28
Bottlenose Dolphin	62,851	0	180	180	0.29
Common Dolphin	172,974	0	3,913	3,913	2.26
Harbor Porpoise	95,543	49	1,125	1,125	1.18
Pilot Whales	68,139	0	27	27	0.04
Risso's Dolphin	35,215	0	28	28	0.08
Sperm Whale *	4,349	0	7	7	0.16
Pinnipeds:					
Gray Seal	27,300	7	978	985	3.60
Harbor Seal	61,336	16	2,393	2,409	3.93

* Listed as Endangered under the Endangered Species Act (ESA).

[1] Calculations of percentage of stock taken are based on the maximum requested Level A harassment take in any one year + the total requested Level B harassment take in any one year and then compared against the best available abundance estimate as shown in Table 5. For this proposed action, the best available abundance estimates are derived from the NMFS Stock Assessment Reports (Hayes et al., 2022).

[2] The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

Proposed Mitigation

In order to promulgate a rulemaking under section 101(a)(5)(A) 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, 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, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities (*e.g.,* soft-start, establishing shutdown zones). Additional measures have also been incorporated to account for the fact that the proposed construction activities would occur offshore. Modeling was performed to estimate harassment zones, which were used to inform mitigation measures for pile driving activities to minimize Level A harassment and Level B harassment to the extent practicable, while providing estimates of the areas within which Level B harassment might occur.

Generally speaking, the measures considered and proposed here fall into three categories: temporal (seasonal and daily) work restrictions, real-time measures (shutdown, clearance zones, and vessel strike avoidance), and noise abatement/reduction measures. Seasonal work restrictions are designed to avoid or minimize operations when marine mammals are concentrated or engaged in behaviors that make them more susceptible, or make impacts more likely) in order to reduce both the number and severity of potential takes, and are effective in reducing both chronic (longer-term) and acute effects. Real-time measures, such as shutdown and pre-clearance zones, and vessel strike avoidance measures, are intended to reduce the probability or scope of near-term acute impacts by taking steps in real time once a higher-risk scenario is identified (*i.e.,* once animals are detected within an impact zone). Noise

abatement measures, such as bubble curtains, are intended to reduce the noise at the source, which reduces both acute impacts, as well as the contribution to aggregate and cumulative noise that results in longer term chronic impacts.

Below, we describe training, coordination, and vessel strike avoidance measures that apply to all activity types, and then in the following subsections we describe the measures that apply specifically to WTG and OSS foundation installation, cofferdam or casing pipe scenario installation and removal, UXO/MEC detonations, HRG surveys, and fishery monitoring surveys.

Training and Coordination

Revolution Wind would be required to instruct all project personnel regarding the authority of the marine mammal monitoring team(s). For example, the *e.g.,* HRG acoustic equipment operator, pile driving personnel, etc., would be required to immediately comply with any call for a delay or shutdown by the Lead PSO. Any disagreement between the Lead PSO and the project personnel would only be discussed after delay or shutdown has occurred. All relevant personnel and the marine mammal monitoring team would be required to participate in joint, onboard briefings that would be led by Revolution Wind project personnel and the Lead PSO prior to the beginning of project activities. This would serve to ensure that all relevant responsibilities, communication procedures, marine mammal monitoring and mitigation protocols, reporting protocols, safety, operational procedures, and ITA requirements are clearly understood by all involved parties. The briefing would be repeated whenever new relevant personnel (*e.g.,* new PSOs, acoustic source operators, relevant crew) join the operation before work commences.

More information on vessel crew training requirements can be found in the *Vessel Strike Avoidance Measures* section below.

North Atlantic Right Whale Awareness Monitoring

Revolution Wind must use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale Sightings Advisory System, monitoring of Coast Guard VHF Channel 16 throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (*e.g.,* establishment of a zone identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic right whale presence in the area through ongoing visual and passive acoustic monitoring efforts and opportunities (outside of Revolution Wind's efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales.

Protected Species Observers and PAM Operator Training

Revolution Wind would employ NMFS-approved PSOs and PAM operators. The PSO field team and PAM team would have a lead member (designated as the ''Lead PSO'' or ''PAM Lead'') who would have prior experience observing mysticetes, odontocetes and pinnipeds in the Northwestern Atlantic Ocean on other offshore projects requiring PSOs. Any remaining PSOs and PAM operators must have previous experience observing marine mammals during projects and must have the ability to work with all required and relevant software and equipment. New and/or inexperienced PSOs would be paired with an experienced PSO to ensure that the quality of marine mammal observations and data recording is kept consistent.

All PSOs and PAM operators would be required to complete a Permits and Environmental Compliance Plan (PECP) training, as well as a two-day training and refresher session on monitoring protocols. These trainings would be held with the PSO provider and project compliance representatives and would occur before the start of project activities related to the construction and development of the Revolution Wind Offshore Wind Farm Project. PSOs would be required during all foundation installations, cofferdam or casing pipe installation/removal activities, UXO/MEC detonations, and HRG surveys. More information on requirements during each activity can be found in the Proposed Monitoring and Reporting section.

Vessel Strike Avoidance Measures

This proposed rule contains numerous vessel strike avoidance measures. Revolution Wind will be 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 unable to maneuver and, because of the inability to maneuver, the vessel cannot comply (*e.g.,* due to towing, etc.). Vessel operators and crews will receive protected species identification training prior to the start of in-water construction activities. This training will cover information about marine mammals and other protected species known to occur or which have the potential to occur in the project area. It will include training on making observations in both good weather conditions (*i.e.,* clear visibility, low wind, and low sea state) and bad weather conditions (*i.e.,* fog, high winds and high sea states, in glare). Training will not only include identification skills, but will also include information and resources available regarding applicable Federal laws and regulations for protected species.

Revolution Wind will abide by the following vessel strike avoidance measures:

- All 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.
- During any vessel transits within or to/from the Revolution Wind project area, such as for crew transfers), an observer would be stationed at the best vantage point of the vessel(s) to ensure that the vessel(s) are maintaining the appropriate separation distance from marine mammals.
- Year-round and when a vessel is in transit, all vessel operators will continuously monitor U.S. Coast Guard VHF Channel 16 over which North Atlantic right whale sightings are broadcasted.
- At the onset of transiting and at least once every four hours, vessel operators and/or trained crew members will monitor the project's Situational Awareness System, WhaleAlert, and the Right Whale Sighting Advisory System (RWSAS) for the presence of North Atlantic right whales. Any observations of any large whale by any Revolution Wind staff or contractors, including vessel crew, must be communicated immediately to PSOs, PAM operator, and all vessel captains to increase situational awareness. Conversely, any large whale observation or detection via a sighting network (*e.g.,* Mysticetus) by PSOs or PAM operators will be conveyed to vessel operators and crew.
- All vessels would comply with existing NMFS regulations and speed restrictions and state regulations as applicable for North Atlantic right whales.
- In the event that any Slow Zone (designated as a Dynamic Management Area (DMA)) is established that overlaps with an area where a project-associated

vessel would operate, that vessel, regardless of size, will transit that area at 10 knots or less.

- Between November 1st and April 30th, all vessels, regardless of size, would operate port to port (specifically from ports in New Jersey, New York, Maryland, Delaware, and Virginia) at 10 knots or less, except for vessels while transiting in Narragansett Bay or Long Island Sound (which have not been demonstrated by best available science to provide consistent habitat for North Atlantic right whales).
- All vessels, regardless of size, would immediately reduce speed to 10 knots or less when any large whale, mother/calf pairs, or large assemblages of non-delphinid cetaceans are observed near (within 500 m) an underway vessel.
- All vessels, regardless of size, would immediately reduce speed to 10 knots or less when a North Atlantic right whale is sighted, at any distance, by an observer or anyone else on the vessel.
- If a vessel is traveling at greater than 10 knots, in addition to the required dedicated visual observer, real-time PAM of transit corridors must be conducted prior to and during transits. If a North Atlantic right whale is detected via visual observation or PAM within or approaching the transit corridor, all crew transfer vessels must travel at 10 knots or less for the following 12 hours. Each subsequent detection will trigger a 12-hour reset. A slowdown in the transit corridor expires when there has been no further visual or acoustic detection of North Atlantic right whales in the transit corridor in the past 12 hours.
- All underway vessels (*e.g.,* transiting, surveying) must have a dedicated visual observer on duty at all times to monitor for marine mammals within a 180° direction of the forward path of the vessel (90° port to 90° starboard). Visual observers must be equipped with alternative monitoring technology for periods of low visibility (*e.g.,* darkness, rain, fog, etc.). The dedicated visual observer must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements in this proposed action. Visual observers may be third-party observers (*i.e.,* NMFS-approved PSOs) or crew members and must not have any other duties other than observing for marine mammals. Observer training related to these vessel strike avoidance measures must be conducted for all vessel operators and crew prior to the start of in-water construction activities to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a North Atlantic right whale, other whale (defined in this context as sperm whales or baleen whales other than North Atlantic right whales), or other marine mammal. Confirmation of the observers' training and understanding of the ITA requirements must be documented on a training course log sheet and reported to NMFS.
- All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If a whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take appropriate action.
- If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less such that the 500-m minimum separation distance requirement is not violated. If a North Atlantic right whale, or a large whale that cannot be confirmed as a species other than a North Atlantic right whale, is sighted within 500 m of an underway vessel, that 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 500 m. If a whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and non-North Atlantic right whale baleen whales. If one of these species is sighted within 100 m of an underway vessel, that 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 from all delphinoid cetaceans and pinnipeds, with an exception made for those that approach the vessel (*e.g.,* bow-riding dolphins). If a delphinoid cetacean or pinniped is sighted within 50 m of an underway vessel, that vessel must shift the engine to neutral (again, with an exception made for those that approach the vessel). Engines will not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m.
- When a marine mammal(s) is 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 a marine mammal(s) is sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engine(s) until the animal(s) is clear of the area. This does not apply to any vessel towing gear or any situation where respecting the relevant separation distance would be unsafe (*i.e.,* any situation where the vessel is navigationally constrained).
- All vessels underway must not divert or alter course in order to approach any marine mammal.
- For in-water construction heavy machinery activities other than impact or vibratory pile driving, if a marine mammal in on a path towards or comes within 10 m of equipment, Revolution Wind must cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.
- Revolution Wind must submit a North Atlantic right whale vessel strike avoidance plan 180 days prior to commencement of vessel use. The plan would, at minimum, describe how PAM, in combination with visual observations, would be conducted to ensure the transit corridor is clear of right whales. The plan would also provide details on the vessel-based observer protocols on transiting vessels.

WTG and OSS Foundation Installation

For WTG and OSS foundation installation, NMFS is proposing to include the following mitigation requirements, which are described in detail below: seasonal and daily restrictions; the use of noise abatement systems; the use of PSOs and PAM operators; the implementation of clearance and shutdown zones, and the use of soft-start.

Seasonal and Daily Restrictions

No foundation impact pile driving activities would occur January 1 through April 30. Based on the best available information (Roberts and Halpin, 2022), the highest densities of North Atlantic right whales in the project area are expected during the months of January through April. NMFS is requiring this seasonal work restriction to minimize the potential for North Atlantic right whales to be exposed to noise incidental to impact pile driving of monopiles, which is

expected to greatly reduce the number of takes of North Atlantic right whales.

No more than three foundation monopiles would be installed per day. Monopiles would be no larger than 15-m in diameter, representing the larger end of the tapered 7/15-m monopile design. For all monopiles, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 4,000 kJ.

Revolution Wind has requested authorization to initiate pile driving during nighttime when detection of marine mammals is visually challenging. To date, Revolution Wind has not submitted a plan containing the information necessary, including evidence, that their proposed systems are capable of detecting marine mammals, particularly large whales, at night and at distances necessary to ensure mitigation measures are effective. The available information on traditional night vision technologies demonstrates that there is a high degree of uncertainty in reliably detecting marine mammals at night at the distances necessary for this project (Smultea *et al.,* 2021). Therefore, at this time, NMFS plans to only allow Revolution Wind to initiate pile driving during daylight hours, and prohibit Revolution Wind from initiating pile driving earlier than one hour after civil sunrise or later than 1.5 hours before civil sunset. We are, however, proposing to encourage and allow Revolution Wind the opportunity to further investigate and test advanced technology and detection systems to support their request. NMFS is proposing to condition the LOA such that nighttime pile driving would only be allowed if Revolution Wind submits an Alternative Monitoring Plan (as part of the Pile Driving and Marine Mammal Monitoring Plan) to NMFS for approval that proves the efficacy of their night vision devices (*e.g.,* mounted thermal/IR camera systems, hand-held or wearable night vision devices (NVDs), infrared (IR) spotlights) in detecting protected marine mammals prior to making a determination in the final rule. The plan must include a full description of the proposed technology, monitoring methodology, and supporting data demonstrating the reliability and effectiveness of the proposed technology in detecting marine mammal(s) within the clearance and shutdown zones for monopiles before and during impact pile driving. The Plan should identify the efficacy of the technology at detecting marine mammals in the clearance and shutdowns under all the various conditions anticipated during construction, including varying weather conditions, sea states, and in consideration of the use of artificial lighting.

Noise Abatement Systems

Revolution Wind would employ noise abatement systems (NAS), also known as noise attenuation systems, during all impact pile driving of monopiles to reduce the sound pressure levels that are transmitted through the water in an effort to reduce ranges to acoustic thresholds and minimize any acoustic impacts resulting from impact pile driving. Revolution Wind would be required to employ a big double bubble curtain or a combination of two or more NAS during these activities, as well as the adjustment of operational protocols to minimize noise levels.

Two categories of NAS exist: primary and secondary. A primary NAS would be used to reduce the level of noise produced by the pile driving activities at the source, typically through adjustments on to the equipment (*e.g.,* hammer strike parameters). Primary NAS are still evolving and will be considered for use during mitigation efforts when the NAS has been demonstrated as effective in commercial projects. However, as primary NAS are not fully effective at eliminating noise, a secondary NAS would be employed. The secondary NAS is a device or group of devices that would reduce noise as it was transmitted through the water away from the pile, typically through a physical barrier that would reflect or absorb sound waves and, therefore reducing the distance the higher energy sound propagates through the water column. Together, these systems must reduce noise levels to the lowest level practicable with the goal of not exceeding measured ranges to Level A harassment and Level B harassment isopleths corresponding to those modeled assuming 10-dB sound attenuation, pending results of sound field verification (SFV) (see the *Acoustic Monitoring for Sound Field and Harassment Isopleth Verification* section).

Noise abatement systems, such as bubble curtains, are used to decrease the sound levels radiated from a 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 *et al.,* 2016; Koschinski and 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 and Lüdemann, 2013; Nehls *et al.,* 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. Secondary NAS that may be used by Revolution Wind include a big bubble curtain (BBC), a hydro-sound damper (HSD), or an AdBm Helmholz resonator (Elzinga *et al.,* 2019). See Appendix B (Protected Species Mitigation and Monitoring Plan (PSMMP)) of the ITA application for more information on these systems (Revolution Wind, 2022b). If a single system is used, it must be a double big bubble curtain (dBBC). Other systems (*e.g.,* noise mitigation screens) are not considered feasible for the Revolution Wind project as they are in their early stages of development and field tests to evaluate performance and effectiveness have not been completed. Should the research and development phase of these newer systems demonstrate effectiveness, as part of adaptive management, Revolution Wind may submit data on the effectiveness of these systems and request approval from NMFS to use them during pile driving.

If a bubble curtain is used (single or double), Ørsted would be required to maintain the following operational parameters: The bubble curtain(s) must distribute air bubbles using a target air flow rate of at least 0.5 $m^3/(min*m)$, and must distribute bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact; no parts of the ring or other

objects should prevent full seafloor contact. Revolution Wind must require that construction contractors train personnel in the proper balancing of airflow to the bubble ring, and must require that construction contractors submit an inspection/performance report for approval by Revolution Wind within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards must occur prior to impact driving of monopiles. If Revolution Wind uses a noise mitigation device in addition to a BBC, similar quality control measures would be required.

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. Dähne *et al.* (2017) found that single bubble curtains that reduce sound levels by 7 to 10 dB reduced the overall sound level by approximately 12 dB when combined as a double bubble curtain for 6-m steel monopiles in the North Sea. During installation of monopiles (~8 m) for more than 150 WTGs in comparable water depths (>25 m) and conditions in Europe indicate that attenuation of 10 dB is readily achieved (Bellmann, 2019; Bellmann *et al.,* 2020) using single BBCs for noise attenuation. Designed to gather additional data regarding the efficacy of BBCs, the Coastal Virginia Offshore Wind (CVOW) pilot project systematically measured noise resulting from the impact driven installation of two 7.8-m monopiles, one installation using a dBBC and the other installation using no noise abatement system (CVOW, unpublished data). Although many factors contributed to variability in received levels throughout the installation of the piles (*e.g.,* hammer energy, technical challenges during operation of the dBBC), reduction in broadband SEL using the dBBC (comparing measurements derived from the mitigated and the unmitigated monopiles) ranged from approximately 9–15 dB. Again, NMFS would require Revolution Wind to apply a dBBC, or a single BBC coupled with an additional noise mitigation device, to ensure sound generated from the project does not exceed that modeled (assuming 10-dB reduction) at given ranges to harassment isopleths, and to minimize noise levels to the lowest level practicable. Double BBCs are successfully and widely applied across European wind development efforts, and are known to reduce noise levels more than single BBC alone (*e.g.,* Bellman *et al.,* 2020). Revolution Wind anticipates, and NMFS agrees, that the use of a noise abatement system would likely produce field measurements of the isopleth distances to the Level A harassment and Level B harassment thresholds that accord with those modeled assuming 10-dB of attenuation for impact pile driving of monopiles (refer back to the Estimated Take, Proposed Mitigation, and Proposed Monitoring and Reporting sections).

Use of PSOs and PAM Operators

As described above, Revolution Wind would be required to use PSOs and acoustic PSOs (*i.e.,* PAM operators) during all foundation installation activities. At minimum, four PSOs would be actively observing marine mammals before, during, and after pile driving. At least two PSOs would be stationed on the pile driving vessel and at least two PSOs would be stationed on a secondary, dedicated PSO vessel. The dedicated PSO vessel would be located at the outer edge of the 2.3 km (in the summer; 4.4 km in the winter) large whale clearance zone (unless modified by NMFS based on SFV). Concurrently, at least one PAM operator would be actively monitoring for marine mammals before, during, and after pile driving. More details on PSO and PAM operator requirements can be found in the Proposed Monitoring and Reporting section.

Furthermore, all crew and personnel working on the Revolution Wind project would be required to maintain situational awareness of marine mammal presence (discussed further above) and would be required to report any sightings to the PSOs.

Clearance and Shutdown Zones

NMFS is proposing to require the establishment of both clearance and shutdown zones during all impact pile driving of WTG and OSS foundation piles, which would be monitored by visual PSOs and PAM operators before, during and after pile driving. Prior to the start of impact pile driving activities, Revolution Wind would clear the area of marine mammals, per the clearance zones in Table 34, to minimize the potential for and degree of harassment.

The purpose of ''clearance'' of a particular zone is to prevent potential instances of auditory injury and more severe behavioral disturbance or, in the case of North Atlantic right whales, avoid and minimize behavioral disturbance to the maximum extent practicable (for North Atlantic right whales, the clearance and shutdown zones are set to any distance; see Table 34) by delaying the commencement of impact pile driving if marine mammals are detected within certain pre-defined distances from the pile being installed.

PSOs would visually monitor for marine mammals for a minimum of 60 minutes immediately prior to commencement of pile driving, while PAM operators would review data from at least 24 hours prior to pile driving and actively monitor hydrophones for 60 minutes immediately prior to pile driving. Prior to initiating soft-start procedures, all clearance zones must be visually confirmed to be free of marine mammals for 30 minutes immediately prior to starting a soft-start of pile driving. If a marine mammal is observed entering or within the relevant clearance zone prior to the initiation of impact pile driving activities, pile driving must be delayed and will not begin until either the marine mammal(s) has voluntarily left the specific clearance zones and have been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other marine mammal species).

Mitigation zones related to impact pile driving activities were created around two different seasonal periods in consideration of the different seasonal sound speed profiles that were used in JASCO's underwater sound propagation modeling, including summer (May through November) and winter (December) (Table 34). In addition to the clearance and shutdown zones that would be monitored both visually and acoustically, NMFS is proposing to establish a minimum visibility zone to ensure that marine mammals are visually detected prior to commencement of pile driving. The minimum visibility zone would extend 2,300 m from the pile during summer months and 4,400 m during December (Table 34). These values correspond to the maximum low-frequency cetacean (*i.e.,* baleen whale) distances to the Level A harassment isopleths assuming three monopiles are driven in a day, rounded up to the nearest hundred. The entire minimum visibility zone must be visible (*i.e.,* not obscured by dark, rain, fog, etc.) for a full 30 minutes immediately prior to commencing impact pile driving. For North Atlantic right whales, there is an additional requirement that the clearance zone may only be declared clear if no confirmed North Atlantic right whale acoustic detections (in addition to visual) have occurred during the 60-minute

monitoring period. Any large whale sighted by a PSO or acoustically detected by a PAM operator that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale.

The purpose of a shutdown is to prevent a specific acute impact, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity. If a marine mammal is observed entering or within the respective shutdown zone (Table 34) after impact pile driving has begun, the PSO will request a temporary cessation of impact pile driving. In situations when shutdown is called for but Revolution Wind determines shutdown is not practicable due to imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk of injury or loss of life for individuals, reduced hammer energy must be implemented when the lead engineer determines it is practicable. Specifically, pile refusal or pile instability could result in not being able to shut down pile driving immediately. Pile refusal occurs when the pile driving sensors indicate the pile is approaching refusal, and a shut-down would lead to a stuck pile which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Pile instability occurs when the pile is unstable and unable to stay standing if the piling vessel were to ''let go.'' During these periods of instability, the lead engineer may determine a shutdown is not feasible because the shutdown combined with impending weather conditions may require the piling vessel to ''let go'' which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. In these situations, Revolution Wind must reduce hammer energy to the lowest level practicable.

After shutdown, impact pile driving may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods (15 minutes for small odontocetes and 30 minutes for all other marine mammal species). If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving may not restart until the North Atlantic right whale is no longer observed or 30 minutes has elapsed since the last detection. In cases where these criteria are not met, pile driving may restart only if necessary to maintain pile stability, at which time Revolution Wind must use the lowest hammer energy practicable to maintain stability. Upon re-starting pile driving, soft start protocols must be followed.

The clearance and shutdown zone sizes vary by species and are shown in Table 34. All distances to the perimeter of clearance zones are the radii from the center of the pile. Pursuant to the proposed adaptive management provisions, Revolution Wind may request modification to these zone sizes pending results of sound field verification (see Proposed Monitoring and Reporting section). Any changes to zone size would require NMFS' approval.

TABLE 34—CLEARANCE, SHUTDOWN, MINIMUM VISIBILITY, AND LEVEL B HARASSMENT ZONES DURING IMPACT PILE DRIVING IN SUMMER AND WINTER [1]

Monitoring details	Zone sizes for impact piling (m)									
Foundation type	North Atlantic right whales		Large whales		Delphinids		Harbor porpoises		Seals	
	WTG	OSS	WTG	OSS	WTG	OSS	WTG	OSS	WTG	OSS
Clearance Zone	any distance		2,300 (4,400)	1,600 (2,700)	[2] NAS	NAS	1,400 (2,400)	900 (1,300)	500 (900)	400 (400)
PAM Clearance Zone	3,900 (4,300)	4,100 (4,700)	n/a							
Shutdown Zone	any distance		2,300 (4,400)	1,600 (2,700)	NAS	NAS	1,400 (2,400)	900 (1,300)	500 (900)	400 (400)
PAM Shutdown Zone	3,900 (4,400)	4,100 (4,700)	n/a							
Minimum Visibility Zone	WTG: 2,300 (4,400) OSS: 1,600 (2,700)									
Level B Harassment Zone	WTG: 3,833 (4,271) OSS: 4,100 (4,698)									

[1] Winter (*i.e.,* December) distances are presented in parentheses.
[2] NAS (noise abatement system) means that the zone is small enough that it would be encompassed by the bubble curtain.

Soft-Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning them, or providing them with a chance to leave the area prior to the hammer operating at full capacity. Soft start typically involves initiating hammer operation at a reduced energy level (relative to full operating capacity) followed by a waiting period. Revolution Wind must utilize a soft start protocol for impact pile driving of monopiles by performing 4–6 strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes. NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers. 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, as mentioned previously, Revolution Wind will target less than 20 percent of the total hammer energy for the initial hammer strikes during soft start. Soft start will be required at the beginning of each day's monopile installation, and at any time following a cessation of impact pile driving of 30 minutes or longer. If a marine mammal is detected within or about to enter the applicable clearance zones prior to the beginning of soft-start procedures, impact pile driving would be delayed until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species).

Cofferdam or Casing Pipe Installation and Removal

For cofferdam or casing pipe installation and removal, NMFS is proposing to include the following mitigation requirements, which are described in detail below: daily restrictions; the use of PSOs; the implementation of clearance and shutdown zones; and the use of soft-start if a pneumatic impact hammer is used. Given the short duration of work, relatively small harassment zones if a pneumatic hammer is used, and lower noise levels during vibratory driving, NMFS is not proposing to require PAM or noise abatement system use during these activities.

Seasonal and Daily Restrictions

Revolution Wind has proposed to construct the cofferdams or casing pipe scenario within the first year of the effective period of the regulations and LOA. NMFS is not requiring any seasonal work restrictions for landfall construction in this proposed rule due to the relatively short duration of work (*i.e.,* low associated impacts). Revolution Wind would be required, however, to conduct vibratory pile driving associated with cofferdam installation and pneumatic hammering of casing pipes during daylight hours only. Although North Atlantic right whales do migrate in coastal waters, they are not expected to occur in Narragansett Bay where work would be occurring. The distance to the Level B harassment isopleth (9.74 km) for installation of steel sheet piles and the maximum distance to the Level A isopleth (3.95 km) for installation of a casing pipe do not extend beyond the mouth of Narragansett Bay; thus, it is unlikely that right whales (or most species of marine mammals considered here) would be exposed to vibratory pile driving during cofferdam or goal post sheet pile installation at levels close to the 120 dB Level B harassment threshold, or pneumatic hammering at Level A harassment thresholds.

Use of PSOs

Prior to the start of vibratory pile driving or pneumatic hammering activities, at least two PSOs located at the best vantage points would monitor the clearance zone for 30 minutes, continue monitoring during pile driving or pneumatic hammering, and for 30 minutes following cessation of either activity. The clearance zones must be fully visible for at least 30 minutes and all marine mammal(s) must be confirmed to be outside of the clearance zone for at least 30 minutes immediately prior to initiation of either activity.

Clearance and Shutdown Zones

Revolution Wind would establish clearance and shutdown zones for vibratory pile driving activities associated with cofferdam installation (Table 35) and pneumatic hammering for casing pipe installation (Table 36). If a marine mammal is observed entering or is observed within the respective zones, activities will not commence until the animal has exited the zone or a specific amount of time has elapsed since the last sighting (*i.e.,* 30 minutes for large whales and 15 minutes for dolphins, porpoises, and pinnipeds). If a marine mammal is observed entering or within the respective shutdown zone after vibratory pile driving or pneumatic hammering has begun, the PSO will call for a temporary cessation of the activity. Pile driving or hammering must not be restarted until either the marine mammal(s) has voluntarily left the specific clearance zones and has been visually confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other marine mammal species). Because a vibratory hammer can grip a pile without operating, pile instability should not be a concern and no caveat for re-starting pile driving due to pile instability is proposed.

TABLE 35—DISTANCES TO HARASSMENT THRESHOLDS AND MITIGATION ZONES DURING VIBRATORY SHEET PILE DRIVING

Marine mammal species	Level A harassment (SEL_{cum}) (m)	Level B harassment (m)	Clearance zone (m)	Shutdown zone (m)
Low-frequency cetaceans				
Fin whale *	5	9,740	100	100
Minke whale	5	9,740	100	100
Sei whale *	5	9,740	100	100
Humpback whale	5	9,740	100	100
North Atlantic right whale *	5	9,740	100	100
Blue whale *	5	9,740	100	100
Mid-frequency cetaceans				
Sperm whale *		9,740	100	100
Atlantic white-sided dolphin		9,740	50	50
Atlantic spotted dolphin		9,740	50	50
Common dolphin		9,740	50	50
Risso's dolphin		9,740	50	50
Bottlenose dolphin		9,740	50	50
Pilot whales		9,740	50	50
High-frequency cetaceans				
Harbor porpoise	190	9,740	[1] 200	[1] 200
Phocid Pinnipeds (in water)				
Gray seal	10	9,740	50	50

TABLE 35—DISTANCES TO HARASSMENT THRESHOLDS AND MITIGATION ZONES DURING VIBRATORY SHEET PILE DRIVING—Continued

Marine mammal species	Level A harassment (SEL_{cum}) (m)	Level B harassment (m)	Clearance zone (m)	Shutdown zone (m)
Harbor seal	10	9,740	50	50

* Denotes species listed under the Endangered Species Act
[1] Distance has been increased from 100 m, as proposed by Revolution Wind, to ensure the clearance and shutdown zones are larger than the Level A harassment zone (190 m).

TABLE 36—DISTANCES TO HARASSMENT THRESHOLDS AND MITIGATION ZONES DURING CASING PIPE INSTALLATION

Marine mammal hearing group	Level A harassment (SEL_{cum}) (m)	Level B harassment (m)	Clearance zone (m)	Shutdown zone (m)
Low-frequency	3,870	920	3,900	3,900
Mid-frequency	230	920	250	250
High-frequency	3,950	920	4,000	4,000
Phocid pinnipeds	1,290	920	1,300	1,300

UXO/MEC Detonations

For UXO/MEC detonations, NMFS is proposing to include the following mitigation requirements, which are described in detail below: As Low as Reasonably Practical Approach (ALARP); seasonal and daily restrictions; the use of noise abatement systems; the use of PSOs and PAM operators to visually and acoustically monitor for marine mammals; and the implementation of clearance zones.

As Low as Reasonably Practicable (ALARP) Approach

For any UXOs/MECs that require removal, Revolution Wind would be required to implement the As Low as Reasonably Practicable (ALARP) process. This process would require Revolution Wind to undertake ''life-and-shift'' (*i.e.,* physical removal and then lead up to in situ disposal), which would include low-order (deflagration) to high-order (detonation) methods of removal. Another potential approach involve the cutting of the UXO/MEC to extract any explosive components. Implementing the ALARP approach would minimize potential impacts to marine mammals, as UXOs/MECs would only be detonated as a last resort.

Seasonal and Daily Restrictions

Revolution Wind would be limited to only detonating a total of 13 UXOs/MECs between May 1 and October 31 to reduce impacts to North Atlantic right whales during peak occurrence periods. Furthermore, UXO/MEC detonation would be limited to daylight hours only to ensure that visual PSOs can confirm appropriate clearance of the site prior to detonation events.

Noise Abatement Systems

Revolution Wind would be required to use a noise abatement system during all UXO/MEC detonations, should detonations be determined to be necessary. Although the exact level of noise attenuation that can be achieved by noise abatement systems is unknown, available data from Bellmann *et al.* (2020) and Bellmann and Betke (2021) provide a reasonable expectation that the noise abatement systems would be able to achieve at least 10-dB attenuation. SFV would be required for all detonation events to verify the modeled distances, assuming 10-dB attenuation, are representative of the sound fields generated during detonations. This level of noise reduction would provide substantial reductions in impact zones for low-frequency cetaceans such as the North Atlantic right whale. For example, assuming the largest UXO/MEC charge weight (454 kg; E12) at a depth of 45 m, 10-dB of attenuation reduces the Level A harassment (PTS) zone from 243 km^2 to approximately 45 km^2 (Table 45 in the ITA application). The Level B harassment zone, given the same parameters, would be decreased from 1,158 km^2 to 445 km^2 (Table 47 in the ITA application). However, and as previously stated in this notice, Revolution Wind does not expect that all 13 of the potential UXOs/MECs would be of the largest charge weight; this weight was used as a conservative option in estimating exposures and take of marine mammals.

Use of PSOs and PAM Operators

Prior to the UXO/MEC detonation, at least two PSOs per observing platform (*i.e.,* vessels, plane) located at the best vantage points would monitor the clearance zone for 60 minutes, continue monitoring during the detonation, and for 30 minutes following the event. The clearance zones must be fully visible for at least 60 minutes and all marine mammal(s) must be confirmed to be outside of the clearance zone for at least 30 minutes immediately prior to initiation of either activity. PAM must also be conducted for at least 60 minutes prior to detonation and the zone must be acoustically clear during this time.

Clearance Zones

Revolution Wind proposed to clear a 3.78-km radius zone around the detonation site prior to detonations using both visual and acoustic monitoring methods. This distance represents the modeled Level A (PTS) harassment zone for low-frequency cetaceans (*i.e.,* large whales) assuming the largest 454-kg charge weight and use of a bubble curtain (Table 37). However, NMFS is proposing to require more protective zone sizes in order to ensure the least practicable adverse impact, which includes minimizing the potential for TTS. As stated above, it is currently not known how easily Revolution Wind will be able to identify UXO/MEC charge weights in the field. For this reason, NMFS proposes to require Revolution Wind to clear a zone extending 10 km for large whales, 2 km for delphinids, 10 km for harbor porpoises, and 5 km for seals (Table 37). These zones are based on (but not equal to) the largest TTS threshold distances for a 454-kg charge at any site modeled. However, NMFS notes that these zone

sizes may be adjusted based on SFV and confirmation of UXO/MEC/doner charge sizes. Moreover, if Revolution Wind indicates to NMFS they will be able to easily and reliably identify charge weights in the field, NMFS would develop clearance zones in the final rule for each charge weight analyzed.

If a marine mammal is observed entering or within the clearance zone prior to denotation, the activity would be delayed. Only when the marine mammals have been confirmed to have voluntarily left the clearance zones and been visually confirmed to be beyond the clearance zone, or when 60 minutes have elapsed without any redetections for whales (including the North Atlantic right whale) or 30 minutes have elapsed without any redetections of delphinids, harbor porpoises, or seals may detonation occur.

TABLE 37—LARGEST MODELED HARASSMENT AND CLEARANCE ZONES FOR UXO/MEC DETONATION OF E12 (454 kg) CHARGE ASSUMING 10-dB NOISE ABATEMENT

Marine mammal species	Distances to zones for E12 (454 kg) UXO/MEC charge weight [1]		
	Level A harassment clearance zone (m)	Level B harassment zone (m)	Clearance zones
Low-frequency cetaceans			
Fin whale *	3,780	11,900	10,000
Minke whale.			
Sei whale *.			
Humpback whale.			
North Atlantic right whale *.			
Blue whale *.			
Mid-frequency cetaceans			
Sperm whale *	461	2,550	2,000
Atlantic white-sided dolphin.			
Atlantic spotted dolphin.			
Common dolphin.			
Risso's dolphin.			
Bottlenose dolphin.			
Long-finned pilot whale.			
High-frequency cetaceans			
Harbor porpoise	6,200	14,100	10,000
Pinnipeds (in water)			
Gray seal	1,600	6,990	5,000
Harbor seal.			

* Denotes species listed under the Endangered Species Act.

[1] At time of preparing this proposed rule, Revolution Wind has not provided NMFS evidence they will be able to reliably determine the charge weight of any UXO/MEC that must be detonated; therefore, NMFS assumes all UXO/MECs could be of the largest size modeled. If Revolution Wind provides information they can detect charge weights in the field prior to issuance of the final rule, if issued, NMFS may modify the clearance zone to ones based on charge weights distances to PTS and TTS. Distances to PTS and TTS thresholds have been identified by Revolution Wind in Appendix B of their application.

HRG Surveys

For HRG surveys, NMFS is proposing to include the following mitigation requirements, which are described in detail below, for all HRG survey activities using boomers, sparkers, and CHIRPs: the use of PSOs; the implementation of clearance, shutdown, and vessel separation zones; and ramp-up of survey equipment.

There are no mitigation measures prescribed for sound sources operating at frequencies greater than 180 kHz, as these would be expected to fall outside of marine mammal hearing ranges and not result in harassment; however, all HRG survey vessels would be subject to the aforementioned vessel strike avoidance measures described earlier in this section. Furthermore, due to the frequency range and characteristics of some of the sound sources, shutdown, clearance, and ramp-up procedures are not proposed to be conducted during HRG surveys utilizing only non-impulsive sources (*e.g.,* Ultra-Short BaseLine (USBL) and other parametric sub-bottom profilers), with exception to usage of CHIRPS and other non-parametric sub-bottom profilers. PAM would not be required during HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impacts during HRG survey activities is limited. We have provided a thorough description of our reasoning for not requiring PAM during HRG surveys in several **Federal Register** notices (*e.g.,* 87 FR 40796, July 8, 2022; 87 FR 52913, August 3, 2022; 87 FR 51356, August 22, 2022).

Seasonal and Daily Restrictions

Given the potential impacts to marine mammals from exposure to HRG survey noise sources are relatively minor (*e.g.,* limited to Level B harassment) and that the distances to the Level B harassment isopleth is very small (maximum distance is 141 m), NMFS is not proposing to implement any seasonal or time-of-day restrictions for HRG surveys.

Although no temporal restrictions are proposed, NMFS would require Revolution Wind to deactivate acoustic sources during periods where no data is being collected, except as determined necessary for testing. Any unnecessary use of the acoustic source would be avoided.

Use of PSOs

During all HRG survey activities using boomers, sparkers, and CHIRPS, one PSO would be required to monitor during daylight hours and two would be required to monitor during nighttime hours, per vessel. PSOs would begin visually monitoring 30 minutes prior to the initiation of the specified acoustic source (*i.e.,* ramp-up, if applicable) through 30 minutes after the use of the specified acoustic source has ceased. PSOs would be required to monitor the appropriate clearance and shutdown zones. These zones would be based around the radial distance from the acoustic source and not from the vessel.

Clearance, Shutdown, and Vessel Separation Zones

Revolution Wind would be required to implement a 30-minute clearance period of the clearance zones (Table 38) immediately prior to the commencing of the survey, or when there is more than a 30-minute break in survey activities and PSOs have not been actively monitoring. The clearance zones would be monitored by PSOs, using the appropriate visual technology. If a marine mammal is observed within a clearance zone during the clearance period, ramp-up (described below) may not begin until the animal(s) has been observed voluntarily exiting its respective clearance 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). In any case when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (IR/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations would be allowed to commence (*i.e.,* no delay is required) despite periods of inclement weather and/or loss of daylight.

Once the survey has commenced, Revolution Wind would be required to shut down boomers, sparkers, and CHIRPs if a marine mammal enters a respective shutdown zone (Table 38). In cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations would be allowed to continue (*i.e.,* no shutdown is required) so long as no marine mammals have been detected. The use of boomers, sparkers, and CHIRPS would not be allowed to commence or resume until the animal(s) has been confirmed to have left the shutdown zone or until a full 15 minutes (for small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sighting. Any large whale sighted by a PSO within 1,000 m of the boomers, sparkers, and CHIRPs that cannot be identified as a non-North Atlantic right whale would be treated as if it were a North Atlantic right whale.

The shutdown requirement would be waived for small delphinids of the following genera: *Delphinus, Stenella, Lagenorhynchus,* and *Tursiops.* Specifically, if a delphinid from the specified genera is visually detected approaching the vessel (*i.e.,* to bow-ride) or towed equipment, shutdown would not be 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), the PSOs would use their best professional judgment in making the decision to call for a shutdown. Shutdown would be required if a delphinid that belongs to a genus other than those specified is detected in the shutdown zone.

If a boomer, sparker, or CHIRP is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it would be allowed to be activated again without ramp-up only if (1) PSOs have maintained constant observation, and (2) no additional detections of any marine mammal occurred within the respective shutdown zones. If a boomer, sparker, or CHIRP was shut down for a period longer than 30 minutes, then all clearance and ramp-up procedures would be required, as previously described.

TABLE 38—HARASSMENT THRESHOLD RANGES AND MITIGATION ZONES DURING HRG SURVEYS

Marine mammal species	Level B harassment zone (m)		Clearance zone (m)	Shutdown zone (m)
	Boomer/sparker	CHIRPs		
Low-frequency cetaceans				
Fin whale.*	141	48	100	100
Minke whale.			100	100
Sei whale.*			100	100
Humpback whale.			100	100
North Atlantic right whale.*			500	500
Blue whale.*			100	100
Mid-frequency cetaceans				
Sperm whale.*	141	48	100	100
Atlantic white-sided dolphin.			100	n/a
Atlantic spotted dolphin.			100	n/a
Common dolphin.			100	n/a
Risso's dolphin.			100	100
Bottlenose dolphin.			100	n/a
Long-finned pilot whale.			100	100
High-frequency cetaceans				
Harbor porpoise.	141	48	100	100

TABLE 38—HARASSMENT THRESHOLD RANGES AND MITIGATION ZONES DURING HRG SURVEYS—Continued

Marine mammal species	Level B harassment zone (m)		Clearance zone (m)	Shutdown zone (m)
	Boomer/sparker	CHIRPs		
Phocid Pinnipeds (in water)				
Gray seal.	141	48	100	100
Harbor seal.				

NOTE: n/a = no shutdown zone mitigation will be applied as these species are known to bow-ride.
* Denotes species is listed under the Endangered Species Act.

Ramp-Up

At the start or restart of the use of boomers, sparkers, and/or CHIRPs, a ramp-up procedure would be required unless the equipment operates on a binary on/off switch. A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. Operators would ramp up sources to half power for 5 minutes and then proceed to full power. Prior to a ramp-up procedure starting, the operator would have to notify the Lead PSO of the planned start of the ramp-up. This notification time would not be less than 60 minutes prior to the planned ramp-up activities as all relevant PSOs would need the appropriate 30 minute period to monitor prior to the initiation of ramp-up. Prior to ramp-up beginning, the operator must receive confirmation from the PSO that the clearance zone is clear of any marine mammals. All ramp-ups would be scheduled to minimize the overall time spent with the source being activated. The ramp-up procedure must be used at the beginning of HRG survey activities or after more than a 30-minute break in survey activities using the specified HRG equipment to provide additional protection to marine mammals in or near the survey area by allowing them to vacate the area prior to operation of survey equipment at full power.

Revolution Wind would not initiate ramp-up until the clearance process has been completed (see Clearance and Shutdown Zones section above). Ramp-up activities would be delayed if a marine mammal(s) enters its respective clearance zone. Ramp-up would only be reinitiated if the animal(s) has been observed exiting its respective shutdown zone or until additional time has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

ASV Use

Should Revolution Wind use an ASV for HRG survey operations, the following measures would be implemented:

- When in use, the ASV would be within 800 m (2,625 ft) of the primary vessel while conducting survey operations;
- Two PSOs would be stationed aboard the mother vessel at the best vantage points to monitor the clearance and shutdown zones around the ASV;
- A dual thermal/high definition camera would be installed on the mother vessel, facing forward and angled in a direction to provide a field of view ahead of the vessel and around the ASV. PSOs would monitor the real-time camera output on hand-held tablets. A monitor would also be installed on the bridge, displaying the real-time image from the thermal/HD camera installed on the ASV itself, providing an additional forward field of view from the ASV;
- Night-vision goggles with thermal clip-ons, and a hand-held spotlight would be used to monitor the ASV during survey operations during periods of reduced visibility (*e.g.,* darkness, rain, fog).

Fishery Monitoring Surveys

Training

All crew undertaking the fishery survey activities would be required to receive protected species identification training prior to activities occurring. Marine mammal monitoring must occur prior to, during, and after haul-back, and gear must not be deployed if a marine mammal is observed in the area. Trawl operations must only start after 15 minutes of no marine mammal sightings within 1 nm of the sampling station.

Gear-Specific Best Management Practices (BMPs)

During daytime sampling for the research trawl surveys, Revolution Wind must maintain visual monitoring efforts during the entire period of time that trawl gear is in the water from deployment to retrieval. If a marine mammal is sighted before the gear is removed from the water, the vessel must slow its speed and steer away from the observed animal(s).

Revolution Wind would be required to undertake BMPs to reduce risks to marine mammals during trawl and trap surveys. These include:

- For research trawls, these specifically include limiting tow time to 20 minutes and monitoring for marine mammals throughout gear deployment, fishing, and retrieval. For ventless trap surveys, these include the breaking strength of all lines being less than 1,700 pounds, the use of sinking line for groundlines, the hauling of sampling gear at least once every 30 days, and the removal of gear at the end of each sampling season;
- The permit number would be written clearly on buoy and any lines that go missing would be reported to NOAA Fisheries' Greater Atlantic Regional Fisheries Office (GARFO) Protected Resources Division as soon as possible;
- If marine mammals are sighted near the proposed sampling location, deployment of research trawl nets and ventless traps would be delayed until the marine mammal(s) has left the area;
- If a marine mammal is determined to be at risk of interaction with the deployed gear, all gear would be immediately removed; and
- If marine mammals are sighted in the vicinity within 15 minutes prior to gear deployment and it is determined the risks of interaction are present regarding the research gear, the sampling station would either move to another location or suspend activities until there are no marine mammal sightings for 15 minutes within 1 nm.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures would provide the means of affecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to promulgate a rulemaking for an activity, section 101(a)(5)(A) 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 proposed 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/or
- Mitigation and monitoring effectiveness.

Separately, monitoring is also regularly used to support mitigation implementation, which is referred to as mitigation monitoring, and monitoring plans typically include measures that both support mitigation implementation and increase our understanding of the impacts of the activity on marine mammals.

During Revolution Wind's construction activities, visual monitoring by NMFS-approved PSOs would be conducted before, during, and after impact pile driving, vibratory pile driving and pneumatic hammering, any UXO/MEC detonations, and HRG surveys. PAM would also be conducted during all impact pile driving and UXO/MEC detonations. Observations and acoustic detections by PSOs would be used to support the activity-specific mitigation measures described above. Also, to increase understanding of the impacts of the activity on marine mammals, observers would record all incidents of marine mammal occurrence at any distance from the piling and pneumatic hammering locations, UXO/MEC detonation site, and during active HRG acoustic sources, and monitors would document all behaviors and behavioral changes, in concert with distance from an acoustic source. The required monitoring is described below, beginning with PSO measures that are applicable to all activities or monitoring, followed by activity-specific monitoring requirements.

Protected Species Observer Requirements

Revolution Wind would be required to collect sighting data and behavioral response data related to construction activities for marine mammal species observed in the region of the activity during the period in which the activities occur using NMFS-approved visual and acoustic PSOs (see Proposed Mitigation section). All observers must be trained in marine mammal identification and behaviors, and are required to have no other construction-related tasks while conducting monitoring. PSOs would monitor all clearance and shutdown zones prior to, during, and following impact pile driving, vibratory pile driving, pneumatic hammering, UXO/MEC detonation, and during HRG surveys using boomers, sparkers, and CHIRPs (with monitoring durations specified further below). Any PSO would have the authority to call for a delay or shutdown of survey activities. PSOs will also monitor the Level B harassment zones and will document any marine mammals observed within these zones, to the extent practicable (noting that some zones are too large to fully observe). Observers would be located at the best practicable vantage points on the pile driving vessel and, where required, on an aerial platform. Full details regarding all marine mammal monitoring must be included in relevant Plans (*e.g.,* Pile Driving and Marine Mammal Monitoring Plan) that, under this proposed action, Revolution Wind would be required to submit to NMFS for approval at least 180 days in advance of the commencement of any construction activities.

The following measures apply to all visual monitoring efforts:

1. Monitoring must be conducted by NMFS-approved, trained PSOs who would be placed at the primary location relevant to the activity (*i.e.,* pile driving vessel, pneumatic hammering location, UXO/MEC vessel, HRG survey vessel), dedicated PSO vessels (*e.g.,* additional UXO/MEC vessel(s) when the detonation area is larger than 2 km), and aerial survey plane and must be in positions that allow for the best vantage point to monitor for marine mammals and implement the relevant clearance and shutdown procedures, when determined to be applicable;

2. PSO must be independent third-party observers and must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct the relevant vessel crew with regard to the presence of protected species and mitigation requirements;

3. During all observation periods related to pile driving (impact and vibratory), pneumatic hammering, UXO/MEC detonations, and HRG surveys, PSOs would be located at the best vantage point(s) in order to ensure 360° visual coverage of the entire clearance and shutdown zones around the observing platform and as much of the Level B harassment zone as possible, while still maintaining a safe work environment;

4. PSOs may not exceed 4 consecutive watch hours, must have a minimum 2-hour break between watches, and may not exceed a combined watch schedule of more than 12 hours in a single 24-hour period;

5. PSOs would be required to use appropriate equipment (specified below) to monitor for marine mammals. During periods of low visibility (*e.g.,* darkness, rain, fog, poor weather conditions, etc.), PSOs would be required to use alternative technologies (*i.e.,* infrared or thermal cameras) to monitor the shutdown and clearance zones.

6. PSOs should have the following minimum qualifications:

a. Visual acuity in both eyes (corrected is permissible) sufficient for discernment of moving targets at the water's surface with the ability to estimate the target size and distance. The use of binoculars is permitted and may be necessary to correctly identify the target(s);

b. Ability to conduct field observations and collect data according to the assigned protocols;

c. Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

d. Writing skills sufficient to document observations, including but not limited to: the number and species of marine mammals observed, the dates and times of when in-water construction activities were conducted, the dates and time 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.

e. 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 Revolution Wind, in satisfaction of the mitigation and monitoring requirements described herein, must meet the following additional requirements:

7. At least one observer must have prior experience working as an observer.

8. Other observers may substitute education (a degree in biological science or a related field) or training for experience;

9. One observer will be designated as lead observer or monitoring coordinator (''Lead PSO''). This Lead PSO would be required to have a minimum of 90 days of at-sea experience working in this role in an offshore environment, and would be required to have no more than eighteen months elapsed since the conclusion of their last at-sea experience;

10. At least one PSO located on platforms (either vessel-based or aerial) would be required to have a minimum of 90 days of at-sea experience working in this role in an offshore environment and would be required to have no more than eighteen months elapsed since the conclusion of their last at-sea experience; and

11. All PSOs must be approved by NMFS. Revolution Wind would be required to submit resumes of the initial set of PSOs necessary to commence the project to NMFS Office of Protected Resources (OPR) (at *itp.esch@noaa.gov*) for approval at least 60 days prior to the first day of in-water construction activities requiring PSOs. Resumes would need to include the dates of training and any prior NMFS approval, as well as the dates and description of their last PSO experience, and must be accompanied by information documenting their successful completion of an acceptable training course. NMFS would allow three weeks to approve PSOs from the time that the necessary information is received by NMFS, after which any PSOs that meet the minimum requirements would automatically be considered approved.

Some activities planned to be undertaken by Revolution Wind may require the use of PAM, which would necessitate the employment of at least one acoustic PSO (aka PAM operator) on duty at any given time. PAM operators would be required to meet several of the specified requirements described above for PSOs, including: 2, 4, 6b-e, 8, 9, 10, and 11. Furthermore, PAM operators would be required to complete a specialized training for operating PAM systems and must demonstrate familiarity with the PAM system on which they would be working.

PSOs would be able to act as both acoustic and visual observers for the project if the individual(s) demonstrates that they have had the required level and appropriate training and experience to perform each task. However, a single individual would not be allowed to concurrently act in both roles or exceed work hours specified in #4 above.

Revolution Wind's personnel and PSOs would also be required to use available sources of information on North Atlantic right whale presence to aid in monitoring efforts. This includes:

1. Daily monitoring of the Right Whale Sightings Advisory System;

2. Consulting of the WhaleAlert app; and,

3. Monitoring of the Coast Guard's VHF Channel 16 throughout the day to receive notifications of any sightings and information associated with any Dynamic Management Areas, to plan construction activities and vessel routes, if practicable, to minimize the potential for co-occurrence with North Atlantic right whales.

Additionally, whenever multiple project-associated vessels (of any size; *e.g.,* construction survey, crew transfer) are operating concurrently, any visual observations of ESA-listed marine mammals must be communicated to PSOs and vessel captains associated with other vessels to increase situational awareness.

The following are proposed monitoring and reporting measures that NMFS would require specific to each construction activity:

WTG and OSS Foundation Installation

Revolution Wind would be required to implement the following monitoring procedures during all impact pile driving activities of monopiles related to WTG and OSS installation.

During all observations associated with impact pile driving, PSOs would use high magnification (7x) binoculars and the naked eye to search continuously for marine mammals. At least one PSO on the foundation pile driving vessel and secondary dedicated-PSO vessel must be equipped with Big Eye binoculars (*e.g.,* 25 x 50; 2,7 view angle; individual ocular focus; height control) of appropriate quality. These would be pedestal-mounted on the deck at the most appropriate vantage point that provides optimal sea surface observation and PSO safety.

Revolution Wind would be required to have a minimum of four PSOs actively observing marine mammals before, during, and after (specific times described below) the installation of foundation piles (monopiles). At least two PSOs must be actively observing on the pile driving vessel while at least two PSOs are actively observing on a secondary, PSO-dedicated vessel. Concurrently, at least one acoustic PSO (*i.e.,* passive acoustic monitoring (PAM) operator) must be actively monitoring for marine mammals before, during and after impact pile driving.

As described in the Proposed Mitigation section, if the minimum visibility zone cannot be visually monitored at all times, pile driving operations may not commence or, if active, must shutdown, unless Revolution Wind determines shutdown is not practicable due to imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk of injury or loss of life for individuals.

To supplement visual observation efforts, Revolution Wind would utilize at least one PAM operator before, during, and after pile installation. This PAM operator would assist the PSOs in ensuring full coverage of the clearance and shutdown zones. All on-duty visual PSOs would remain in contact with the on-duty PAM operator, who would monitor the PAM systems for acoustic detections of marine mammals in the area. In some cases, the PAM operator and workstation may be located onshore or they may be located on a vessel. In either situation, PAM operators would maintain constant and clear communication with visual PSOs on duty regarding detections of marine mammals that are approaching or within the applicable zones related to impact pile driving. Revolution Wind would utilize PAM to acoustically monitor the clearance and shutdown zones (and beyond for situational awareness), and would record all detections of marine mammals and estimated distance, when possible, to

the activity (noting whether they are in the Level A harassment or Level B harassment zones). To effectively utilize PAM, Revolution Wind would implement the following protocols:

- PAM operators would be stationed on at least one of the dedicated monitoring vessels in addition to the PSOs, or located remotely/onshore.
- PAM operators would have completed specialized training for operating PAM systems prior to the start of monitoring activities, including identification of species-specific mysticete vocalizations (*e.g.,* North Atlantic right whales).
- The PAM operator(s) on-duty would monitor the PAM systems for acoustic detections of marine mammals that are vocalizing in the area.
- Any detections would be conveyed to the PSO team and any PSO sightings would be conveyed to the PAM operator for awareness purposes, and to identify if mitigation is to be triggered.
- For real-time PAM systems, at least one PAM operator would be designated to monitor each system by viewing data or data products that are streamed in real-time or near real-time to a computer workstation and monitor located on a project vessel or onshore.
- The PAM operator would inform the Lead PSO on duty of marine mammal detections approaching or within applicable ranges of interest to the pile driving activity via the data collection software system (*i.e.,* Mysticetus or similar system), who would be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.,* delay or shutdown).
- Acoustic monitoring during nighttime and low visibility conditions during the day would complement visual monitoring (*e.g.,* PSOs and thermal cameras) and would cover an area of at least the Level B harassment zone around each foundation.

All PSOs and PAM operators would be required to begin monitoring 60 minutes prior to any impact pile driving, during, and after for 30 minutes. However, PAM operators must review acoustic data from the previous 24 hours as well. As described in the Proposed Mitigation section, impact pile driving of monopiles would only commence when the minimum visibility zone (extending 2.3 km from the pile during summer months and 4.4 km during December for WTG foundation installations, and 1.6 km during summer months and 2.7 km during December for OSS foundation installations) is fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and the clearance zones are clear of marine mammals for at least 30 minutes, as determined by the Lead PSO, immediately prior to the initiation of impact pile driving.

For North Atlantic right whales, any visual (regardless of distance) or acoustic detection would trigger a delay to the commencement of pile driving. In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale species, it must be treated as if it were a North Atlantic right whale. Following a shutdown, monopile installation may not recommence until the minimum visibility zone is fully visible and the clearance zone is clear of marine mammals for 30 minutes and no marine mammals have been detected acoustically within the PAM clearance zone for 30 minutes.

Revolution Wind must prepare and submit a Pile Driving and Marine Mammal Monitoring Plan to NMFS for review and approval at least 180 days before the start of any pile driving. The plans must include final pile driving project design (*e.g.,* number and type of piles, hammer type, noise abatement systems, anticipated start date, etc.) and all information related to PAM PSO monitoring protocols for pile-driving and visual PSO protocols for all activities.

Cofferdam or Casing Pipe Installation and Removal

Revolution Wind would be required to implement the following procedures during all vibratory pile driving activities associated with cofferdam installation and removal, and pneumatic hammering installation and removal of casing pipes.

During all observation periods related to vibratory pile driving or pneumatic hammering, PSOs must use high-magnification (25x), standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals.

Revolution Wind would be required to have a minimum of two PSOs on active duty during any installation and removal of the temporary cofferdams, or casing pipes and goal post sheet piles. These PSOs would always be located at the best vantage point(s) on the vibratory pile driving or pneumatic hammering platform or secondary platform in the immediate vicinity of the primary platforms, in order to ensure that appropriate visual coverage is available of the entire visual clearance zone and as much of the Level B harassment zone as possible. NMFS would not require the use of PAM for these activities.

PSOs would monitor the clearance zone for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles or casing pipes, and for 30 minutes after the activities have ceased. Sheet pile or casing pipe installation may only commence when visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of impact or vibratory pile driving.

UXO/MEC Detonations

Revolution Wind would be required to implement the following procedures during all UXO/MEC detonations.

During all observation periods related to UXO/MEC detonation, PSOs must use high-magnification (25x), standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. PSOs located on the UXO/MEC monitoring vessel((s) would also be equipped with ''Big Eye'' binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control). These would be mounted on a pedestal on the deck of the vessel(s) at the most appropriate vantage to provide for optimal sea surface observation, as well as safety of the PSOs.

For detonation zones (based on UXO/MEC charge weight) larger than 2 km, a secondary vessel would be used for marine mammal monitoring. In the event a secondary vessel is needed, two PSOs would be located at an appropriate vantage point on this vessel and would maintain watch during the same time period as the PSOs on the primary monitoring vessel. For detonation zones larger than 5 km, Revolution Wind would also be required to perform an aerial survey. At least two PSOs must be deployed on the plane during the aerial survey that would occur before, during, and after UXO/detonation events. Revolution Wind would be required to ensure that the clearance zones are fully (100 percent) monitored prior to, during, and after detonations.

As UXO/MEC detonation would only occur during daylight hours, PSOs would only need to monitor during the period between civil twilight rise and set. All PSOs and PAM operators would be required to begin monitoring 60 minutes prior to the UXO/MEC detonation event, during the event, and after for 30 minutes. Detonation may only commence when visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least

30 minutes immediately prior to detonation.

The PAM operator(s) would be stationed on one of the dedicated monitoring vessels, but may also potentially be located remotely onshore, although the latter alternative is subject to approval by NMFS. When real-time PAM is used, at least one PAM operator would be designated to monitor each system by viewing the data or data products that would be streamed in real-time or near real-time to a computer workstation and monitor, which would be located either on an Revolution Wind vessel or onshore. The PAM operator would work in coordination with the visual PSOs to ensure the clearance zone is clear of marine mammals (both visually and acoustically) prior to the detonation. The PAM operator would inform the Lead PSO on-duty of any marine mammal detections approaching or within the clearance zones via the data collection software (*i.e.,* Mysticetus or a similar system), who would then be responsible for requesting the necessary mitigation procedure (*i.e.,* delay). The PAM operator would monitor the clearance zone for large whales, and beyond the zone as possible (dependent on the detection radius of the PAM monitoring equipment).

Revolution Wind must prepare and submit a UXO/MEC and Marine Mammal Monitoring Plan to NMFS for review and approval at least 180 days before the start of any UXO/MEC. The plans must include final project design and all information related to visual and PAM PSO monitoring protocols for UXO/MEC detonations.

HRG Surveys

Revolution Wind would be required to implement the following procedures during all HRG surveys.

During all observation periods, PSOs must use standard handheld (7x) binoculars and the naked eye to search continuously for marine mammals.

Between four and six PSOs would be present on every 24-hour survey vessel, and two to three PSOs would be present on every 12-hour survey vessel. Revolution Wind would be required to have at least one PSO on active duty during HRG surveys that are conducted during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and at least two PSOs during HRG surveys that are conducted during nighttime hours.

All PSOs would begin monitoring 30 minutes prior to the activation of boomers, sparkers, or CHIRPs; throughout use of these acoustic sources, and for 30 minutes after the use of the acoustic sources has ceased.

Given that multiple HRG vessels may be operating concurrently, any observations of marine mammals would be required to be communicated to PSOs on all nearby survey vessels.

Ramp-up of boomers, sparkers, and CHIRPs would only commence when visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of survey activities utilizing the specified acoustic sources.

During daylight hours when survey equipment is not operating, Revolution Wind would ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

Marine Mammal Passive Acoustic Monitoring

As described previously, Revolution Wind would be required to utilize a PAM system to supplement visual monitoring for all monopile installations, as well as during all UXO/MEC detonations. PAM operators may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches. Again, PSOs can act as PAM operators or visual PSOs (but not simultaneously) as long as they demonstrate that their training and experience are sufficient to perform each task.

The PAM system must be monitored by a minimum of one PAM operator beginning at least 60 minutes prior to soft start of impact pile driving of monopiles and UXO/MEC detonation, at all times during monopile installation and UXO/MEC detonation, and 30 minutes post-completion of both activities. PAM operators must immediately communicate all detections of marine mammals at any distance (*i.e.,* not limited to the Level B harassment zones) to visual PSOs, including any determination regarding species identification, distance, and bearing and the degree of confidence in the determination.

PAM systems may be used for real-time mitigation monitoring. The requirement for real-time detection and localization limits the types of PAM technologies that can be used to those systems that are either cabled, satellite, or radio-linked. It is most likely that Revolution Wind would deploy autonomous or moored-remote PAM devices, including sonobuoy arrays or similar retrievable buoy systems. The system chosen will dictate the design and protocols of the PAM operations. Revolution Wind is not considering seafloor cabled PAM systems, in part due to high installation and maintenance costs, environmental issues related to cable laying, and the associated permitting complexities. For a review of the PAM systems Revolution Wind is considering, please see Appendix 4 of the Protected Species Mitigation and Monitoring Plan included in Revolution Wind's ITA application.

Towed PAM systems may be utilized for the Revolution Wind project only if additional PAM systems are necessary. Towed systems consist of cabled hydrophone arrays that would be deployed from a vessel and then typically monitored from the tow vessel. Notably, several challenges exist when using a towed PAM system (*i.e.,* the tow vessel may not be fit for the purpose as it may be towing other equipment, operating sound sources, or working in patterns not conducive to effective PAM). Furthermore, detection and localization capabilities for low-frequency cetacean calls (*i.e.,* mysticete species) can be difficult in a commercial deployment setting. Alternatively, these systems have many advantages, as they are often low cost to operate, have high mobility, and are fairly easy and reliable to operate. These types of systems also work well in conjunction with visual monitoring efforts.

Revolution Wind plans to deploy PAM arrays specific for mitigation and monitoring of marine mammals outside of the shutdown zone to optimize the PAM system's capabilities to monitor for the presence of animals potentially entering these zones. The exact configuration and number of PAM devices would depend on the size of the zone(s) being monitored, the amount of noise expected in the area, and the characteristics of the signals being monitored. More closely spaced hydrophones would allow for more directionality and, perhaps, range to the vocalizing marine mammals; however, this approach would add additional costs and greater levels of complexity to the project. Mysticetes, which would produce relatively loud and lower-frequency vocalizations, may be able to be heard with fewer hydrophones spaced at greater distances. However, detecting smaller cetaceans (such as mid-frequency delphinids; odontocetes) may necessitate that more hydrophones be spaced closer together given the shorter propagation range of the shorter, mid-frequency acoustic signals (*e.g.,* whistles and echolocation clicks). As there are no ''perfect fit'' single optimal array configurations, these set-ups

would need to be considered on a case-by-case basis.

A Passive Acoustic Monitoring (PAM) Plan must be submitted to NMFS for review and approval at least 180 days prior to the planned start of monopile installations. PAM should follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind (Van Parijs *et al.,* 2021). The plan must describe all proposed PAM equipment, procedures, and protocols. However, NMFS considers PAM usage for every project on a case-by-case basis, and would continue discussions with Revolution Wind regarding selection of the PAM system that is most appropriate for the proposed project. The authorization to take marine mammals would be contingent upon NMFS' approval of the PAM Plan.

Acoustic Monitoring for Sound Field and Harassment Isopleth Verification (SFV)

During the installation of the first three monopile foundations, and during all UXO/MEC detonations, Revolution Wind must empirically determine source levels, the ranges to the isopleths corresponding to the Level A harassment and Level B harassment thresholds, and the transmission loss coefficient(s). Revolution Wind may also estimate ranges to the Level A harassment and Level B harassment isopleths by extrapolating from in situ measurements conducted at several distances from the monopile being driven, and UXO/MEC being detonated. Revolution Wind must measure received levels at a standard distance of 750 m from the monopiles and at both the presumed modeled Level A harassment and Level B harassment isopleth ranges, or an alternative distance(s) as agreed to in the SFV Plan.

If acoustic field measurements collected during for installation of the first or subsequent monopile, and UXOs/MEC being detonated, indicate ranges to the isopleths corresponding to Level A harassment and Level B harassment thresholds are greater than the ranges predicted by modeling (assuming 10-dB attenuation), Revolution Wind must implement additional noise mitigation measures prior to installing the next monopile, or detonating any additional UXOs/MECs. Initial additional measures may include improving the efficacy of the implemented noise mitigation technology (*e.g.,* BBC, DBBC) and/or modifying the piling schedule to reduce the sound source. Each sequential modification would be evaluated empirically by acoustic field measurements. In the event that field measurements indicate ranges to isopleths corresponding to Level A harassment and Level B harassment thresholds are greater than the ranges predicted by modeling (assuming 10-dB attenuation), NMFS may expand the relevant harassment, clearance, and shutdown zones and associated monitoring protocols. If harassment zones are expanded beyond an additional 1,500 m, additional PSOs would be deployed on additional platforms, with each observer responsible for maintaining watch in no more than 180° and of an area with a radius no greater than 1,500 m.

If acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10-dB attenuation), Revolution Wind may request a modification of the clearance and shutdown zones for impact pile driving of monopiles and for detonation of UXOs/MECs. For a modification request to be considered by NMFS, Revolution Wind would have had to conduct SFV on three or more monopiles and on all detonated UXOs/MECs thus far to verify that zone sizes are consistently smaller than those predicted by modeling (assuming 10-dB attenuation). In addition, if a subsequent monopile installation location is selected that was not represented by previous three locations (*i.e.,* substrate composition, water depth), SFV would be required. Furthermore, if a subsequent UXO/MEC charge weight is encountered and/or detonation location is selected that was not representative of the previous locations (*i.e.,* substrate composition, water depth), SFV would also be required. Upon receipt of an interim SFV report, NMFS may adjust zones (*i.e.,* Level A harassment, Level B harassment, clearance, shutdown, and/or minimum visibility zone) to reflect SFV measurements. The shutdown and clearance zones for pile driving would be equivalent to the measured range to the Level A harassment isopleths plus 10 percent (shutdown zone) and 20 percent (clearance zone), rounded up to the nearest 100 m for PSO clarity. The minimum visibility zone would be based on the largest measured distance to the Level A harassment isopleth for large whales. Regardless of SFV, a North Atlantic right whale detected at any distance by PSOs would continue to result in a delay to the start of pile driving. Similarly, if pile driving has commenced, shutdown would be called for in the event a right whale is observed at any distance. That is, the visual clearance and shutdown criteria for North Atlantic right whales would not change, regardless of field acoustic measurements. The Level B harassment zone would be equal to the largest measured range to the Level B harassment isopleth.

The SFV plan must also include how operational noise would be monitored. Revolution Wind would be required to estimate source levels (at 10 m from the operating foundation) based on received levels measured at 50 m, 100 m, and 250 m from the pile foundation. These data must be used to identify estimated transmission loss rates. Operational parameters (*e.g.,* direct drive/gearbox information, turbine rotation rate) as well as sea state conditions and information on nearby anthropogenic activities (*e.g.,* vessels transiting or operating in the area) must be reported.

Revolution Wind must submit a SFV Plan at least 180 days prior to the planned start of impact pile driving and any UXO/MEC detonation activities. The plan must describe how Revolution Wind would ensure that the first three monopile foundation installation sites selected and each UXO/MEC detonation scenario (*i.e.,* charge weight, location) selected for SFV are representative of the rest of the monopile installation sites and UXO/MEC scenarios. Revolution Wind must include information on how additional sites/scenarios would be selected for SFV should it be determined that these sites/scenarios are not representative of all other monopile installation sites and UXO/MEC detonations. The plan must also include the methodology for collecting, analyzing, and preparing SFV data for submission to NMFS. The plan must describe how the effectiveness of the sound attenuation methodology would be evaluated based on the results. Revolution Wind must also provide, as soon as they are available but no later than 48 hours after each installation, the initial results of the SFV measurements to NMFS in an interim report after each monopile for the first three piles and after each UXO/MEC detonation.

Reporting

Prior to any construction activities occurring, Revolution Wind would provide a report to NMFS (at *itp.esch@noaa.gov* and *pr.itp.monitoringreports@noaa.gov*) documenting that all required training for Revolution Wind personnel (*i.e.,* vessel crews, vessel captains, PSOs, and PAM operators) has been completed.

NMFS would require standardized and frequent reporting from Revolution Wind during the life of the proposed

regulations and LOA. All data collected relating to the Revolution Wind project would be recorded using industry-standard software (*e.g.,* Mysticetus or a similar software) installed on field laptops and/or tablets. Revolution Wind would be required to submit weekly, monthly and annual reports as described below. During activities requiring PSOs, the following information would be collected and reported related to the activity being conducted:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Watch status (*i.e.,* sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions (*e.g.,* sea state, tide state, water depth);
- All marine mammal sightings, regardless of distance from the construction activity;
- Species (or lowest possible taxonomic level possible)
- Pace of the animal(s);
- Estimated number of animals (minimum/maximum/high/low/best);
- Estimated number of animals by cohort (*e.g.,* adults, yearlings, juveniles, calves, group composition, etc.);
- Description (*i.e.,* 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);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity;
- Animal's closest distance and bearing from the pile being driven, UXO/MEC, or specified HRG equipment and estimated time entered or spent within the Level A harassment and/or Level B harassment zones;
- Construction activity at time of sighting (*e.g.,* vibratory installation/removal, impact pile driving, UXO/MEC detonation, HRG survey), use of any noise abatement device(s), and specific phase of activity (*e.g.,* ramp-up of HRG equipment, HRG acoustic source on/off, soft start for pile driving, active pile driving, post-UXO/MEC detonation, etc.);
- Description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.,* delay, shutdown, etc.) and time and location of the action; and
- Other human activity in the area.

For all real-time acoustic detections of marine mammals, the following must be recorded and included in weekly, monthly, annual, and final reports:

a. Location of hydrophone (latitude & longitude; in Decimal Degrees) and site name;

b. Bottom depth and depth of recording unit (in meters);

c. Recorder (model & manufacturer) and platform type (*i.e.,* bottom-mounted, electric glider, etc.), and instrument ID of the hydrophone and recording platform (if applicable);

d. Time zone for sound files and recorded date/times in data and metadata (in relation to UTC. *i.e.,* EST time zone is UTC–5);

e. Duration of recordings (start/end dates and times; in ISO 8601 format, yyyy-mm-ddTHH:MM:SS.sssZ);

f. Deployment/retrieval dates and times (in ISO 8601 format);

g. Recording schedule (must be continuous);

h. Hydrophone and recorder sensitivity (in dB *re. 1* μ*Pa*);

i. Calibration curve for each recorder;

j. Bandwidth/sampling rate (in Hz);

k. Sample bit-rate of recordings; and

l. Detection range of equipment for relevant frequency bands (in meters).

For each detection the following information must be noted:

a. Species identification (if possible);

b. Call type and number of calls (if known);

c. Temporal aspects of vocalization (date, time, duration, etc., date times in ISO 8601 format);

d. Confidence of detection (detected, or possibly detected);

e. Comparison with any concurrent visual sightings;

f. Location and/or directionality of call (if determined) relative to acoustic recorder or construction activities;

g. Location of recorder and construction activities at time of call;

h. Name and version of detection or sound analysis software used, with protocol reference;

i. Minimum and maximum frequencies viewed/monitored/used in detection (in Hz); and

j. Name of PAM operator(s) on duty.

If a North Atlantic right whale is detected via Revolution Wind PAM, the date, time, location (*i.e.,* latitude and longitude of recorder) of the detection as well as the recording platform that had the detection must be reported to *nmfs.pacmdata@noaa.gov* as soon as feasible, but no longer than 24 hours after the detection. Full detection data and metadata must be submitted monthly on the 15th of every month for the previous month via the webform on the NMFS North Atlantic right whale Passive Acoustic Reporting System website (*https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates*).

If a North Atlantic right whale is observed at any time by PSOs or personnel on or in the vicinity of any impact or vibratory pile-driving vessel, dedicated PSO vessel, construction survey vessel, during vessel transit, or during an aerial survey, Revolution Wind must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866) 755–6622, to the U.S. Coast Guard via channel 16, and through the WhaleAlert app (*https://www.whalealert.org/*) as soon as feasible but no longer than 24 hours after the sighting. Information reported must include, at a minimum: time of sighting, location, and number of North Atlantic right whales observed.

SFV Interim Report—Revolution Wind would be required to provide, as soon as they are available but no later than 48 hours after each installation, the initial results of SFV measurements to NMFS in an interim report after each monopile for the first three piles and any subsequent piles monitored. An SFV interim report must also be submitted within 48 hours after each UXO/MEC detonation.

Weekly Report—Revolution Wind would be required to compile and submit weekly PSO, PAM, and SFV reports to NMFS (at *itp.esch@noaa.gov* and *PR.ITP.monitoringreports@noaa.gov*) that document the daily start and stop of all pile driving, pneumatic hammering, HRG survey, or UXO/MEC detonation activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals (acoustic and visual), any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the noise abatement system(s) used and its performance. Weekly reports would be due on Wednesday for the previous week (Sunday–Saturday). The weekly report would also identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, weekly reports would no longer be required.

Monthly Report—Revolution Wind would be required to compile and submit monthly reports to NMFS (at *itp.esch@noaa.gov* and

PR.ITP.monitoringreports@noaa.gov) that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, number of UXO/MEC detonations, all detections of marine mammals, and any mitigative actions taken. Monthly reports would be due on the 15th of the month for the previous month. The monthly report would also identify which turbines become operational and when (a map must be provided). Once foundation pile installation is complete, monthly reports would no longer be required.

Annual Report—Revolution Wind would be required to submit an annual PSO PAM, and SFV summary report to NMFS (at *itp.esch@noaa.gov* and *PR.ITP.monitoringreports@noaa.gov*) no later than 90 days following the end of a given calendar year describing, in detail, all of the information required in the monitoring section above. A final annual report would be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments were received from NMFS within 60 calendar days of NMFS' receipt of the draft report, the report would be considered final.

Final Report—Revolution Wind must submit its draft final report(s) to NMFS (at *itp.esch@noaa.gov* and *PR.ITP.monitoringreports@noaa.gov*) on all visual and acoustic monitoring conducted under the LOA within 90 calendar days of the completion of activities occurring under the LOA. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of NMFS' receipt of the draft report, the report shall be considered final.

Situational Reporting

Specific situations encountered during the development of the Revolution Wind project would require reporting. These situations and the relevant procedures include:

• If a marine mammal observation occurs during vessel transit, the following information must be recorded and reported:

a. Time, date, and location;

b. The vessel's activity, heading, and speed;

c. Sea state, water depth, and visibility;

d. Marine mammal identification to the best of the observer's ability (*e.g.,* North Atlantic right whale, whale, dolphin, seal);

e. Initial distance and bearing to marine mammal from vessel and closest point of approach; and,

f. Any avoidance measures taken in response to the marine mammal sighting.

• If a sighting of a stranded, entangled, injured, or dead marine mammal occurs, the sighting would be reported to NMFS OPR, the NMFS Greater Atlantic Regional Fisheries Office (GARFO) Marine Mammal and Sea Turtle Stranding & Entanglement Hotline (866–755–6622), and the U.S. Coast Guard within 24 hours. If the injury or death was caused by a project activity, Revolution Wind must immediately cease all activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Revolution Wind may not resume their activities until notified by NMFS. The report must include the following information:

g. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

h. Species identification (if known) or description of the animal(s) involved;

i. Condition of the animal(s) (including carcass condition if the animal is dead);

j. Observed behaviors of the animal(s), if alive;

k. If available, photographs or video footage of the animal(s); and

l. General circumstances under which the animal was discovered.

• In the event of a vessel strike of a marine mammal by any vessel associated with the Revolution Wind project, Revolution Wind shall immediately report the strike incident to the NMFS OPR and the GARFO within and no later than 24 hours. Revolution Wind must immediately cease all activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Revolution Wind may not resume their activities until notified by NMFS. The report must include the following information:

a. Time, date, and location (latitude/longitude) of the incident;

b. Species identification (if known) or description of the animal(s) involved;

c. Vessel's speed during and leading up to the incident;

d. Vessel's course/heading and what operations were being conducted (if applicable);

e. Status of all sound sources in use;

f. 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;

g. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

h. Estimated size and length of animal that was struck;

i. Description of the behavior of the marine mammal immediately preceding and following the strike;

j. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

k. 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

l. To the extent practicable, photographs or video footage of the animal(s).

Sound Monitoring Reporting

As described previously, Revolution Wind would be required to provide the initial results of SFV (including measurements) to NMFS in interim reports after each monopile installation for the first three piles (and any subsequent piles) as soon as they are available, but no later than 48 hours after each installation. Revolution Wind would also have to provide interim reports after every UXO/MEC detonation as soon as they are available, but no later than 48 hours after each detonation. In addition to in situ measured ranges to the Level A harassment and Level B harassment isopleths, the acoustic monitoring report must include: hammer energies (pile driving), UXO/MEC weight (including donor charge weight), SPL_{peak}, SPL_{rms} that contains 90 percent of the acoustic energy, single strike sound exposure level, integration time for SPL_{rms}, and 24-hour cumulative SEL extrapolated from measurements. The sound levels reported must be in median and linear average (*i.e.,* average in linear space), and in dB. All these levels must be reported in the form of median, mean, max, and minimum. The SEL and SPL power spectral density and one-third octave band levels (usually calculated as decidecade band levels) at the receiver

locations should be reported. The acoustic monitoring report must also include: a description of the SFV PAM hardware and software, including software version used, calibration data, bandwidth capability and sensitivity of hydrophone(s), any filters used in hardware or software, any limitations with the equipment, a description of the hydrophones used, hydrophone and water depth, distance to the pile driven, sediment type at the recording location, and local environmental conditions (*e.g.,* wind speed). In addition, pre- and post-activity ambient sound levels (broadband and/or within frequencies of concern) should be reported. Finally, the report must include a description of the noise abatement system and operational parameters (*e.g.,* bubble flow rate, distance deployed from the pile or UXO/MEC location, etc.), and any action taken to adjust the noise abatement system. Final results of SFV must be submitted as soon as possible, but no later than within 90 days following completion of impact pile driving of monopiles and UXOs/MECs detonations.

Adaptive Management

The regulations governing the take of marine mammals incidental to Revolution Wind's construction activities would contain an adaptive management component. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data throughout the life of the project that can inform potential from completed projects to allow consideration of whether any changes to mitigation or monitoring are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Revolution Wind regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA. During the course of the rule, Revolution Wind (and other LOA-holders conducting offshore wind development activities) would be required to participate in one or more adaptive management meetings convened by NMFS and/or BOEM, in which the above information would be summarized and discussed in the context of potential changes to the mitigation or monitoring measures.

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'' by mortality, serious injury, and Level A harassment or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the 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).

In the Estimated Take section, we identified the subset of potential effects that would be expected to qualify as takes under the MMPA, and then identified the maximum number of takes by Level A harassment and Level B harassment that we estimate are reasonably expected to occur based on the methods described. The impact that any given take would have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.,* the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, etc.). In this rule, we evaluate the likely impacts of the enumerated harassment takes that are proposed for authorization in the context of the specific circumstances surrounding these predicted takes. We also collectively evaluate this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock. As also described above, no serious injury or mortality is expected or proposed for authorization for any species or stock.

The Description of the Specified Activities section describes the specified activities proposed by Revolution Wind that may result in take of marine mammals and an estimated schedule for conducting those activities. Revolution Wind has provided a realistic construction schedule (*e.g.,* Revolution Wind's schedule reflects the maximum number of piles they anticipate to be able to drive each month in which pile driving is authorized to occur), although we recognize schedules may shift for a variety of reasons (*e.g.,* weather or supply delays). However, the total amount of take would not exceed the 5 year totals and maximum annual total in any given year indicated in Tables 33 and 34, respectively.

We base our analysis and negligible impact determination (NID) on the maximum number of takes that would be reasonably expected to occur and are proposed to be authorized in the 5-year LOA, if issued, and extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals and the number and context of the individuals affected. As stated before, the number of takes, both annual and 5-year total, alone are only a part of the analysis. To avoid repetition, we provide some general analysis in this Negligible Impact Analysis and Determination section that applies to all the species listed in Table 4, given that some of the anticipated effects of Revolution Wind's construction activities on marine mammals are expected to be relatively similar in nature. Then, we subdivide into more detailed discussions for mysticetes, odontocetes, and pinnipeds which have broad life history traits that support an overarching discussion of some factors considered within the analysis for those groups (*e.g.,* habitat-use patterns, high-level differences in feeding strategies).

Last, we provide a negligible impact determination for each species or stock,

providing species or stock-specific information or analysis, where appropriate, for example, for North Atlantic right whales given their population status. Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of Revolution Wind's proposed activities, and then providing species- or stock-specific information allows us to avoid duplication while ensuring that we have analyzed the effects of the specified activities on each affected species or stock. It is important to note that in the group or species sections, we base our negligible impact analysis on the maximum annual take that is predicted under the 5-year rule; however, the majority of the impacts are associated with WTG and OSS foundation installation, which would occur largely within a 1-year period. The estimated take in the other years is expected to be notably less, which is reflected in the total take that would be allowable under the rule (see Tables 32, 33, and 34).

As described previously, no serious injury or mortality is anticipated or proposed for authorization in this rule. The amount of harassment Revolution Wind has requested, and NMFS is proposing to authorize, is based on exposure models that consider the outputs of acoustic source and propagation models. Several conservative parameters and assumptions are ingrained into these models, such as assuming forcing functions that consider direct contact with piles (*i.e.,* no cushion allowances) and application of the highest monthly sound speed profile to all months within a given season. In addition, the exposure model results do not reflect any mitigation measures (except for North Atlantic right whales) or avoidance response, and some of those results have been adjusted upward to consider sighting or group size data, where necessary. The resulting values for each stock were then used by Revolution Wind to request take by behavioral harassment. The only case in which mitigation measures (other than source level reduction via a noise abatement system) were considered is the potential for PTS (Level A harassment) of large whales. Models used to predict exposures for impact pile driving and UXO/MEC detonations predicted PTS exposures for multiple species. However, Revolution Wind did not request, and we are not proposing to authorize, Level A harassment of any baleen whale species other than humpback whales due, in large part, to the extended mitigation measures for large whales. Therefore, for all species, the amount of take proposed to be authorized represents the maximum amount of Level A harassment and Level B harassment that is reasonably expected to occur.

Behavioral Disturbance

In general, NMFS anticipates that impacts on an individual that has been harassed are likely to be more intense when exposed to higher received levels and for a longer duration (though this is in no way a strictly linear relationship for behavioral effects across species, individuals, or circumstances) and less severe impacts result when exposed to lower received levels and for a brief duration. However, there is also growing evidence of the importance of contextual factors such as distance from a source in predicting marine mammal behavioral response to sound—*i.e.,* sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (*e.g.,* DeRuiter, 2012, Falcone *et al.,* 2017). As described in the Potential Effects to Marine Mammals and their Habitat section, the intensity and duration of any impact resulting from exposure to Revolution Wind's activities is dependent upon a number of contextual factors including, but not limited to, sound source frequencies, whether the sound source is moving towards the animal, hearing ranges of marine mammals, behavioral state at time of exposure, status of individual exposed (*e.g.,* reproductive status, age class, health) and an individual's experience with similar sound sources. Ellison *et al.* (2012) and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources. Harassment of marine mammals may result in behavioral modifications (*e.g.,* avoidance, temporary cessation of foraging or communicating, changes in respiration or group dynamics, masking) or may result in auditory impacts such as hearing loss. In addition, some of the lower level physiological stress responses (*e.g.,* orientation or startle response, change in respiration, change in heart rate) discussed previously would likely co-occur with the behavioral modifications, although these physiological responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Takes by Level B harassment, then, may have a stress-related physiological component as well; however, we would not expect Revolution Wind's activities to produce conditions of long-term and continuous exposure to noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

In the range of potential behavioral effects that might be expected to be part of a response that qualifies as an instance of Level B harassment by behavioral disturbance (which by nature of the way it is modeled/counted, occurs within one day), the less severe end might include exposure to comparatively lower levels of a sound, at a greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time, or breaking off one or a few feeding bouts. More severe effects could occur if an animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response, and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. However, such severe behavioral effects are expected to occur infrequently.

Many species perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than one day or recur on subsequent days (Southall *et al.,* 2007) due to diel and lunar patterns in diving and foraging behaviors observed in many cetaceans (Baird *et al.,* 2008, Barlow *et al.,* 2020, Henderson *et al.,* 2016, Schorr *et al.,* 2014). It is important to note the water depth in the Revolution Wind project area is shallow (5 to 50 m) and deep diving species, such as sperm whales, are not expected to be engaging in deep foraging dives when exposed to noise above NMFS harassment thresholds during the specified activities. Therefore, we do not anticipate impacts to deep foraging behavior to be impacted by the specified activities.

It is also important to identify that the estimated number of takes does not necessarily equate to the number of individual animals Revolution Wind expects to harass (which is lower), but

rather to the instances of take (*i.e.,* exposures above the Level B harassment thresholds) that are anticipated to occur. These instances may represent either brief exposures (*e.g.,* seconds for UXO/MEC detonation, or seconds to minutes for HRG surveys) or, in some cases, longer durations of exposure within a day (*e.g.,* pile driving). Some individuals of a species may experience recurring instances of take over multiple days throughout the year, while some members of a species or stock may experience one exposure as they move through an area or not experience take at all, which means that the number of individuals taken is smaller than the total estimated takes. In short, for species that are more likely to be migrating through the area and/or for which only a comparatively smaller number of takes are predicted (*e.g.,* some of the mysticetes), it is more likely that each take represents a different individual, whereas for non-migrating species with larger amounts of predicted take, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be exposed multiple times.

For the Revolution Wind project, impact pile driving is most likely to result in a higher magnitude and severity of behavioral disturbance than other activities (*i.e.,* vibratory pile driving, UXO/MEC detonation, and HRG surveys). Impact pile driving has higher source levels than vibratory pile driving and HRG sources. HRG survey equipment also produces much higher frequencies than pile driving, resulting in minimal sound propagation. While UXO/MEC detonations may have higher source levels, impact pile driving is planned for longer durations (*i.e.,* a maximum of 13 UXO/MEC detonations are planned, which would result in only instantaneous exposures). While impact pile driving is anticipated to be most impactful for these reasons, impacts are 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 Level B harassment. Given sufficient notice through the use of soft-start, marine mammals are expected to move away from a sound source that is annoying prior to becoming exposed to very loud noise levels. The requirement that pile driving can only commence when the full extent of all clearance zones are fully visible to visual PSOs would ensure a higher marine mammal detection, enabling a high rate of success in implementation of clearance zones. Furthermore, Revolution Wind would be required to utilize PAM prior to and during all clearance periods, during impact pile driving, and after pile driving has ended during the post-piling period. PAM has been shown to be particularly effective when used in conjunction with visual observations, increasing the overall capability to detect marine mammals (Van Parijs *et al.,* 2021). These measures also apply to UXO/MEC detonation(s), which also have the potential to elicit more severe behavioral reactions in the unlikely event that an animal is relatively close to the explosion in the instant that it occurs; hence, severity of behavioral responses are expected to be lower than would be the case without mitigation.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe response, if they are not expected to be repeated over sequential days, impacts to individual fitness are not anticipated. Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.,* 2018; Harris *et al.,* 2017; King *et al.,* 2015; NAS 2017; New *et al.,* 2014; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015).

Temporary Threshold Shift (TTS)

TTS is one form of Level B harassment that marine mammals may incur through exposure to Revolution Wind's activities and, as described earlier, the proposed takes by Level B harassment may represent takes in the form of behavioral disturbance, TTS, or both. As discussed in the Potential Effects to Marine Mammals and their Habitat section, in general, TTS can last from a few minutes to days, be of varying degree, and occur across different frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Impact and vibratory pile driving generate sounds in the lower frequency ranges (with most of the energy below 1–2 kHz, but with a small amount energy ranging up to 20 kHz); therefore, in general and all else being equal, we would anticipate the potential for TTS is higher in low-frequency cetaceans (*i.e.,* mysticetes) than other marine mammal hearing groups and would be more likely to occur in frequency bands in which they communicate. However, we would not expect the TTS to span the entire communication or hearing range of any species given the frequencies produced by pile driving do not span entire hearing ranges for any particular species. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalizations, the frequency range of TTS from Revolution Wind's pile driving and UXO/MEC detonation activities would not typically span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues for any given species. However, the mitigation measures proposed by Revolution Wind and proposed by NMFS, further reduce the potential for TTS in mysticetes.

Generally, both the degree of TTS and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously (refer back to Table 10). However, source level alone is not a predictor of TTS. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the proposed mitigation and the nominal speed of the receiving animal relative to the stationary sources such as impact pile driving. The recovery time of TTS is also of importance when considering the potential impacts from TTS. In TTS laboratory studies (as discussed in the Potential Effects to Marine Mammals and their Habitat section), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes) and we note that while the pile driving activities last for hours a day, it is unlikely that most marine mammals would stay in the close vicinity of the source long enough to incur more severe TTS. UXO/MEC detonation also has the potential to result in TTS; however, given the duration of exposure is extremely short (milliseconds), the degree of TTS (*i.e.,* the amount of dB shift) is expected to be small and TTS duration is expected to be short (minutes to hours). Overall, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the unlikely scenario that any TTS overlapped the entirety of a critical hearing range, it is unlikely that

TTS of the nature expected to result from Revolution Wind's activities would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

Permanent Threshold Shift (PTS)

Revolution Wind has requested, and NMFS proposed to authorize, a very small amount of take by PTS to some marine mammal individuals. The numbers of proposed annual takes by Level A harassment are relatively low for all marine mammal stocks and species: humpback whales (7 takes), harbor porpoises (49 takes), gray seals (7 takes), and harbor seals (16 takes). The only activities incidental to which we anticipate PTS may occur is from exposure to impact pile driving and UXO/MEC detonations, which produce sounds that are both impulsive and primarily concentrated in the lower frequency ranges (below 1 kHz) (David, 2006; Krumpel *et al.,* 2021).

There are no PTS data on cetaceans and only one instance of PTS being induced in an older harbor seals (Reichmuth *et al.,* 2019); however, available TTS data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds (Southall *et al.,* 2007; NMFS 2018; Southall *et al.,* 2019)) suggest that most threshold shifts occur in the frequency range of the source up to one octave higher than the source. We would anticipate a similar result for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS.

PTS would consist of minor degradation of hearing capabilities occurring predominantly at frequencies one-half to one octave above the frequency of the energy produced by pile driving or instantaneous UXO/MEC detonation (*i.e.,* the low-frequency region below 2 kHz) (Cody and Johnstone, 1981; McFadden, 1986; Finneran, 2015), not severe hearing impairment. If hearing impairment occurs from either impact pile driving or UXO/MEC detonation, 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 prior to implementation of full hammer energy during impact pile driving, marine mammals are expected to move away from a sound source that is annoying prior to it resulting in severe PTS. Revolution estimates up to 13 UXOs/MECs may be detonated and the exposure analysis assumes the worst-case scenario that all of the UXOs/MECs found would consist of the largest charge weight of UXO/MEC (E12; 454 kg). However, it is highly unlikely that all charges would be this maximum size, thus the amount of take incidental to the detonation of the 13 UXOs/MECs would likely be less than what is estimated here. Furthermore, Revolution Wind plans to implement sound attenuation during UXO/MEC detonations, to the extent practicable, that would further be expected to reduce take of marine mammals. Nonetheless, this negligible impact analysis considers the effects of the takes that are conservatively proposed for authorization.

Auditory Masking or Communication Impairment

The ultimate potential impacts of masking on an individual are similar to those discussed for TTS (*e.g.,* decreased ability to communicate, forage effectively, or detect predators), but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Also, though, masking can result from the sum of exposure to multiple signals, none of which might individually cause TTS. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency). As our analysis has indicated, for this project we expect that impact pile driving foundations have the greatest potential to mask marine mammal signals, and this pile driving may occur for several, albeit intermittent, hours per day. Masking is fundamentally more of a concern at lower frequencies (which are pile driving dominant frequencies), because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower low frequency calls of mysticetes, as well as many non-communication cues related to fish and invertebrate prey, and geologic sounds that inform navigation. However, the area in which masking would occur for all marine mammal species and stocks (*e.g.,* predominantly in the vicinity of the foundation pile being driven) is small relative to the extent of habitat used by each species and stock. In summary, the nature of Revolution Wind's activities, paired with habitat use patterns by marine mammals, does not support the likelihood that the level of masking that could occur would have the potential to affect reproductive success or survival.

Impacts on Habitat and Prey

Construction activities or UXO/MEC detonation may result in fish and invertebrate mortality or injury very close to the source, and all activities (including HRG surveys) may cause some fish to leave the area of disturbance. It is anticipated that any mortality or injury would be limited to a very small subset of available prey and the implementation of mitigation measures such as the use of a noise attenuation system during impact pile driving and UXO/MEC detonation would further limit the degree of impact (again noting UXO/MEC detonation would be limited to 13 events over 5 years). Behavioral changes in prey in response to construction activities could temporarily impact marine mammals' foraging opportunities in a limited portion of the foraging range but, because of the relatively small area of the habitat that may be affected at any given time (*e.g.,* around a pile being driven), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Cable presence and operation are not anticipated to impact marine mammal habitat as these would be buried, and any electromagnetic fields emanating from the cables are not anticipated to result in consequences that would impact marine mammals prey to the extent they would be unavailable for consumption.

The presence and operation of wind turbines within the lease area could have longer-term impacts on marine mammal habitat, as the project would result in the persistence of the structures within marine mammal habitat for more than 30 years. The presence and operation of an extensive number of structures such as wind turbines are, in general, likely to result in local and broader oceanographic effects in the marine environment, and may disrupt dense aggregations and distribution of marine mammal

zooplankton prey through altering the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.,* 2021, Johnson *et al.,* 2021, Christiansen *et al.,* 2022, Dorrell *et al.,* 2022). However, the scale of impacts is difficult to predict and may vary from hundreds of meters for local individual turbine impacts (Schultze *et al.,* 2020) to large-scale dipoles of surface elevation changes stretching hundreds of kilometers (Christiansen *et al.,* 2022). In 2022, NMFS hosted a workshop to better understand the current scientific knowledge and data gaps around the potential long-term impacts of offshore wind farm operations in the Atlantic Ocean. The report from that workshop is pending and NMFS will consider its findings in development of the final rule for this action.

As discussed in the Potential Effects to Marine Mammals and Their Habitat section, the RWF would consist of no more than 79 turbines (scheduled to be operational by Year 2 of the effective period of the rule) in New England coastal waters, an area dominated by physical oceanographic patterns of strong seasonal stratification (summer) and turbulence-driven mixing (winter). While there are likely to be local oceanographic impacts from the presence and operation of the RWF, meaningful oceanographic impacts relative to stratification and mixing that would significantly affect marine mammal habitat and prey over large areas in key foraging habitats are not anticipated from the Revolution Wind project. Although this area supports aggregations of zooplankton (baleen whale prey) that could be impacted if long-term oceanographic changes occurred, prey densities are typically significantly less in the Revolution Wind project area than in known baleen whale foraging habitats to the east and north (*e.g.,* south of Nantucket and Martha's Vineyard, Great South Channel). For these reasons, if oceanographic features are affected by wind farm operation during the course of the proposed rule (approximately Years 2–5), the impact on marine mammal habitat and their prey is likely to be comparatively minor.

Mitigation To Reduce Impacts on All Species

This proposed rulemaking includes a variety of mitigation measures designed to minimize impacts on all marine mammals, with a focus on North Atlantic right whales (the latter is described in more detail below). For impact pile driving of foundation piles, eight overarching mitigation measures are proposed, which are intended to reduce both the number and intensity of marine mammal takes: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within designated zones triggering delay or shutdown); (3) use of PAM to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering delay or shutdown); (4) implementation of clearance zones; (5) implementation of shutdown zones; (6) use of soft-start; (7) use of noise abatement technology; and, (8) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Revolution Wind project personnel must be reported to PSOs.

When monopile foundation installation does occur, Revolution Wind is committed to reducing the noise levels generated by impact pile driving to the lowest levels practicable and ensuring that they do not exceed a noise footprint above that which was modeled, assuming a 10-dB attenuation. Use of a soft-start would allow animals to move away from (*i.e.,* avoid) the sound source prior to the elevation of the hammer energy to the level maximally needed to install the pile (Revolution Wind would not use a hammer energy greater than necessary to install piles). Clearance zone and shutdown zone implementation, required when marine mammals are within given distances associated with certain impact thresholds, would reduce the magnitude and severity of marine mammal take.

Revolution Wind has indicated that up to three piles per day (*i.e.,* 12 hours of impact pile driving over 24 hours) could occur under ideal conditions; however, it is more likely that, given the complexities of installation, the average rate would be two piles per day (*i.e.,* 8 hours of activity pile driving per day). Revolution Wind has indicated that a monopile installation sequence would occur over up to nine hours; however, this entire period would not consist of active hammering, as a considerable portion of this time would be needed to move vessels and equipment to set up additional monopiles. Specifically, the application notes that ''installation of a single pile at a minimum would involve a 1-hour pre-clearance period, up to 4 hours of piling, and 4 hours to move to the next piling location where the process would begin again.'' The full 9-hour installation sequence period would also consist of other activities outside of active impact driving that are not likely to harass marine mammals (*e.g.,* vessel transit, equipment set-up, pre-clearance monitoring by visual PSOs and PAM operators).

Revolution proposed, and NMFS would require, use a noise attenuation device (likely a big bubble curtain and another technology, such as a hydro-sound damper) during all foundation pile driving to ensure sound generated from the project does not exceed that modeled (assuming 10-dB reduction) distances to harassment isopleths and to minimize noise levels to the lowest level practicable. Double big bubble curtains are successfully and widely applied across European wind development efforts, and are known to reduce noise levels more than a single big bubble curtain alone (*e.g.,* see Bellman *et al.,* 2020).

Mysticetes

Six mysticete species (comprising six stocks) of cetaceans (North Atlantic right whale, humpback whale, fin whale, blue whale, sei whale, and minke whale) are proposed to be taken by harassment. These species, to varying extents, utilize coastal New England waters, including the project area, for the purposes of migration and foraging.

Behavioral data on mysticete reactions to pile driving noise is scant. Kraus *et al.* (2019) predicted that the three main impacts of offshore wind farms on marine mammals would consist of displacement, behavioral disruptions, and stress. Broadly, we can look to studies that have focused on other noise sources such as seismic surveys and military training exercises, which suggest that exposure to loud signals can result in avoidance of the sound source (or displacement if the activity continues for a longer duration in a place where individuals would otherwise have been staying, which is less likely for mysticetes in this area), disruption of foraging activities (if they are occurring in the area), local masking around the source, associated stress responses, and impacts to prey, as well as TTS or PTS in some cases.

Mysticetes encountered in the Revolution Wind project area are expected to be migrating through and/or foraging within the project area; the extent to which an animal engages in these behaviors in the area is species-specific and varies seasonally. Given that extensive feeding BIAs for the North Atlantic right whale, humpback whale, fin whale, sei whale, and minke whale exist to the east and north of the project area (LaBrecque *et al.,* 2015; Van Parijs *et al.,* 2015), many mysticetes are expected to predominantly be migrating through the project area towards or from

these feeding habitats. However, the extent to which particular species are utilizing the project area and nearby habitats (*i.e.,* south of Martha's Vineyard and Nantucket) for foraging or other activities is changing, particularly right whales (*e.g.,* O'Brien *et al.,* 2021; Quintana-Rizzo *et al.,* 2021), thus our understanding of the temporal and spatial occurrence of right whales and other mysticete species is continuing to be informed by ongoing monitoring efforts. While we have acknowledged above that mortality, hearing impairment, or displacement of mysticete prey species may result locally from impact pile driving or UXO/MEC detonation, given the very short duration of UXO/MEC detonation and limited amount over 5 years, and broad availability of prey species in the area and the availability of alternative suitable foraging habitat for the mysticete species most likely to be affected, any impacts on mysticete foraging would be expected to be minor. Whales temporarily displaced from the proposed project area would be expected to have sufficient remaining feeding habitat available to them, and would not be prevented from feeding in other areas within the biologically important feeding habitats. In addition, any displacement of whales or interruption of foraging bouts would be expected to be temporary in nature.

The potential for repeated exposures is dependent upon the residency time of whales, with migratory animals unlikely to be exposed on repeated occasions and animals remaining in the area to be more likely exposed repeatedly. Where relatively low amounts of species-specific proposed Level B harassment are predicted (compared to the abundance of each mysticete species or stock, such as is indicated in Table 34 here) and movement patterns suggest that individuals would not necessarily linger in a particular area for multiple days, each predicted take likely represents an exposure of a different individual; the behavioral impacts would, therefore, be expected to occur within a single day within a year—an amount that would not be expected to impact reproduction or survival. Alternatively, species with longer residence time in the project area may be subject to repeated exposures. In general, for this project, the duration of exposures would not be continuous throughout any given day and pile driving would not occur on all consecutive days within a given year, due to weather delays or any number of logistical constraints Revolution Wind has identified. Species-specific analysis regarding potential for repeated exposures and impacts is provided below. Overall, we do not expect impacts to whales within project area habitat, including fin whales foraging in the fin whale feeding BIA, to affect the fitness of any large whales.

The humpback whale is the only mysticete species for which PTS is anticipated and proposed to be authorized. As described previously, PTS for mysticetes from impact pile driving may overlap frequencies used for communication, navigation, or detecting prey. However, given the nature and duration of the activity, the mitigation measures, and likely avoidance behavior, any PTS is expected to be of a small degree, would be limited to frequencies where pile driving noise is concentrated (*i.e.,* only a small subset of their expected hearing range) and would not be expected to impact reproductive success or survival.

North Atlantic Right Whales

North Atlantic right whales are listed as endangered under the ESA and, as described in the Effects to Marine Mammals and Their Habitat section, are threatened by a low population abundance, higher than average mortality rates, and lower than average reproductive rates. Recent studies have reported individuals showing high stress levels (*e.g.,* Corkeron *et al.,* 2017) and poor health, which has further implications on reproductive success and calf survival (Christiansen *et al.,* 2020; Stewart *et al.,* 2021; Stewart *et al.,* 2022). Given this, the status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis and consideration. NMFS proposes to authorize a maximum of 44 takes of North Atlantic right whales, by Level B harassment only, in any given year (likely Year 1), with no more than 56 takes incidental to all construction activities over the 5-year period of effectiveness of this proposed rule.

As described above, the project area represents part of an important migratory and potential feeding area for right whales. Quintana-Rizzo *et al.* (2021) noted different degrees of residency (*i.e.,* the minimum number of days an individual remained in southern New England) for right whales, with individual sighting frequency ranging from 1 to 10 days. The study results indicate that southern New England may, in part, be a stopover site for migrating right whales moving to or from southeastern calving grounds. The right whales observed during the study period were primarily concentrated in the northeastern and southeastern sections of the MA WEA during the summer (June–August) and winter (December–February), rather than in OCS–A 0486, which is to the west in the RI/MA WEA (see Figure 5 in Quintano-Rizzo *et al.,* 2021). Right whale distribution did shift to the west into the RI/MA WEA in the spring (March–May), although sightings within the Revolution Wind project area were few compared to other portions of the WEA during this time. Overall, the Revolution Wind project area contains habitat less frequently utilized by North Atlantic right whales than the more easterly Southern New England region.

In general, North Atlantic right whales in southern New England are expected to be engaging in migratory or foraging behavior (Quintano-Rizzo *et al.,* 2021). Model outputs suggest that 23 percent of the species' population is present in this region from December through May, and the mean residence time has tripled to an average of 13 days during these months. Given the species' migratory behavior in the project area, we anticipate individual whales would be typically migrating through the area during most months when foundation installation and UXO/MEC detonation would occur (given the seasonal restrictions on foundation installation from January through April and UXO/MEC detonation from December through April), rather than lingering for extended periods of time. Other work that involves either much smaller harassment zones (*e.g.,* HRG surveys) or is limited in amount (cable landfall construction) may occur during periods when North Atlantic right whales are using the habitat for both migration and foraging. Therefore, it is likely that many of the exposures would occur to individual whales; however, some may be repeat takes of the same animal across multiple days for some short period of time given residency data (*e.g.,* 13 days during December through May). It is important to note the activities occurring from December through May that may impact North Atlantic right whale would be primarily HRG surveys and cable landfall construction, neither of which would result in very high received levels. Across all years, while it is possible an animal could have been exposed during a previous year, the low amount of take proposed to be authorized during the 5-year period of the proposed rule makes this scenario possible but unlikely. However, if an individual were to be exposed during a subsequent year, the impact of that exposure is likely independent of the previous exposure given the duration between exposures.

North Atlantic right whales are presently experiencing an ongoing UME (beginning in June 2017). Preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. Given the current status of the North Atlantic right whale, the loss of even one individual could significantly impact the population. No mortality, serious injury, or injury of North Atlantic right whales as a result of the project is expected or proposed to be authorized. Any disturbance to North Atlantic right whales due to Revolution Wind's activities is expected to result in temporary avoidance of the immediate area of construction. As no injury, serious injury, or mortality is expected or authorized, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of mitigation measures, the authorized number of takes of North Atlantic right whales would not exacerbate or compound the effects of the ongoing UME in any way.

As described in the general Mysticete section above, impact pile driving (assuming WTG and OSS monopile build-out) has the potential to result in the highest amount of annual take (44 Level B harassment takes) and is of greatest concern given loud source levels. This activity would likely be limited to 1 year, during times when North Atlantic right whales are not present in high numbers and are likely to be primarily migrating to more northern foraging grounds, with the potential for some foraging occurring in or near the project area. The potential types, severity, and magnitude of impacts are also anticipated to mirror that described in the general mysticete section above, including avoidance (the most likely outcome), changes in foraging or vocalization behavior, masking, a small amount of TTS, and temporary physiological impacts (*e.g.,* change in respiration, change in heart rate). Importantly, the effects of the activities proposed by Revolution Wind are expected to be sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors such as migratory or foraging behavior of North Atlantic right whales. As described above, 56 total instances of take are proposed for authorization, each occurring within a day, with the majority of takes (44) occurring within 1 year and the remaining 12 occurring over the remaining four years of the effective period of the rule. If this number of exposures results in temporary behavioral reactions, such as slight displacement (but not abandonment) of migratory habitat or temporary cessation of feeding, it is unlikely to result in energetic consequences that could affect reproduction or survival of any individuals. As described above, North Atlantic right whales are primarily foraging during December through May when the vast majority of take from impact pile driving would not occur (given the seasonal restriction from January 1–April 31). Overall, NMFS expects that any harassment of North Atlantic right whales incidental to the specified activities would not result in changes to their migration patterns or foraging behavior, as only temporary avoidance of an area during construction is expected to occur. As described previously, right whales migrating through and/or foraging in these areas are not expected to remain in this habitat for extensive durations, relative to nearby habitats such as south of Nantucket and Martha's Vineyard or the Great South Channel (known core foraging habitats) (Quintana-Rizzo *et al.,* 2021), and that any temporarily displaced animals would be able to return to or continue to travel through and forage in these areas once activities have ceased.

Although acoustic masking may occur, based on the acoustic characteristics of noise associated with pile driving (*e.g.,* frequency spectra, short duration of exposure) and construction surveys (*e.g.,* intermittent signals), NMFS expects masking effects to be minimal (*e.g.,* impact or vibratory pile driving) to none (*e.g.,* construction surveys). In addition, masking would likely only occur during the period of time that a North Atlantic right whale is in the relatively close vicinity of pile driving, which is expected to be infrequent and brief, given time of year restrictions, anticipated mitigation effectiveness, and likely avoidance behaviors. TTS is another potential form of Level B harassment that could result in brief periods of slightly reduced hearing sensitivity, affecting behavioral patterns by making it more difficult to hear or interpret acoustic cues within the frequency range (and slightly above) of sound produced during impact pile driving; however, any TTS would likely be of low amount, be limited to frequencies where most construction noise is centered (below 2 kHz). NMFS expects that right whale hearing sensitivity would return to pre-exposure levels shortly after migrating through the area or moving away from the sound source.

As described in the Potential Effects to Marine Mammals and Their Habitat section, the distance of the receiver to the source influences the severity of response with greater distances typically eliciting less severe responses. Additionally, NMFS recognizes North Atlantic right whales migrating could be pregnant females (in the fall) and cows with older calves (in spring) and that these animals may slightly alter their migration course in response to any foundation pile driving; however, as described in the Potential Effects to Marine Mammals and Their Habitat section, we anticipate that course diversion would be of small magnitude. Hence, while some avoidance of the pile driving activities may occur, we anticipate any avoidance behavior of migratory right whales would be similar to that of gray whales (Tyack and Clark, 1983), on the order of hundreds of meters up to 1 to 2 km. This diversion from a migratory path otherwise uninterrupted by Revolution Wind activities, or from lower quality foraging habitat (relative to nearby areas), is not expected to result in meaningful energetic costs that would impact annual rates of recruitment of survival. NMFS expects that North Atlantic right whales would be able to avoid areas during periods of active noise production, while not being forced out of this portion of their habitat.

North Atlantic right whale presence in the Revolution Wind project area is year-round; however, abundance during summer months is lower compared to the winter months, with spring and fall serving as ''shoulder seasons,'' wherein abundance waxes (fall) or wanes (spring). Given this year-round habitat usage, in recognition that where and when whales may actually occur during project activities is unknown as it depends on the annual migratory behaviors, the applicant has proposed and NMFS is proposing to require a suite of mitigation measures designed to reduce impacts to North Atlantic right whales to the maximum extent practicable. These mitigation measures (*e.g.,* seasonal/daily work restrictions, vessel separation distances, reduced vessel speed) would not only avoid the likelihood of ship strikes, but also would minimize the severity of behavioral disruptions by minimizing impacts (*e.g.,* through sound reduction using abatement systems and reduced temporal overlap of project activities and North Atlantic right whales). This would further ensure that the number of takes, by Level B harassment, that are estimated to occur are not expected to affect reproductive success or

survivorship via detrimental impacts to energy intake or cow/calf interactions during migratory transit. However, even in consideration of recent habitat-use and distribution shifts, Revolution Wind would still be installing monopiles when the presence of North Atlantic right whales is expected to be lower.

As described in the Description of Marine Mammals in the Area of Specified Activities section, Revolution Wind would be constructed within the North Atlantic right whale migratory corridor BIA which represent areas and months within which a substantial portion of a species or population is known to migrate. Off the south coast of Massachusetts and Rhode Island, this BIA extends from the coast to beyond the shelf break. The Revolution Wind project area is relatively small compared with the migratory BIA area (approximately 339 km^2 versus the size of the full North Atlantic right whale migratory BIA, 269,448 km^2). Because of this, overall North Atlantic right whale migration is not expected to be impacted by the proposed activities. There are no known North Atlantic right whale mating or calving areas within the project area. Impact pile driving, which is responsible for the majority of North Atlantic right whale impacts, would be limited to a maximum of 12 hours per day (three intermittent 4-hour events); therefore, if foraging activity is disrupted due to pile driving, any disruption would be brief as North Atlantic right whales would likely resume foraging after pile driving ceases or when animals move to another nearby location to forage. Prey species are mobile (*e.g.,* calanoid copepods can initiate rapid and directed escape responses) and are broadly distributed throughout the project area (noting again that North Atlantic right whale prey is not particularly concentrated in the project area relative to nearby habitats); therefore, any impacts to prey that may occur are also unlikely to impact marine mammals.

The most significant measure to minimize impacts to individual North Atlantic right whales during monopile installations is the seasonal moratorium on impact pile driving of monopiles from January 1 through April 30, when North Atlantic right whale abundance in the project area is expected to be highest. NMFS also expects this measure to greatly reduce the potential for mother-calf pairs to be exposed to impact pile driving noise above the Level B harassment threshold during their annual spring migration through the project area from calving grounds to primary foraging grounds (*e.g.,* Cape Cod Bay). Further, NMFS expects that exposures to North Atlantic right whales would be reduced due to the additional proposed mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed. Impact pile driving may only begin in the absence of North Atlantic right whales (based on visual and passive acoustic monitoring). If impact pile driving has commenced, NMFS anticipates North Atlantic right whales would avoid the area, utilizing nearby waters to carry on pre-exposure behaviors. However, impact pile driving must be shut down if a North Atlantic right whale is sighted at any distance, unless a shutdown is not feasible due to risk of injury or loss of life. Shutdown may occur anywhere if right whales are seen within or beyond the Level B harassment zone, further minimizing the duration and intensity of exposure. NMFS anticipates that if North Atlantic right whales go undetected and they are exposed to impact pile driving noise, it is unlikely a North Atlantic right whale would approach the impact pile driving locations to the degree that they would purposely expose themselves to very high noise levels. These measures are designed to avoid PTS and also reduce the severity of Level B harassment, including the potential for TTS. While some TTS could occur, given the proposed mitigation measures (*e.g.,* delay pile driving upon a sighting or acoustic detection and shutting down upon a sighting or acoustic detection), the potential for TTS to occur is low.

The proposed clearance and shutdown measures are most effective when detection efficiency is maximized, as the measures are triggered by a sighting or acoustic detection. To maximize detection efficiency, Revolution Wind proposed, and NMFS is proposed to require, the combination of PAM and visual observers (as well as communication protocols with other Revolution Wind vessels, and other heightened awareness efforts such as daily monitoring of North Atlantic right whale sighting databases) such that as a North Atlantic right whale approaches the source (and thereby could be exposed to higher noise energy levels), PSO detection efficacy would increase, the whale would be detected, and a delay to commencing pile driving or shutdown (if feasible) would occur. In addition, the implementation of a soft start would provide an opportunity for whales to move away from the source if they are undetected, reducing received levels. Further, Revolution Wind has committed to not installing two WTG or OSS foundations simultaneously. North Atlantic right whales would, therefore, not be exposed to concurrent impact pile driving on any given day and the area ensonified at any given time would be limited. We note that Revolution Wind has requested to install foundation piles at night which does raise concern over detection capabilities. Revolution Wind is currently conducting detection capability studies using alternative technology and intends to submit the results of these studies to NMFS. In consultation with BOEM, NMFS will review the results and determine if Revolution Wind should be allowed to conduct pile driving at night.

Although the temporary cofferdam Level B harassment zone is large (9,740 km to the unweighted Level B harassment threshold; Table 27 in the ITA application), the cofferdams would be installed within Narragansett Bay over a short timeframe (56 hours total; 28 hours for installation and 28 hours for removal). Therefore, it is also unlikely that any North Atlantic right whales would be exposed to concurrent vibratory and impact pile installation noises. Any UXO/MEC detonations, if determined to be necessary, would only occur in daylight and if all other low-order methods or removal of the explosive equipment of the device are determined to not be possible. Given that specific locations for the 13 possible UXOs/MECs are not presently known, Revolution Wind has agreed to undertake specific mitigation measures to reduce impacts on any North Atlantic right whales, including the use of a sound attenuation device (*i.e.,* likely a bubble curtain and another device) to achieve a minimum of 10-dB attenuation, and not detonating a UXO/MEC if a North Atlantic right whale is observed within the large whale clearance zone (10 km). Finally, for HRG surveys, the maximum distance to the Level B harassment isopleth is 141 m. The estimated take, by Level B harassment only, associated with HRG surveys is to account for any North Atlantic right whale sightings PSOs may miss when HRG acoustic sources are active. However, because of the short maximum distance to the Level B harassment isopleth (141 m), the requirement that vessels maintain a distance of 500 m from any North Atlantic right whales, the fact whales are unlikely to remain in close proximity to an HRG survey vessel for any length of time, and that the acoustic source would be shutdown if a North Atlantic right whale is observed within 500 m of the source, any exposure to noise levels above the harassment

threshold (if any) would be very brief. To further minimize exposures, ramp-up of boomers, sparkers, and CHIRPs must be delayed during the clearance period if PSOs detect a North Atlantic right whale (or any other ESA-listed species) within 500 m of the acoustic source. With implementation of the proposed mitigation requirements, take by Level A harassment is unlikely and, therefore, not proposed for authorization. Potential impacts associated with Level B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior. Given the high level of precautions taken to minimize both the amount and intensity of Level B harassment on North Atlantic right whales, it is unlikely that the anticipated low-level exposures would lead to reduced reproductive success or survival.

North Atlantic right whales are listed as endangered under the ESA with a declining population primarily due to vessel strike and entanglement. Again, Revolution estimates that 44 instances of take, by Level B harassment only, could occur within the first year, and 56 instances of take could occur over the 5-year effective period of the proposed rule, with the likely scenario that each instance of exposure occurs to a different individual (a small portion of the stock), and any individual North Atlantic right whale is likely to be disturbed at a low-moderate level. The magnitude and severity of harassment are not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality, serious injury, or Level A harassment is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Revolution Wind's activities combined, that the proposed authorized take would have a negligible impact on the North Atlantic stock of North Atlantic right whales.

Humpback Whales

Humpback whales potentially impacted by Revolution Wind's activities do not belong to a DPS that is listed as threatened or endangered under the ESA. However, humpback whales along the Atlantic Coast have been experiencing an active UME as 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, and take from ship strike and entanglement is not proposed to be authorized. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS of which the Gulf of Maine stock is a part) remains stable at approximately 12,000 individuals.

Revolution Wind has requested, and NMFS has proposed to authorize, a limited amount of humpback whale harassment, by Level A harassment and Level B harassment. No mortality or serious injury is anticipated or proposed for authorization. Among the activities analyzed, impact pile driving has the potential to result in the highest amount of annual take of humpback whales (7 takes by Level A harassment and 48 takes by Level B harassment) and is of greatest concern, given the associated loud source levels. Kraus *et al.* (2016) reported humpback whale sightings in the RI–MA WEA during all seasons, with peak abundance during the spring and early summer, but their presence within the region varies between years. Increased presence of sand lance (*Ammodytes* spp.) appears to correlate with the years in which most whales were observed, suggesting that humpback whale distribution and occurrence could largely be influenced by prey availability (Kenney and Vigness-Raposa 2010, 2016). Seasonal abundance estimates of humpback whales in the RI–MA WEA range from 0 to 41 (Kraus *et al.,* 2016), with higher estimates observed during the spring and summer. Davis *et al.* (2020) found the greatest number of acoustic detections in southern New England in the winter and spring, with a noticeable decrease in acoustic detections during most summer and fall months. This data suggests that the 7 and 48 maximum annual instances of predicted to take by Level A harassment and Level B harassment, respectively, could consist of individuals exposed to noise levels above the harassment thresholds once during migration through the project area and/or individuals exposed on multiple days if they are utilizing the area as foraging habitat. Based on the observed peaks in humpback whale seasonal distribution in the RI/MA WEA, it is likely that these individuals would primarily be exposed to HRG survey activities, landfall construction activities, and to a lesser extent, impact pile driving and UXO/MEC detonations (given the seasonal restrictions on the latter two activities). Any such exposures would occur either singly, or intermittently, but not continuously throughout a day.

For all the reasons described in the Mysticete section above, we anticipate any potential PTS or TTS would be small (limited to a few dB) and concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of baleen whales. If TTS is incurred, hearing sensitivity would likely return to pre-exposure levels shortly after exposure ends. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Altogether, the amount of take proposed to be authorized is small, and the low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality or serious injury is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Revolution Wind's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Maine stock of humpback whales.

Fin Whale

The western North Atlantic stock of fin whales is listed as endangered under the ESA. The 5-year total amount of take, by Level B harassment, of fin whales (n=48) NMFS proposes to authorize is low relative to the stock abundance. Any Level B harassment is expected to be in the form of behavioral disturbance, primarily resulting in avoidance of the project area where pile driving is occurring, and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief periods of time. No Level A harassment, serious injury, or mortality is anticipated or proposed for authorization. As described previously, the project area overlaps 11 percent of a small fin whale feeding BIA (March–October; 2,933 km^2) located east of Montauk Point, New York (Figure 2.3 in LaBrecque *et al.,* 2015). Although the RWF and a portion of the RWEC would be constructed within the fin whale foraging BIA, the BIA is considerably larger than the relatively small area within which impacts from monopile installations or UXO/MEC detonations may occur; this difference in scale would provide ample access to foraging opportunities for fin whales within the remaining area of the BIA. In addition, monopile installations and UXO/MEC

detonations have seasonal/daily work restrictions, such that the temporal overlap between these project activities and the BIA timeframe does not include the months of March or April. Acoustic impacts from landfall construction would be limited to Narragansett Bay, within which fin whales are not expected to occur. A second larger yearlong feeding BIA (18,015 km^2) extends from the Great South Channel (east of the smaller fin whale feeding BIA) north to southern Maine. Any disruption of feeding behavior or avoidance of the western BIA by fin whales from May to October is expected to be temporary, with habitat utilization by fin whales returning to baseline once the construction activities cease. The larger fin whale feeding BIA would provide suitable alternate habitat and ample foraging opportunities consistently throughout the year, rather than seasonally like the smaller, western BIA.

Because of the relatively low magnitude and severity of take proposed for authorization, the fact that no serious injury or mortality is anticipated, the temporary nature of the disturbance, and the availability of similar habitat and resources in the surrounding area, NMFS has preliminarily determined that the impacts of Revolution Wind's activities on fin whales and the food sources that they utilize are not expected to cause significant impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock.

Blue and Sei Whales

The Western North Atlantic stock of blue whales and the Nova Scotia stock of sei whales are also listed under the ESA. There are no known areas of specific biological importance in or around the project area, nor are there any UMEs. For both species, the actual abundance of each stock is likely significantly greater than what is reflected in each SAR because, as noted in the SARs, the most recent population estimates are primarily based on surveys conducted in U.S. waters and both stocks' range extends well beyond the U.S. Exclusive Economic Zone (EEZ).

The 5-year total amount of take, by Level B harassment, proposed for authorization for blue whales (n=7) and sei whales (n=26) is low, and no potential Level A harassment take is anticipated or proposed for authorization for either species. Similar to other mysticetes, we would anticipate the number of takes to represent individuals taken only once or, in rare cases, an individual taken a very small number of times as most whales in the project area would be migrating. To a small degree, sei whales may forage in the project area, although the currently identified foraging habitats (BIAs) are to the east and north of the area in which Revolution Wind's activities would occur (LaBrecque *et al.,* 2015). With respect to the severity of those individual takes by behavioral Level B harassment, we would anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the turbine installation to be the most likely type of response. Any avoidance of the project area due to Revolution Wind's activities would be expected to be limited.

Overall, the take by harassment proposed for authorization is of a low magnitude and severity and is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality or serious injury is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Revolution Wind's activities combined, that the proposed authorized take would have a negligible impact on the Western North Atlantic blue whale stock and the Nova Scotia sei whale stock.

Minke Whales

The Canadian East Coast stock of minke whales is not listed under the ESA. There are no known areas of specific biological importance in or around the project area. 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 21,000 whales. No mortality or serious injury of this stock is anticipated or proposed for authorization.

Minke whales may be taken by Level B harassment; however, this would be limited to a relatively low number of individuals annually, with the maximum annual take of 304 minke whales estimated for the first year of construction and a maximum 320 across all 5 years. We anticipate the impacts of this harassment to follow those described in the general Mysticete section above. In summary, Level B harassment would be temporary, with primary impacts being temporary displacement of the project area but not abandonment of any migratory or foraging behavior. Overall, the amount of take proposed to be authorized is small and the low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality or serious injury is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Revolution Wind's activities combined, that the proposed authorized take would have a negligible impact on the Canadian East Coast stock of minke whales.

Odontocetes

In this section, we include information here that applies to all of the odontocete species and stocks addressed below, which are further divided into the following subsections: Sperm whales, Dolphins and small whales; and Harbor porpoises. These sub-sections include more specific information, as well as conclusions for each stock represented.

The majority of takes by harassment of odontocetes incidental to Revolution Wind's specified activities are by Level B harassment incidental to pile driving and HRG surveys. We anticipate that, given ranges of individuals (*i.e.,* that some individuals remain within a small area for some period of time), and non-migratory nature of some odontocetes in general (especially as compared to mysticetes), these takes are more likely to represent multiple exposures of a smaller number of individuals than is the case for mysticetes, though some takes may also represent one-time exposures to an individual.

Pile driving, particularly impact pile driving foundation piles, has the potential to disturb odontocetes to the greatest extent, compared to HRG surveys and UXO/MEC detonations. While we do expect animals to avoid the area during pile driving, their habitat range is extensive compared to the area ensonified during pile driving.

As described earlier, Level B harassment may manifest as changes to behavior (*e.g.,* avoidance, changes in vocalizations (from masking) or foraging), physiological responses, or TTS. Odontocetes are highly mobile species and, similar to mysticetes, NMFS expects any avoidance behavior to be limited to the area near the pile being driven. While masking could occur during pile driving, it would only occur in the vicinity of and during the duration of the pile driving, and would

not generally occur in a frequency range that overlaps most odontocete communication or echolocation signals. The mitigation measures (*e.g.,* use of sound abatement systems, implementation of clearance and shutdown zones) would also minimize received levels such that the severity of any behavioral response would be expected to be less than exposure to unmitigated noise exposure.

Any masking or TTS effects are anticipated to be of low-severity. First, the frequency range of pile driving, the most impactful activity conducted by Revolution Wind in terms of response severity, falls within a portion of the frequency range of most odontocete vocalizations. However, odontocete vocalizations span a much wider range than the low frequency construction activities proposed by Revolution Wind. Further, as described above, recent studies suggest odontocetes have a mechanism to self-mitigate (*i.e.,* reduce hearing sensitivity) the impacts of noise exposure, which could potentially reduce TTS impacts. Any masking or TTS is anticipated to be limited and would typically only interfere with communication within a portion of an odontocete's range and as discussed earlier, the effects would only be expected to be of a short duration and, for TTS, a relatively small degree. Furthermore, odontocete echolocation occurs predominantly at frequencies significantly higher than low frequency construction activities; therefore, there is little likelihood that threshold shift, either temporary or permanent, would interfere with feeding behaviors (noting that take by Level A harassment (PTS) is proposed for only harbor porpoises). For HRG surveys, the sources operate at higher frequencies than pile driving and UXO/MEC detonations; however, sounds from these sources attenuate very quickly in the water column, as described above; therefore, any potential for TTS and masking is very limited. Further, odontocetes (*e.g.,* common dolphins, spotted dolphins, bottlenose dolphins) have demonstrated an affinity to bow-ride actively surveying HRG surveys; therefore, the severity of any harassment, if it does occur, is anticipated to be minimal based on the lack of avoidance previously demonstrated by these species.

The waters off the coast of Rhode Island are used by several odontocete species; however, none (except the sperm whale) are listed under the ESA and there are no known habitats of particular importance. In general, odontocete habitat ranges are far-reaching along the Atlantic coast of the U.S., and the waters off of Rhode Island, including the project area, do not contain any particularly unique odontocete habitat features.

Sperm Whale

The Western North Atlantic stock of sperm whales spans the East Coast out into oceanic waters well beyond the U.S. EEZ. Although listed as endangered, the primary threat faced by the sperm whale (*i.e.,* commercial whaling) has been eliminated and, further, sperm whales in the western North Atlantic were little affected by modern whaling (Taylor *et al.,* 2008). Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. There is no currently reported trend for the stock and, although the species is listed as endangered under the ESA, there are no specific issues with the status of the stock that cause particular concern (*e.g.,* no UMEs). There are no known areas of biological importance (*e.g.,* critical habitat or BIAs) in or near the project area.

No mortality, serious injury or Level A harassment is anticipated or proposed to be authorized for this species. Impacts would be limited to Level B harassment and would occur to only a very small number of individuals (maximum of 7 per year or 15 across all 5 years) incidental to pile driving, UXO/MEC detonation(s), and HRG surveys. Sperm whales are not common within the project area due to the shallow waters, and it is not expected that any noise levels would reach habitat in which sperm whales are common, including deep-water foraging habitat. If sperm whales do happen to be present in the project area during any activities related to the Revolution Wind project, they would likely be only transient visitors and not engaging in any significant behaviors. This very low magnitude and severity of effects is not expected to result in impacts on the reproduction or survival of individuals, much less impact annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Revolution Wind's activities combined, that the take proposed to be authorized would have a negligible impact on sperm whales.

Dolphins and Small Whales (Including Delphinids, Pilot Whales, and Harbor Porpoises)

There are no specific issues with the status of odontocete stocks that cause particular concern (*e.g.,* no recent UMEs). No mortality or serious injury is expected or proposed to be authorized for these stocks. Only Level B harassment is anticipated or proposed for authorization for any dolphin or small whale.

The maximum amount of take, by Level B harassment, proposed for authorization within any one year for all odontocetes cetacean stocks ranges from 15 to 6,229 instances, which is less than a maximum of 3.6 percent as compared to the population size for all stocks. As described above for odontocetes broadly, we anticipate that a fair number of these instances of take in a day represent multiple exposures of a smaller number of individuals, meaning the actual number of individuals taken is lower. Although some amount of repeated exposures to some individuals is likely given the duration of activity proposed by Revolution Wind, the intensity of any Level B harassment combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals.

Overall, the populations of all dolphins and small whale species and stocks for which we propose to authorize take are stable (no declining population trends), not facing existing UMEs, and the small amount, magnitude and severity of effects is not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Revolution Wind's activities combined, that the take proposed to be authorized would have a negligible impact on all dolphin and small whale species and stocks considered in this analysis.

Harbor Porpoises

The Gulf of Maine/Bay of Fundy stock of harbor porpoises is found predominantly in northern U.S. coastal waters (less than 150 m depth) and up into Canada's Bay of Fundy. Although the population trend is not known, there are no UMEs or other factors that cause particular concern for this stock. No mortality or non-auditory injury by UXO/MEC detonations are anticipated or authorized for this stock. NMFS proposes to authorize 49 takes by Level A harassment (PTS; incidental to UXO/MEC detonations) and 1,237 takes by Level B harassment (incidental to multiple activities).

Regarding the severity of takes by behavioral Level B harassment, because harbor porpoises are particularly sensitive to noise, it is likely that a fair

number of the responses could be of a moderate nature, particularly to pile driving. In response to pile driving, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* (2017) in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. However, pile driving is scheduled to occur when harbor porpoise abundance is low off the coast of Rhode Island and, given alternative foraging areas, any avoidance of the area by individuals is not likely to impact the reproduction or survival of any individuals. Given only one UXO/MEC would be detonated on any given day and up to only 13 UXO/MEC would be detonated over the 5-year effective period of the LOA, any behavioral response would be brief and of a low severity.

With respect to PTS and TTS, the effects on an individual are likely relatively low given the frequency bands of pile driving (most energy below 2 kHz) compared to harbor porpoise hearing (150 Hz to 160 kHz peaking around 40 kHz). Specifically, PTS or TTS is unlikely to impact hearing ability in their more sensitive hearing ranges, or the frequencies in which they communicate and echolocate. Regardless, we have authorized a limited amount of PTS, but expect any PTS that may occur to be within the very low end of their hearing range where harbor porpoises are not particularly sensitive, and any PTS would be of small magnitude. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

In summary, the amount of take proposed to be authorized (49 and 1,237 by Level A harassment and Level B harassment, respectively) is small and while harbor porpoises are likely to avoid the area during any construction activity discussed herein, as demonstrated during European wind farm construction, the time of year in which work would occur is when harbor porpoises are not in high abundance, and any work that does occur would not result in the species' abandonment of the waters off of Rhode Island. The low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality or serious injury is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Revolution Wind's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

Pinnipeds (Harbor Seals and Gray Seals)

Neither the harbor seal nor gray seal are listed under the ESA. Revolution Wind requested, and NMFS proposes to authorize that no more than 16 and 2,393 harbor seals and 7 and 978 gray seals may be taken by Level A harassment and Level B harassment, respectively, within any one year. These species occur in Rhode Island waters most often in winter, when impact pile driving and UXO/MEC detonations would not occur. Seals are also more likely to be close to shore such that exposure to impact pile driving would be expected to be at lower levels generally (but still above NMFS behavioral harassment threshold). The majority of takes of these species is from monopile installations, vibratory pile driving associated with temporary cofferdam installation and removal, and HRG surveys. Research and observations show that pinnipeds in the water may be tolerant of anthropogenic noise and activity (a review of behavioral reactions by pinnipeds to impulsive and non-impulsive noise can be found in Richardson *et al.* (1995) and Southall *et al.* (2007)). Available data, though limited, suggest that exposures between approximately 90 and 140 dB SPL do not appear to induce strong behavioral responses in pinnipeds exposed to non-pulse sounds in water (Costa *et al.,* 2003; Jacobs and Terhune, 2002; Kastelein *et al.,* 2006c). Although there was no significant displacement during construction as a whole, Russell *et al.* (2016) found that displacement did occur during active pile driving at predicted received levels between 168 and 178 dB re $1\mu Pa_{(p\text{-}p)}$; however seal distribution returned to the pre-piling condition within two hours of cessation of pile driving. Pinnipeds may not react at all until the sound source is approaching (or they approach the sound source) within a few hundred meters and then may alert, ignore the stimulus, change their behaviors, or avoid the immediate area by swimming away or diving. Effects on pinnipeds that are taken by Level B harassment in the project area would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals would simply move away from the sound source and be temporarily displaced from those areas (see Lucke *et al.,* 2006; Edren *et al.,* 2010; Skeate *et al.,* 2012; Russell *et al.,* 2016). Given their documented tolerance of anthropogenic sound (Richardson *et al.,* 1995; Southall *et al.,* 2007), repeated exposures of individuals of either of these species to levels of sound that may cause Level B harassment are unlikely to significantly disrupt foraging behavior. Given the low anticipated magnitude of impacts from any given exposure, even repeated Level B harassment across a few days of some small subset of individuals, which could occur, is unlikely to result in impacts on the reproduction or survival of any individuals. Moreover, pinnipeds would benefit from the mitigation measures described in the Proposed Mitigation section.

Revolution Wind requested, and NMFS is proposing to authorize, a small amount of PTS (16 harbor seals and 7 gray seals which constitutes less than 0.1 percent of each population) incidental to UXO/MEC detonation. As described above, noise from UXO/MEC detonation is low frequency and, while any PTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), PTS would not occur at frequencies where pinniped hearing is most sensitive. In summary, any PTS, would be of small degree and not occur across the entire, or even most sensitive, hearing range. Hence, any impacts from PTS are likely to be of low severity and not interfere with behaviors critical to reproduction or survival.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and occurred across Maine, New Hampshire, and Massachusetts until 2020. Based on tests conducted so far, the main pathogen found in the seals belonging to that UME was phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. Currently, the only active UME is occurring in Maine with some harbor and gray seals testing positive for highly pathogenic avian influenza (HPAI) H5N1. Although elevated strandings continue, neither UME (alone or in combination) 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 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 overall abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely

increasing in the U.S. Atlantic, as well as in Canada (Hayes *et al.,* 2020).

Overall, impacts from the Level B harassment take proposed for authorization incidental to Revolution Wind's specified activities would be of relatively low magnitude and a low severity. Similarly, while some individuals may incur PTS overlapping some frequencies that are used for foraging and communication, given the low degree, the impacts would not be expected to impact reproduction or survival of any individuals. In consideration of all of the effects of Revolution Wind's activities combined, we have preliminarily determined that the authorized take will have a negligible impact on harbor seals and gray seals.

Preliminary Negligible Impact Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the marine mammal take from all of Revolution Wind's specified activities combined 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 proposes to authorize incidental take (by Level A harassment and Level B harassment) of 16 species of marine mammal (with 16 managed stocks). The maximum number of takes possible within any one year and proposed for authorization relative to the best available population abundance is low for all species and stocks potentially impacted (*i.e.,* less than 1 percent for nine stocks, less than 4 percent for five stocks, and less than 12 percent for two stocks; see Table 33). Therefore, NMFS preliminarily finds that small numbers of marine mammals may be taken relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed action (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

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 promulgation of rulemakings, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS Greater Atlantic Regional Field Office (GARFO).

NMFS is proposing to authorize the take of five marine mammal species which are listed under the ESA: the North Atlantic right, sei, fin, blue, and sperm whale. The Permit and Conservation Division requested initiation of Section 7 consultation on November 1, 2022 with GARFO for the issuance of this proposed rulemaking. NMFS will conclude the Endangered Species Act consultation prior to reaching a determination regarding the proposed issuance of the authorization. The proposed regulations and any subsequent LOA(s) would be conditioned such that, in addition to measures included in those documents, the applicant would also be required to abide by the reasonable and prudent measures and terms and conditions of a Biological Opinion and Incidental Take Statement, issued by NMFS, pursuant to Section 7 of the Endangered Species Act.

Proposed Promulgation

As a result of these preliminary determinations, NMFS proposes to promulgate an ITA for Revolution Wind authorizing take, by Level A and B harassment, incidental to construction activities associated with the Revolution Wind Offshore Wind Farm project offshore of Rhode Island for a 5-year period from October 5, 2023 through October 4, 2028, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed rulemaking can be found at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy.*

Request for Additional Information and Public Comments

NMFS requests interested persons to submit comments, information, and suggestions concerning Revolution Wind's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare the final rule and make final determinations on whether to issue the requested authorization. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Recognizing, as a general matter, that this action is one of many current and future wind energy actions, we invite comment on the relative merits of the IHA, single-action rule/LOA, and programmatic multi-action rule/LOA approaches, including potential marine mammal take impacts resulting from this and other related wind energy actions and possible benefits resulting from regulatory certainty and efficiency.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Revolution Wind is the sole entity that would be subject to the requirements in these proposed regulations, and Revolution Wind is not a small

governmental jurisdiction, small organization, or small business, as defined by the RFA. Under the RFA, governmental jurisdictions are considered to be small if they are governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOA, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS.

The Coastal Zone Management Act (CZMA) requires Federal actions within and outside the coastal zone that have reasonably foreseeable effects on any coastal use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. 16 U.S.C. 1456(c). Additionally, regulations implementing the CZMA require non-Federal applicants for Federal licenses or permits to submit a consistency certification to the state that declares that the proposed activity complies with the enforceable policies of the state's approved management program and will be conducted in a manner consistent with such program. As required, on June 7, 2021, Revolution Wind submitted a Federal consistency certification to the Commonwealth of Massachusetts Office of Coastal Zone Management and the State of Rhode Island Coastal Resources Management Council for approval of the Construction and Operations Plan (COP) by BOEM and the issuance of an Individual Permit by United States Army Corps of Engineers, under section 10 and 14 of the Rivers and Harbors Act and section 404 of the Clean Water Act (15 CFR part 930, subpart E). The Commonwealth of Massachusetts issued its concurrence on October 7, 2022, and the State of Rhode Island issued its concurrence on December 21, 2022.

NMFS has determined that Revolution Wind's application for an authorization to allow the incidental, but not intentional, take of small numbers of marine mammals on the outer continental shelf is an unlisted activity and, thus, is not, at this time, subject to Federal consistency requirements in the absence of the receipt and prior approval of an unlisted activity review request from the state by the Director of NOAA's Office for Coastal Management.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Endangered and threatened species, Exports, Fish, Fisheries, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation, Wildlife.

Dated: December 14, 2022.

Andrew James Strelcheck

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Add subpart BB, consisting of §§ 217.270 through 217.279, to read as follows:

Subpart BB—Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island

Sec.

217.270 Specified activity and specified geographical region.
217.271 Effective dates.
217.272 Permissible methods of taking.
217.273 Prohibitions.
217.274 Mitigation requirements.
217.275 Requirements for monitoring and reporting.
217.276 Letter of Authorization.
217.277 Modifications of Letter of Authorization.
217.278–217.279 [Reserved]

Subpart BB—Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island

§ 217.270 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the taking of marine mammals that occurs incidental to activities associated with construction of the Revolution Wind Offshore Wind Farm Project by Revolution Wind, LLC (Revolution Wind) and those persons it authorizes or funds to conduct activities on its behalf in the area outlined in paragraph (b) of this section.

(b) The taking of marine mammals by Revolution Wind may be authorized in a Letter of Authorization (LOA) only if it occurs in the Bureau of Ocean Energy Management (BOEM) lease area Outer Continental Shelf (OCS)–A–0486 Commercial Lease of Submerged Lands for Renewable Energy Development and along export cable route at sea-to-shore transition points at Quonset Point in North Kingstown, Rhode Island.

(c) The taking of marine mammals by Revolution Wind is only authorized if it occurs incidental to the following activities associated with the Revolution Wind Offshore Wind Farm Project:

(1) Installation of wind turbine generators (WTG) and offshore substation (OSS) foundations by impact pile driving;

(2) Installation of temporary cofferdams by vibratory pile driving;

(3) High-resolution geophysical (HRG) site characterization surveys; and,

(4) Detonation of unexploded ordnances (UXOs) or munitions and explosives of concern (MECs).

§ 217.271 Effective dates.

Regulations in this subpart are effective from October 5, 2023, through October 4 31, 2028.

§ 217.272 Permissible methods of taking.

Under an LOA, issued pursuant to §§ 216.106 and 217.276, Revolution Wind, and those persons it authorizes or funds to conduct activities on its behalf, may incidentally, but not intentionally, take marine mammals within the area described in § 217.270(b) in the following ways, provided Revolution Wind is in complete compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA:

(a) By Level B harassment associated with the acoustic disturbance of marine mammals by impact pile driving (WTG and OSS monopile foundation installation), vibratory pile installation and removal of temporary cofferdams, the detonation of UXOs/MECs, and through HRG site characterization surveys.

(b) By Level A harassment, provided take is associated with impact pile driving and UXO/MEC detonations.

(c) The incidental take of marine mammals by the activities listed in paragraphs (a) and (b) of this section is limited to the following species:

TABLE 1 TO PARAGRAPH (c)

Marine mammal species	Scientific name	Stock
Blue whale	*Balaenoptera musculus*	Western North Atlantic.
Fin whale	*Balaenoptera physalus*	Western North Atlantic.
Sei whale	*Balaenoptera borealis*	Nova Scotia.
Minke whale	*Balaenoptera acutorostrata*	Canadian East Stock.
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic.
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine.
Sperm whale	*Physeter macrocephalus*	North Atlantic.
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic.
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic.
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore.
Common dolphin	*Delphinus delphis*	Western North Atlantic.
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy.
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic.
Risso's dolphin	*Grampus griseus*	Western North Atlantic.
Gray seal	*Halichoerus grypus*	Western North Atlantic.
Harbor seal	*Phoca vitulina*	Western North Atlantic.

§ 217.273 Prohibitions.

Except for the takings described in § 217.272 and authorized by an LOA issued under § 217.276 or § 217.277, it is unlawful for any person to do any of the following in connection with the activities described in this subpart:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 217.276 and 217.277;

(b) Take any marine mammal not specified in § 217.272(c);

(c) Take any marine mammal specified in the LOA in any manner other than as specified in the LOA; or

(d) Take any marine mammal, as specified in § 217.272(c), after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammals.

§ 217.274 Mitigation requirements.

When conducting the activities identified in §§ 217.270(a) and 217.272, Revolution Wind must implement the mitigation measures contained in this section and any LOA issued under § 217.276 or § 217.277. These mitigation measures must include, but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of Revolution Wind and its designees, all vessel operators, visual protected species observers (PSOs), passive acoustic monitoring (PAM) operators, pile driver operators, and any other relevant designees operating under the authority of the issued LOA;

(2) Revolution Wind must conduct briefings between construction supervisors, construction crews, and the PSO and PAM team prior to the start of all construction activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring and reporting protocols, and operational procedures. An informal guide must be included with the Marine Mammal Monitoring Plan to aid personnel in identifying species if they are observed in the vicinity of the project area;

(3) Revolution Wind must instruct all vessel personnel regarding the authority of the PSO(s). For example, the vessel operator(s) would be required to immediately comply with any call for a shutdown by the Lead PSO. Any disagreement between the Lead PSO and the vessel operator would only be discussed after shutdown has occurred;

(4) Revolution Wind must ensure that any visual observations of an ESA-listed marine mammal are communicated to PSOs and vessel captains during the concurrent use of multiple project-associated vessels (of any size; *e.g.,* construction surveys, crew/supply transfers, etc.);

(5) 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 relevant Level B harassment zone for each specified activity, pile driving and pneumatic hammering activities, and HRG acoustic sources must be shut down immediately, unless shutdown is not practicable, or be delayed if the activity has not commenced. Impact and vibratory pile driving, pneumatic hammering, UXO/MEC detonation, and initiation of HRG acoustic sources must not commence or resume until the animal(s) has been confirmed to have left the relevant clearance zone or the observation time has elapsed with no further sightings. UXO/MEC detonations may not occur until the animal(s) has been confirmed to have left the relevant clearance zone or the observation time has elapsed with no further sightings;

(6) Prior to and when conducting any in-water construction activities and vessel operations, Revolution Wind personnel (*e.g.,* vessel operators, PSOs) must use available sources of information on North Atlantic right whale presence in or near the project area including daily monitoring of the Right Whale Sightings Advisory System, and monitoring of Coast Guard VHF Channel 16 throughout the day to receive notification of any sightings and/or information associated with any slow zones (*i.e.,* Dynamic Management Areas (DMAs) and/or acoustically-triggered slow zones) to provide situational awareness for both vessel operators and PSOs; and

(7) Any marine mammals observed within a clearance or shutdown zone must be allowed to remain in the area (*i.e.,* must leave of their own volition) prior to commencing impact and vibratory pile driving activities, pneumatic hammering, or HRG surveys.

(8) Revolution Wind must treat any large whale sighted by a PSO or acoustically detected by a PAM operator as if it were a North Atlantic right whale, unless a PSO or a PAM operator confirms it is another type of whale.

(b) *Vessel strike avoidance measures.* (1) Prior to the start of construction activities, all vessel operators and crew must receive a protected species identification training that covers, at a minimum:

(i) Sightings of marine mammals and other protected species known to occur or which have the potential to occur in the Revolution Wind project area;

(ii) Training on making observations in both good weather conditions (*i.e.,* clear visibility, low winds, low sea states) and bad weather conditions (*i.e.,*

fog, high winds, high sea states, with glare);

(iii) Training on information and resources available to the project personnel regarding the applicability of Federal laws and regulations for protected species;

(iv) Observer training related to these vessel strike avoidance measures must be conducted for all vessel operators and crew prior to the start of in-water construction activities; and

(v) Confirmation of marine mammal observer training (including an understanding of the LOA requirements) must be documented on a training course log sheet and reported to NMFS.

(2) All vessels must abide by the following:

(i) All vessel operators and crews, regardless of their vessel's size, must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate, to avoid striking any marine mammal;

(ii) All vessels must have a visual observer on board who is responsible for monitoring the vessel strike avoidance zone for marine mammals. Visual observers may be PSO or crew members, but crew members responsible for these duties must be provided sufficient training by Revolution Wind to distinguish marine mammals from other phenomena and must be able to identify a marine mammal as a North Atlantic right whale, other whale (defined in this context as sperm whales or baleen whales other than North Atlantic right whales), or other marine mammal. Crew members serving as visual observers must not have duties other than observing for marine mammals while the vessel is operating over 10 knots (kns);

(iii) Year-round and when a vessel is in transit, all vessel operators must continuously monitor U.S. Coast Guard VHF Channel 16, over which North Atlantic right whale sightings are broadcasted. At the onset of transiting and at least once every four hours, vessel operators and/or trained crew members must monitor the project's Situational Awareness System, WhaleAlert, and the Right Whale Sighting Advisory System (RWSAS) for the presence of North Atlantic right whales Any observations of any large whale by any Revolution Wind staff or contractors, including vessel crew, must be communicated immediately to PSOs, PAM operator, and all vessel captains to increase situational awareness. Conversely, any large whale observation or detection via a sighting network (*e.g.,* Mysticetus) by PSOs or PAM operators must be conveyed to vessel operators and crew;

(iv) Any observations of any large whale by any Revolution Wind staff or contractor, including vessel crew, must be communicated immediately to PSOs and all vessel captains to increase situational awareness;

(v) All vessels must comply with existing NMFS vessel speed regulations in 50 CFR 224.105, as applicable, for North Atlantic right whales;

(vi) In the event that any slow zone (designated as a DMA) is established that overlaps with an area where a project-associated vessel would operate, that vessel, regardless of size, will transit that area at 10 kns or less;

(vii) Between November 1st and April 30th, all vessels, regardless of size, would operate port to port (specifically from ports in New Jersey, New York, Maryland, Delaware, and Virginia) at 10 kns or less, except for vessels while transiting in Narragansett Bay or Long Island Sound which have not been demonstrated by best available science to provide consistent habitat for North Atlantic right whales;

(viii) All vessels, regardless of size, must immediately reduce speed to 10 kns or less when any large whale, mother/calf pairs, or large assemblages of non-delphinid cetaceans are observed (within 500 m) of an underway vessel;

(ix) All vessels, regardless of size, must immediately reduce speed to 10 kns or less when a North Atlantic right whale is sighted, at any distance, by anyone on the vessel;

(x) If a vessel is traveling at greater than 10 kns, in addition to the required dedicated visual observer, Revolution Wind must monitor the transit corridor in real-time with PAM prior to and during transits. If a North Atlantic right whale is detected via visual observation or PAM within or approaching the transit corridor, all crew transfer vessels must travel at 10 kns or less for 12 hours following the detection. Each subsequent detection triggers an additional 12-hour period at 10 kns or less. A slowdown in the transit corridor expires when there has been no further visual or acoustic detection of North Atlantic right whales in the transit corridor for 12 hours;

(xi) All underway vessels (*e.g.,* transiting, surveying) operating at any speed must have a dedicated visual observer on duty at all times to monitor for marine mammals within a 180° direction of the forward path of the vessel (90° port to 90° starboard) located at an appropriate vantage point for ensuring vessels are maintaining appropriate separation distances. Visual observers must be equipped with alternative monitoring technology for periods of low visibility (*e.g.,* darkness, rain, fog, etc.). The dedicated visual observer must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements in this proposed action. Visual observers may be third-party observers (*i.e.,* NMFS-approved PSOs) or crew members. Observer training related to these vessel strike avoidance measures must be conducted for all vessel operators and crew prior to the start of in-water construction activities;

(xii) All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 kns or less such that the 500-m minimum separation distance requirement is not violated. If a North Atlantic right whale is sighted within 500 m of an underway vessel, that vessel must shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 500 m. If a whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take the vessel strike avoidance measures described in this paragraph (b)(2)(xii);

(xiii) All vessels must maintain a minimum separation distance of 100 m from sperm whales and baleen whales other than North Atlantic right whales. If one of these species is sighted within 100 m of an underway vessel, that vessel must shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 100 m;

(xiv) All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all delphinoid cetaceans and pinnipeds, with an exception made for those that approach the vessel (*e.g.,* bow-riding dolphins). If a delphinid cetacean or pinniped is sighted within 50 m of an underway vessel, that vessel must shift the engine to neutral, with an exception made for those that approach the vessel (*e.g.,* bow-riding dolphins). Engines must not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m;

(xv) When a marine mammal(s) is 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 a marine mammal(s) is sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engine(s) until the animal(s) is clear of the area. This does not apply to any vessel towing gear or any situation where respecting the relevant separation distance would be unsafe (*i.e.,* any situation where the vessel is navigationally constrained);

(xvi) All vessels underway must not divert or alter course to approach any marine mammal. Any vessel underway must avoid speed over 10 kns or abrupt changes in course direction until the animal is out of an on a path away from the separation distances;

(xvii) For in-water construction heavy machinery activities other than impact or vibratory pile driving, if a marine mammal is on a path towards or comes within 10 m of equipment, Revolution Wind must cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment; and

(xviii) Revolution Wind must submit a North Atlantic right whale vessel strike avoidance plan 90 days prior to commencement of vessel use. The plan will, at minimum, describe how PAM, in combination with visual observations, will be conducted to ensure the transit corridor is clear of right whales. The plan will also provide details on the vessel-based observer protocols on transiting vessels.

(c) *Fisheries monitoring surveys*—(1) *Training.* (i) All crew undertaking the fishery survey activities must receive protected species identification training prior to activities occurring.

(ii) [Reserved]

(2) *During vessel use.* (i) Marine mammal monitoring must occur prior to, during, and after haul-back, and gear must not be deployed if a marine mammal is observed in the area;

(ii) Trawl operations must only start after 15 minutes of no marine mammal sightings within 1 nautical mile (nmi) of the sampling station; and

(iii) During daytime sampling for the research trawl surveys, Revolution Wind must maintain visual monitoring efforts during the entire period of time that trawl gear is in the water from deployment to retrieval. If a marine mammal is sighted before the gear is removed from the water, the vessel must slow its speed and steer away from the observed animal(s).

(3) *Gear-specific best management practices (BMPs).* (i) Research trawl bottom times must be limited to 20 minutes;

(ii) Ventless trap surveys must utilize sinking ground lines and all lines will have breaking strength of less than 1,700 pounds and sinking groundlines. Sampling gear must be hauled at least once every 30 days, and the gear must be removed from the water at the end of each sampling season;

(iii) The permit number must be written clearly on buoy and any lines that go missing must be reported to NOAA Fisheries' Greater Atlantic Regional Fisheries Office (GARFO) Protected Resources Division as soon as possible;

(iv) If marine mammals are sighted near the proposed sampling location, trawl or ventless trap gear must be delayed until the marine mammal(s) has left the area;

(v) If a marine mammal is determined to be at risk of interaction with the deployed gear, all gear must be immediately removed;

(vi) Marine mammal monitoring must occur during daylight hours and begin prior to the deployment of any gear (*e.g.,* trawls) and continue until all gear has been retrieved; and

(vii) If marine mammals are sighted in the vicinity within 15 minutes prior to gear deployment and it is determined the risks of interaction are present regarding the research gear, the sampling station must either be moved to another location or activities must be suspended until there are no marine mammal sightings for 15 minutes within 1 nm.

(d) *Wind turbine generator (WTG) and offshore substation (OSS) foundation installation*—(1) *Seasonal and daily restrictions.* (i) Foundation impact pile driving activities may not occur January 1 through April 30;

(ii) No more than three foundation monopiles may be installed per day;

(iii) Revolution Wind must not initiate pile driving earlier than 1 hour after civil sunrise or later than 1.5 hours prior to civil sunset, unless Revolution Wind submits and NMFS approves an Alternative Monitoring Plan as part of the Pile Driving and Marine Mammal Monitoring Plan that reliably demonstrates the efficacy of their night vision devices; and

(iv) Monopiles must be no larger than 15 m in diameter, representing the larger end of the tapered 7/15 m monopile design. The minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Maximum hammer energies must not exceed 4,000 kilojoules (kJ).

(2) *Noise abatement systems.* (i) Revolution Wind must deploy dual noise abatement systems that are capable of achieving, at a minimum, 10-dB of sound attenuation, during all impact pile driving of foundation piles:

(A) A single big bubble curtain (BBC) must not be used unless paired with another noise attenuation device; and

(B) A double big bubble curtain (dBBC) may be used without being paired with another noise attenuation device;

(ii) The bubble curtain(s) must distribute air bubbles using an air flow rate of at least 0.5 $m^3/(min*m)$. The bubble curtain(s) must surround 100 percent of the piling perimeter throughout the full depth of the water column. In the unforeseen event of a single compressor malfunction, the offshore personnel operating the bubble curtain(s) must make appropriate adjustments to the air supply and operating pressure such that the maximum possible sound attenuation performance of the bubble curtain(s) is achieved;

(iii) The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact;

(iv) No parts of the ring or other objects may prevent full seafloor contact; and

(v) Construction contractors must train personnel in the proper balancing of airflow to the ring. Construction contractors must submit an inspection/performance report for approval by Revolution Wind within 72 hours following the performance test. Corrections to the bubble ring(s) to meet the performance standards in this paragraph (d)(2) must occur prior to impact pile driving of monopiles. If Revolution Wind uses a noise mitigation device in addition to the BBC, Revolution Wind must maintain similar quality control measures as described in this paragraph (d)(2).

(3) *Sound field verification.* (i) Revolution Wind must perform sound field verification (SFV) during all impact pile driving of the first three monopiles and must empirically determine source levels (peak and cumulative sound exposure level), the ranges to the isopleths corresponding to the Level A harassment (permanent threshold shift (PTS)) and Level B harassment thresholds, and estimated transmission loss coefficients;

(ii) If a subsequent monopile installation location is selected that was not represented by previous three locations (*i.e.,* substrate composition, water depth), SFV must be conducted;

(iii) Revolution Wind may estimate ranges to the Level A harassment and

Level B harassment isopleths by extrapolating from in situ measurements conducted at several distances from the monopiles, and must measure received levels at a standard distance of 750 m from the monopiles;

(iv) If SFV measurements on any of the first three piles indicate that the ranges to Level A harassment and Level B harassment isopleths are larger than those modeled, assuming 10-dB attenuation, Revolution Wind must modify and/or apply additional noise attenuation measures (*e.g.,* improve efficiency of bubble curtain(s), modify the piling schedule to reduce the source sound, install an additional noise attenuation device) before the second pile is installed. Until SFV confirms the ranges to Level A harassment and Level B harassment isopleths are less than or equal to those modeled, assuming 10-dB attenuation, the shutdown and clearance zones must be expanded to match the ranges to the Level A harassment and Level B harassment isopleths based on the SFV measurements. If the application/use of additional noise attenuation measures still does not achieve ranges less than or equal to those modeled, assuming 10-dB attenuation, and no other actions can further reduce sound levels, Revolution Wind must expand the clearance and shutdown zones according to those identified through SFV, in consultation with NMFS;

(v) If harassment zones are expanded beyond an additional 1,500 m, additional PSOs must be deployed on additional platforms, with each observer responsible for maintaining watch in no more than 180° and of an area with a radius no greater than 1,500 m;

(vi) If acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10-dB attenuation), Revolution Wind may request a modification of the clearance and shutdown zones for impact pile driving of monopiles and UXO/MEC detonations. For a modification request to be considered by NMFS, Revolution Wind must have conducted SFV on three or more monopiles and on all detonated UXOs/MECs thus far to verify that zone sizes are consistently smaller than predicted by modeling (assuming 10-dB attenuation). Regardless of SFV measurements, the clearance and shutdown zones for North Atlantic right whales must not be decreased;

(vii) If a subsequent monopile installation location is selected that was not represented by previous locations (*i.e.,* substrate composition, water depth), SFV must be conducted. If a subsequent UXO/MEC charge weight is encountered and/or detonation location is selected that was not representative of the previous locations (*i.e.,* substrate composition, water depth), SFV must be conducted;

(viii) Revolution Wind must submit a SFV Plan at least 180 days prior to the planned start of impact pile driving and any UXO/MEC detonation activities. The plan must describe how Revolution Wind would ensure that the first three monopile foundation installation sites selected and each UXO/MEC detonation scenario (*i.e.,* charge weight, location) selected for SFV are representative of the rest of the monopile installation sites and UXO/MEC scenarios. In the case that these sites/scenarios are not determined to be representative of all other monopile installation sites and UXO/MEC detonations, Revolution Wind must include information on how additional sites/scenarios would be selected for SFV. The plan must also include methodology for collecting, analyzing, and preparing SFV data for submission to NMFS. The plan must describe how the effectiveness of the sound attenuation methodology would be evaluated based on the results. Revolution Wind must also provide, as soon as they are available but no later than 48 hours after each installation, the initial results of the SFV measurements to NMFS in an interim report after each monopile for the first three piles and after each UXO/MEC detonation; and

(ix) The SFV plan must also include how operational noise would be monitored. Revolution Wind must estimate source levels (at 10 m from the operating foundation) based on received levels measured at 50 m, 100 m, and 250 m from the pile foundation. These data must be used to identify estimated transmission loss rates. Operational parameters (*e.g.,* direct drive/gearbox information, turbine rotation rate) as well as sea state conditions and information on nearby anthropogenic activities (*e.g.,* vessels transiting or operating in the area) must be reported.

(4) *Protected species observer and passive acoustic monitoring use.* (i) Revolution Wind must have a minimum of four PSOs actively observing marine mammals before, during, and after (specific times described in this paragraph (d)(4)) the installation of monopiles. At least four PSOs must be actively observing for marine mammals. At least two PSOs must be actively observing on the pile driving vessel while at least two PSOs must be actively observing on a secondary, PSO-dedicated vessel. At least one active PSO on each platform must have a minimum of 90 days at-sea experience working in those roles in offshore environments with no more than eighteen months elapsed since the conclusion of the at-sea experience. Concurrently, at least one acoustic PSO (*i.e.,* passive acoustic monitoring (PAM) operator) must be actively monitoring for marine mammals before, during and after impact pile driving with PAM; and

(ii) All visual PSOs and PAM operators used for the Revolution Wind project must meet the requirements and qualifications described in § 217.275(a) and (b), and (c), respectively, and as applicable to the specified activity.

(5) *Clearance and shutdown zones.* (i) Revolution Wind must establish and implement clearance and shutdown zones (all distances to the perimeter are the radii from the center of the pile being driven) as described in the LOA for all WTG and OSS foundation installation;

(ii) Revolution Wind must use visual PSOs and PAM operators to monitor the area around each foundation pile before, during and after pile driving. PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes prior to commencing pile driving. At least one PAM operator must review data from at least 24 hours prior to pile driving and actively monitor hydrophones for 60 minutes prior to pile driving. Prior to initiating soft-start procedures, all clearance zones must be visually confirmed to be free of marine mammals for 30 minutes immediately prior to starting a soft-start of pile driving;

(iii) PSOs must be able to visually clear (*i.e.,* confirm no marine mammals are present) an area that extends around the pile being driven as described in the LOA. The entire minimum visibility zone must be visible (*i.e.,* not obscured by dark, rain, fog, etc.) for a full 30 minutes immediately prior to commencing impact pile driving (minimum visibility zone size dependent on season);

(iv) If a marine mammal is observed entering or within the relevant clearance zone prior to the initiation of impact pile driving activities, pile driving must be delayed and must not begin until either the marine mammal(s) has voluntarily left the specific clearance zones and have been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections. The specific time periods are 15 minutes for small odontocetes and 30 minutes for all other marine mammal species;

(v) The clearance zone may only be declared clear if no confirmed North

Atlantic right whale acoustic detections (in addition to visual) have occurred within the PAM clearance zone during the 60-minute monitoring period. Any large whale sighting by a PSO or detected by a PAM operator that cannot be identified by species must be treated as if it were a North Atlantic right whale;

(vi) If a marine mammal is observed entering or within the respective shutdown zone, as defined in the LOA, after impact pile driving has begun, the PSO must call for a temporary shutdown of impact pile driving;

(vii) Revolution Wind must immediately cease pile driving if a PSO calls for shutdown, unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. In this situation, Revolution Wind must reduce hammer energy to the lowest level practicable;

(viii) Pile driving must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and has been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for small odontocetes and 30 minutes for all other marine mammal species. In cases where these criteria are not met, pile driving may restart only if necessary to maintain pile stability at which time Revolution Wind must use the lowest hammer energy practicable to maintain stability;

(ix) If impact pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving may not restart until the North Atlantic right whale is no longer observed or 30 minutes has elapsed since the last detection; and

(x) Upon re-starting pile driving, soft start protocols must be followed.

(6) *Soft start.* (i) Revolution Wind must utilize a soft start protocol for impact pile driving of monopiles by performing 4–6 strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes;

(ii) Soft start must occur at the beginning of monopile installation and at any time following a cessation of impact pile driving of 30 minutes or longer; and

(iii) If a marine mammal is detected within or about to enter the applicable clearance zones, prior to the beginning of soft-start procedures, impact pile driving must be delayed until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings. The specific time periods are 15 minutes for small odontocetes and 30 minutes for all other species.

(e) *Cofferdam or casing pipe installation*—(1) *Daily restrictions.* (i) Revolution Wind must conduct vibratory pile driving or pneumatic hammering during daylight hours only.

(ii) [Reserved]

(2) *PSO use.* (i) All visual PSOs used for the Revolution Wind project must meet the requirements and qualifications described in § 217.275(a) and (b), as applicable to the specified activity; and

(ii) Revolution Wind must have a minimum of two PSOs on active duty during any installation and removal of the temporary cofferdams, or casing pipes and goal posts. These PSOs would always be located at the best vantage point(s) on the vibratory pile driving platform or secondary platform in the immediate vicinity of the vibratory pile driving platform, in order to ensure that appropriate visual coverage is available for the entire visual clearance zone and as much of the Level B harassment zone, as possible.

(3) *Clearance and shutdown zones.* (i) Revolution Wind must establish and implement clearance and shutdown zones as described in the LOA;

(ii) Prior to the start of pneumatic hammering or vibratory pile driving activities, at least two PSOs must monitor the clearance zone for 30 minutes, continue monitoring during pile driving and for 30 minutes post pile driving;

(iii) If a marine mammal is observed entering or is observed within the clearance zones, piling and hammering must not commence until the animal has exited the zone or a specific amount of time has elapsed since the last sighting. The specific amount of time is 30 minutes for large whales and 15 minutes for dolphins, porpoises, and pinnipeds;

(iv) If a marine mammal is observed entering or within the respective shutdown zone, as defined in the LOA, after vibratory pile driving or hammering has begun, the PSO must call for a temporary shutdown of vibratory pile driving or hammering;

(v) Revolution Wind must immediately cease pile driving or pneumatic hammering if a PSO calls for shutdown, unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual, pile refusal, or pile instability; and

(vi) Pile driving must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and have been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for small odontocetes and 30 minutes for all other marine mammal species.

(f) *UXO/MEC detonation*—(1) *General.* (i) Revolution Wind shall only detonate a maximum of 13 UXO/MECs, of varying sizes;

(ii) Upon encountering a UXO/MEC of concern, Revolution Wind may only resort to high-order removal (*i.e.,* detonation) if all other means of removal are impracticable; and

(iii) Revolution Wind must utilize a noise abatement system (*e.g.,* bubble curtain or similar noise abatement device) around all UXO/MEC detonations and operate that system in a manner that achieves the maximum noise attenuation levels practicable.

(2) *Seasonal and daily restrictions.* (i) Revolution Wind must not detonate UXOs/MECs from December 1 through April 31, annually; and

(ii) Revolution Wind must only detonate UXO/MECs during daylight hours.

(3) *PSO and PAM use.* (i) All visual PSOs and PAM operators used for the Revolution Wind project must meet the requirements and qualifications described in § 217.265(a) and (b), and (c), respectively, and as applicable to the specified activity; and

(ii) Revolution Wind must use at least 2 visual PSOs on each platform (*i.e.,* vessels, plane) and one acoustic PSO to monitor for marine mammals in the clearance zones prior to detonation. If the clearance zone is larger than 2 km (based on charge weight), Revolution Wind must deploy a secondary PSO vessel. If the clearance is larger than 5 km (based on charge weight), an aerial survey must be conducted.

(4) *Clearance zones.* (i) Revolution Wind must establish and implement clearance zones using both visual and acoustic monitoring, as described in the LOA;

(ii) Clearance zones must be fully visible for at least 60 minutes and all marine mammal(s) must be confirmed to be outside of the clearance zone for at least 30 minutes prior to detonation. PAM must also be conducted for at least 60 minutes prior to detonation and the zone must be acoustically cleared during this time; and

(iii) If a marine mammal is observed entering or within the clearance zone prior to denotation, the activity must be delayed. Detonation may only commence if all marine mammals have been confirmed to have voluntarily left

the clearance zones and been visually confirmed to be beyond the clearance zone, or when 60 minutes have elapsed without any redetections for whales (including the North Atlantic right whale) or 15 minutes have elapsed without any redetections of delphinids, harbor porpoises, or seals.

(5) *Sound field verification.* (i) During each UXO/MEC detonation, Revolution Wind must empirically determine source levels (peak and cumulative sound exposure level), the ranges to the isopleths corresponding to the Level A harassment and Level B harassment thresholds, and estimated transmission loss coefficient(s); and

(ii) If SFV measurements on any of the detonations indicate that the ranges to Level A harassment and Level B harassment thresholds are larger than those modeled, assuming 10-dB attenuation, Revolution Wind must modify the ranges, with approval from NMFS, and/or apply additional noise attenuation measures (*e.g.,* improve efficiency of bubble curtain(s), install an additional noise attenuation device) before the next detonation event.

(g) *HRG surveys*—(1) *General.* (i) All personnel with responsibilities for marine mammal monitoring must participate in joint, onboard briefings that would be led by the vessel operator and the Lead PSO, prior to the beginning of survey activities. The briefing must be repeated whenever new relevant personnel (*e.g.,* new PSOs, acoustic source operators, relevant crew) join the survey operation before work commences;

(ii) Revolution Wind must deactivate acoustic sources during periods where no data is being collected, except as determined to be necessary for testing. Unnecessary use of the acoustic source(s) is prohibited; and

(iii) Any large whale sighted by a PSO within 1 km of the boomer, sparker, or compressed high-intensity radiated pulse (CHIRP) that cannot be identified by species must be treated as if it were a North Atlantic right whale.

(2) *PSO use.* (i) Revolution Wind must use at least one PSO during daylight hours and two PSOs during nighttime operations, per vessel;

(ii) PSOs must establish and monitor the appropriate clearance and shutdown zones (*i.e.,* radial distances from the acoustic source in-use and not from the vessel); and

(iii) PSOs must begin visually monitoring 30 minutes prior to the initiation of the specified acoustic source (*i.e.,* ramp-up, if applicable), through 30 minutes after the use of the specified acoustic source has ceased.

(3) *Ramp-up.* (i) Any ramp-up activities of boomers, sparkers, and CHIRPs must only commence when visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to the initiation of survey activities using a specified acoustic source;

(ii) Prior to a ramp-up procedure starting, the operator must notify the Lead PSO of the planned start of the ramp-up. This notification time must not be less than 60 minutes prior to the planned ramp-up activities as all relevant PSOs must monitor the clearance zone for 30 minutes prior to the initiation of ramp-up; and

(iii) Prior to starting the survey and after receiving confirmation from the PSOs that the clearance zone is clear of any marine mammals, Revolution Wind must ramp-up sources to half power for 5 minutes and then proceed to full power, unless the source operates on a binary on/off switch in which case ramp-up is not feasible. Ramp-up activities would be delayed if a marine mammal(s) enters its respective shutdown zone. Ramp-up would only be reinitiated if the animal(s) has been observed exiting its respective shutdown zone or until additional time has elapsed with no further sighting. The specific time periods are 15 minutes for small odontocetes and seals, and 30 minutes for all other species.

(4) *Clearance and shutdown zones.* (i) Revolution Wind must establish and implement clearance zones as described in the LOA;

(ii) Revolution Wind must implement a 30 minute clearance period of the clearance zones immediately prior to the commencing of the survey or when there is more than a 30 minute break in survey activities and PSOs are not actively monitoring;

(iii) If a marine mammal is observed within a clearance zone during the clearance period, ramp-up would not be allowed to begin until the animal(s) has been observed voluntarily exiting its respective clearance zone or until a specific time period has elapsed with no further sighting. The specific time period is 15 minutes for small odontocetes and seals, and 30 minutes for all other species;

(iv) In any case when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (IR/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations would be allowed to commence (*i.e.,* no delay is required) despite periods of inclement weather and/or loss of daylight;

(v) Once the survey has commenced, Revolution Wind must shut down boomers, sparkers, and CHIRPs if a marine mammal enters a respective shutdown zone;

(vi) In cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations would be allowed to continue (*i.e.,* no shutdown is required) so long as no marine mammals have been detected;

(vii) The use of boomers, and sparkers, and CHIRPS would not be allowed to commence or resume until the animal(s) has been confirmed to have left the Level B harassment zone or until a full 15 minutes (for small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sighting;

(viii) Revolution Wind must immediately shutdown any boomer, sparker, or CHIRP acoustic source if a marine mammal is sighted entering or within its respective shutdown zones. The shutdown requirement in this paragraph (g)(4)(viii) does not apply to small delphinids of the following genera: *Delphinus, Stenella, Lagenorhynchus,* and *Tursiops.* If there is uncertainty regarding the identification of a marine mammal species (*i.e.,* whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified here is detected in the shutdown zone;

(ix) If a boomer, sparker, or CHIRP is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it would be allowed to be activated again without ramp-up only if:

(A) PSOs have maintained constant observation; and

(B) No additional detections of any marine mammal occurred within the respective shutdown zones; and

(x) If a boomer, sparker, or CHIRP was shut down for a period longer than 30 minutes, then all clearance and ramp-up procedures must be initiated.

(5) *Autonomous surface vehicle (ASV) use.* (i) The ASV must remain with 800 m (2,635 ft) of the primary vessel while conducting survey operations;

(ii) Two PSOs must be stationed on the mother vessel at the best vantage points to monitor the clearance and shutdown zones around the ASV;

(iii) At least one PSO must monitor the output of a thermal, high-definition camera installed on the mother vessel to monitor the field-of-view around the ASV using a hand-held tablet; and

(iv) During periods of reduced visibility (*e.g.,* darkness, rain, or fog), PSOs must use night-vision goggles with thermal clip-ons and a hand-held spotlight to monitor the clearance and shutdown zones around the ASV.

§ 217.275 Requirements for monitoring and reporting.

(a) *PSO qualifications.* Revolution Wind must employ qualified, trained visual and acoustic PSOs to conduct marine mammal monitoring during activities associated with construction. PSO requirements are as follows:

(1) Revolution Wind must use independent, dedicated, qualified PSOs, meaning that the PSOs must be employed by a third-party observer provider, must 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 protected species and mitigation requirements in this subpart.

(2) All PSOs must be approved by NMFS. Revolution Wind must submit PSO resumes for NMFS' review and approval at least 60 days prior to commencement of in-water construction activities requiring PSOs. Resumes must include dates of training and any prior NMFS approval, as well as dates and description of last experience, and must be accompanied by information documenting successful completion of an acceptable training course. NMFS shall be allowed three weeks to approve PSOs from the time that the necessary information is received by NMFS, after which PSOs meeting the minimum requirements in this paragraph (a) will automatically be considered approved.

(3) PSOs must have visual acuity in both eyes (with correction of vision being permissible) sufficient enough to discern moving targets on the water's surface with the ability to estimate the target size and distance (binocular use is allowable).

(4) All PSOs must be trained in marine mammal identification and behaviors and must be able to conduct field observations and collect data according to assigned protocols. Additionally, PSOs must have the ability to work with all required and relevant software and equipment necessary during observations.

(5) PSOs must have sufficient writing skills to document all observations, including but not limited to:

(i) The number and species of marine mammals observed;

(ii) The dates and times of when in-water construction activities were conducted;

(iii) The dates and time when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and

(iv) Marine mammal behavior.

(6) All PSOs must be able to communicate orally, by radio, or in-person with Revolution Wind project personnel.

(7) PSOs must have sufficient training, orientation, or experience with construction operations to provide for their own personal safety during observations.

(i) All PSOs must complete a Permits and Environmental Compliance Plan training and a two-day refresher session that will be held with the PSO provider and Project compliance representative(s) prior to the start of construction activities.

(ii) [Reserved]

(8) At least one PSO must have prior experience working as an observer. Other PSOs may substitute education (*i.e.,* degree in biological science or related field) or training for experience.

(9) One PSO for each activity (*i.e.,* foundation installation, cofferdam or casing pipe installation and removal, HRG surveys, UXO/MEC detonation) must be designated as the ''Lead PSO''. The Lead PSO must have a minimum of 90 days of at-sea experience working in an offshore environment and would be required to have no more than eighteen months elapsed since the conclusion of their last at-sea experience.

(10) At a minimum, at least one PSO located on each observation platform (either vessel-based or aerial-based) must have a minimum of 90 days of at-sea experience working in an offshore environment and would be required to have no more than eighteen months elapsed since the conclusion of their last at-sea experiences. Any new and/or inexperienced PSOs would be paired with an experienced PSO.

(11) PSOs must monitor all clearance and shutdown zones prior to, during, and following impact pile driving, vibratory pile driving, pneumatic hammering, UXO/MEC detonations, and during HRG surveys that use boomers, sparkers, and CHIRPs (with specific monitoring durations described in paragraphs (b)(2)(iii), (b)(3)(iv), (b)(4)(ii), and (b)(5)(iii) of this section. PSOs must also monitor the Level B harassment zones and document any marine mammals observed within these zones, to the extent practicable.

(12) PSOs must be located on the best available vantage point(s) on the primary vessel(s) (*i.e.,* pile driving vessel, UXO/MEC vessel, HRG survey vessel) and on other dedicated PSO vessels (*e.g.,* additional UXO/MEC vessels) or aerial platforms, as applicable and necessary, to allow them appropriate coverage of the entire visual shutdown zone(s), clearance zone(s), and as much of the Level B harassment zone as possible. These vantage points must maintain a safe work environment.

(13) Acoustic PSOs must complete specialized training for operating passive acoustic monitoring (PAM) systems and must demonstrate familiarity with the PAM system on which they must be working. PSOs may act as both acoustic and visual observers (but not simultaneously), so long as they demonstrate that their training and experience are sufficient to perform each task.

(b) *PSO requirements*—(1) *General.* (i) All PSOs must be located at the best vantage point(s) on the primary vessel, dedicated PSO vessels, and aerial platform in order to ensure 360° visual coverage of the entire clearance and shutdown zones around the vessels, and as much of the Level B harassment zone as possible;

(ii) During all observation periods, PSOs must use high magnification (25x) binoculars, standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. During impact pile driving and UXO/MEC detonation events, at least one PSO on the primary pile driving or UXO/MEC vessels must be equipped with Big Eye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality. These must be pedestal mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation and PSO safety; and

(iii) PSOs must not exceed four consecutive watch hours on duty at any time, must have a two-hour (minimum) break between watches, and must not exceed a combined watch schedule of more than 12 hours in a 24-hour period.

(2) *WTG and OSS foundation installation.* (i) At least four PSOs must be actively observing marine mammals before, during, and after installation of foundation piles (monopiles). At least two PSOs must be stationed and observing on the pile driving vessel and at least two PSOs must be stationed on a secondary, PSO-dedicated vessel. Concurrently, at least one acoustic PSO (*i.e.,* passive acoustic monitoring (PAM) operator) must be actively monitoring for marine mammals with PAM before, during and after impact pile driving;

(ii) If PSOs cannot visually monitor the minimum visibility zone at all times using the equipment described in paragraph (b)(1)(ii) of this section, impact pile driving operations must not commence or must shutdown if they are currently active;

(iii) All PSOs, including PAM operators, must begin monitoring 60 minutes prior to pile driving, during, and for 30 minutes after an activity. The impact pile driving of monopiles must only commence when the minimum visibility zone is fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and the clearance zones are clear of marine mammals for at least 30 minutes, as determined by the Lead PSO, immediately prior to the initiation of impact pile driving;

(iv) For North Atlantic right whales, any visual or acoustic detection must trigger a delay to the commencement of pile driving. In the event that a large whale is sighted or acoustically detected that cannot be confirmed by species, it must be treated as if it were a North Atlantic right whale; and

(v) Following a shutdown, monopile installation must not recommence until the minimum visibility zone is fully visible and clear of marine mammals for 30 minutes.

(3) *Cofferdam or casing pipe installation and removal.* (i) At least two PSOs must be on active duty during all activities related to the installation and removal of cofferdams or casing pipes and goal post sheet piles;

(ii) These PSOs must be located at appropriate vantage points on the vibratory pile driving or pneumatic hammering platform or secondary platform in the immediate vicinity of the vibratory pile driving or pneumatic hammering platforms;

(iii) PSOs must ensure that there is appropriate visual coverage for the entire clearance zone and as much of the Level B harassment zone as possible; and

(iv) PSOs must monitor the clearance zone for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles and casing pipes, and for 30 minutes after all vibratory pile driving or pneumatic hammering activities have ceased. Sheet pile or casing pipe installation shall only commence when visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of vibratory pile driving or pneumatic hammering.

(4) *UXO/MEC detonations.* (i) At least two PSOs must be on active duty on each observing platform (*i.e.,* vessel, plane) prior to, during, and after UXO/MEC detonations. Concurrently, at least one acoustic PSO (*i.e.,* passive acoustic monitoring (PAM) operator) must be actively monitoring for marine mammals with PAM before, during and after UXO/MEC detonations;

(ii) All PSOs, including PAM operators, must begin monitoring 60 minutes prior to UXO/MEC detonation, during detonation, and for 30 minutes after detonation; and

(iii) Revolution Wind must ensure that clearance zones are fully (100 percent) monitored.

(5) *HRG surveys.* (i) Between 4 and 6 PSOs must be present on every 24-hour survey vessel and 2 to 3 PSOs must be present on every 12-hour survey vessel. At least one PSO must be on active duty during HRG surveys conducted during daylight and at least two PSOs must be on activity duty during HRG surveys conducted at night;

(ii) During periods of low visibility (*e.g.,* darkness, rain, fog, etc.), PSOs must use alternative technology (*i.e.,* infrared/thermal camera) to monitor the clearance and shutdown zones;

(iii) PSOs on HRG vessels must begin monitoring 30 minutes prior to activating boomers, sparkers, or CHIRPs, during use of these acoustic sources, and for 30 minutes after use of these acoustic sources has ceased;

(iv) Any observations of marine mammals must be communicated to PSOs on all nearby survey vessels during concurrent HRG surveys; and

(v) During daylight hours when survey equipment is not operating, Revolution Wind must ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

(c) *PAM operator requirements*—(1) *General.* (i) PAM operators must have completed specialized training for operating PAM systems prior to the start of monitoring activities, including identification of species-specific mysticete vocalizations (*e.g.,* North Atlantic right whales);

(ii) During use of any real-time PAM system, at least one PAM operator must be designated to monitor each system by viewing data or data products that would be streamed in real-time or in near real-time to a computer workstation and monitor;

(iii) PAM operators may be located on a vessel or remotely on-shore but must have the appropriate equipment (*i.e.,* computer station equipped with a data collection software system (*i.e.,* Mysticetus or similar system) and acoustic data analysis software) available wherever they are stationed;

(iv) Visual PSOs must remain in contact with the PAM operator currently on duty regarding any animal detection that would be approaching or found within the applicable zones no matter where the PAM operator is stationed (*i.e.,* onshore or on a vessel);

(v) The PAM operator must inform the Lead PSO on duty of animal detections approaching or within applicable ranges of interest to the pile driving activity via the data collection software system (*i.e.,* Mysticetus or similar system) who will be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.,* delay or shutdown);

(vi) PAM operators must be on watch for a maximum of four consecutive hours, followed by a break of at least two hours between watches; and

(vii) A Passive Acoustic Monitoring Plan must be submitted to NMFS for review and approval at least 180 days prior to the planned start of monopile installation. The authorization to take marine mammals would be contingent upon NMFS' approval of the PAM Plan.

(2) *WTG and OSS foundation installation.* (i) Revolution Wind must use a minimum of one PAM operator before, during, and after impact pile driving activities. The PAM operator must assist visual PSOs in ensuring full coverage of the clearance and shutdown zones;

(ii) PAM operators must assist the visual PSOs in monitoring by conducting PAM activities 60 minutes prior to any impact pile driving, during, and after for 30 minutes for the appropriate size PAM clearance zone (dependent on season). The entire minimum visibility zone must be clear for at least 30 minutes, with no marine mammal detections within the visual or PAM clearance zones prior to the start of impact pile driving;

(iii) Any acoustic monitoring during low visibility conditions during the day would complement visual monitoring efforts and would cover an area of at least the Level B harassment zone around each monopile foundation;

(iv) Any visual or acoustic detection within the clearance zones must trigger a delay to the commencement of pile driving. In the event that a large whale is sighted or acoustically detected that cannot be identified by species, it must be treated as if it were a North Atlantic right whale. Following a shutdown, monopile installation shall not recommence until the minimum visibility zone is fully visible and clear

of marine mammals for 30 minutes and no marine mammals have been detected acoustically within the PAM clearance zone for 30 minutes; and

(v) Revolution Wind must submit a Pile Driving and Marine Mammal Monitoring Plan to NMFS for review and approval at least 180 days before the start of any pile driving. The plan must include final project design related to pile driving (*e.g.,* number and type of piles, hammer type, noise abatement systems, anticipated start date, etc.) and all information related to PAM PSO monitoring protocols for pile-driving and visual PSO protocols for all activities.

(3) *UXO/MEC detonation(s).* (i) Revolution Wind must use a minimum of one PAM operator before, during, and after UXO/MEC detonations. The PAM operator must assist visual PSOs in ensuring full coverage of the clearance and shutdown zones;

(ii) PAM must be conducted for at least 60 minutes prior to detonation, during, and for 30 minutes after detonation;

(iii) The PAM operator must monitor to and beyond the clearance zone for large whales; and

(iv) Revolution Wind must prepare and submit a UXO/MEC and Marine Mammal Monitoring Plan to NMFS for review and approval at least 180 days before the start of any UXO/MEC detonations. The plan must include final project design and all information related to visual and PAM PSO monitoring protocols for UXO/MEC detonations.

(d) *Data collection and reporting.* (1) Prior to initiation of project activities, Revolution Wind must demonstrate in a report submitted to NMFS (at *itp.esch@noaa.gov* and *pr.itp.monitoringreports@noaa.gov*) that all required training for Revolution Wind personnel (including the vessel crews, vessel captains, PSOs, and PAM operators) has been completed.

(2) Revolution Wind must use a standardized reporting system from October 5, 2023 through October 4, 2028, the effective period of this subpart and the LOA. All data collected related to the Revolution Wind project must be recorded using industry-standard softwares (*e.g.,* Mysticetus or a similar software) that is installed on field laptops and/or tablets. For all monitoring efforts and marine mammal sightings, Revolution Wind must collect the following information and report it to NMFS:

(i) Date and time that monitored activity begins or ends;

(ii) Construction activities occurring during each observation period;

(iii) Watch status (*i.e.,* sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

(iv) PSO who sighted the animal;

(v) Time of sighting;

(vi) Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);

(vii) Water conditions (*e.g.,* sea state, tide state, water depth);

(viii) All marine mammal sightings, regardless of distance from the construction activity;

(ix) Species (or lowest possible taxonomic level possible);

(x) Pace of the animal(s);

(xi) Estimated number of animals (minimum/maximum/high/low/best);

(xii) Estimated number of animals by cohort (*e.g.,* adults, yearlings, juveniles, calves, group composition, etc.);

(xiii) Description (*i.e.,* 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);

(xiv) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity;

(xv) Animal's closest distance and bearing from the pile being driven, UXO/MEC, or specified HRG equipment and estimated time entered or spent within the Level A harassment and/or Level B harassment zones;

(xvi) Construction activity at time of sighting (*e.g.,* vibratory installation/removal, impact pile driving, UXO/MEC detonation, construction survey), use of any noise attenuation device(s), and specific phase of activity (*e.g.,* ramp-up of HRG equipment, HRG acoustic source on/off, soft start for pile driving, active pile driving, post-UXO/MEC detonation, etc.);

(xvii) Marine mammal occurrence in Level A harassment or Level B harassment zones;

(xviii) Description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.,* delay, shutdown, etc.) and time and location of the action; and

(xix) Other human activity in the area.

(3) For all real-time acoustic detections of marine mammals, the following must be recorded and included in weekly, monthly, annual, and final reports:

(i) Location of hydrophone (latitude & longitude; in Decimal Degrees) and site name;

(ii) Bottom depth and depth of recording unit (in meters);

(iii) Recorder (model & manufacturer) and platform type (*i.e.,* bottom-mounted, electric glider, etc.), and instrument ID of the hydrophone and recording platform (if applicable);

(iv) Time zone for sound files and recorded date/times in data and metadata (in relation to UTC., *i.e.,* EST time zone is UTC–5);

(v) Duration of recordings (start/end dates and times; in ISO 8601 format, yyyy–mm–ddTHH:MM:SS.sssZ);

(vi) Deployment/retrieval dates and times (in ISO 8601 format);

(vii) Recording schedule (must be continuous);

(viii) Hydrophone and recorder sensitivity (in dB *re. 1 μPa*);

(ix) Calibration curve for each recorder;

(x) Bandwidth/sampling rate (in Hz);

(xi) Sample bit-rate of recordings; and,

(xii) Detection range of equipment for relevant frequency bands (in meters).

(4) For each detection, the following information must be noted:

(i) Species identification (if possible);

(ii) Call type and number of calls (if known);

(iii) Temporal aspects of vocalization (date, time, duration, etc.; date times in ISO 8601 format);

(iv) Confidence of detection (detected, or possibly detected);

(v) Comparison with any concurrent visual sightings;

(vi) Location and/or directionality of call (if determined) relative to acoustic recorder or construction activities;

(vii) Location of recorder and construction activities at time of call;

(viii) Name and version of detection or sound analysis software used, with protocol reference;

(xi) Minimum and maximum frequencies viewed/monitored/used in detection (in Hz); and

(x) Name of PAM operator(s) on duty.

(5)(i) Revolution Wind must compile and submit weekly PSO, PAM, and sound field verification (SFV) reports to NMFS (at *itp.esch@noaa.gov* and *PR.ITP.monitoringreports@noaa.gov*) that document the daily start and stop of all pile driving, HRG survey, or UXO/MEC detonation activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals (acoustic and visual), any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the noise abatement system(s) used and its performance. Weekly reports are due on Wednesday for the previous week (Sunday–Saturday) and must include the information required under this section. The weekly report will also

identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is completed, weekly reports are no longer required;

(ii) [Reserved]

(6)(i) Revolution Wind must compile and submit monthly reports to NMFS (at *itp.esch@noaa.gov* and *PR.ITP.monitoringreports@noaa.gov*) that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, number of UXO/MEC detonations, all detections of marine mammals, and any mitigative action taken. Monthly reports are due on the 15th of the month for the previous month. The monthly report must also identify which turbines become operational and when (a map must be provided). Once foundation installation is complete, monthly reports are no longer required.

(ii) [Reserved]

(7)(i) Revolution Wind must submit an annual report to NMFS (at *itp.esch@noaa.gov* and *PR.ITP.monitoringreports@noaa.gov*) no later than 90 days following the end of a given calendar year. Revolution Wind must provide a final report within 30 days following resolution of comments on the draft report. The report must detail the following information and the information specified in paragraphs (d)(2)(i) through (xix), (d)(3)(i) through (xii), and (d)(4)(i) through (x) of this section:

(A) The total number of marine mammals of each species/stock detected and how many were within the designated Level A harassment and Level B harassment zones with comparison to authorized take of marine mammals for the associated activity type;

(B) Marine mammal detections and behavioral observations before, during, and after each activity;

(C) What mitigation measures were implemented (*i.e.,* number of shutdowns or clearance zone delays, etc.) or, if no mitigative actions was taken, why not;

(D) Operational details (*i.e.,* days of impact and vibratory pile driving, days/amount of HRG survey effort, total number and charge weights related to UXO/MEC detonations, etc.);

(E) SFV results;

(F) Any PAM systems used;

(G) The results, effectiveness, and which noise abatement systems were used during relevant activities (*i.e.,* impact pile driving, UXO/MEC detonation);

(H) Summarized information related to situational reporting; and

(I) Any other important information relevant to the Revolution Wind project, including additional information that may be identified through the adaptive management process.

(ii) The final annual report must be prepared and submitted within 30 calendar days following the receipt of any comments from NMFS on the draft report. If no comments are received from NMFS within 60 calendar days of NMFS' receipt of the draft report, the report must be considered final.

(8)(i) Revolution Wind must submit its draft final report to NMFS (at *itp.esch@noaa.gov* and *PR.ITP.monitoringreports@noaa.gov*) on all visual and acoustic monitoring conducted under the LOA within 90 calendar days of the completion of activities occurring under the LOA. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of NMFS' receipt of the draft report, the report shall be considered final.

(ii) [Reserved]

(9)(i) Revolution Wind must provide the initial results of the SFV measurements to NMFS in an interim report after each monopile foundation installation for the first three monopiles piles, and for each UXO/MEC detonation as soon as they are available, but no later than 48 hours after each installation or detonation. Revolution Wind must also provide interim reports on any subsequent SFV on foundation piles within 48 hours. The interim report must include hammer energies used during pile driving or UXO/MEC weight (including donor charge weight), peak sound pressure level (SPL_{pk}) and median, mean, maximum, and minimum root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}) and single strike sound exposure level (SEL_{ss}); and

(ii) The final results of SFV of monopile installations must be submitted as soon as possible, but no later than within 90 days following completion of impact pile driving of monopiles and UXO/MEC detonations. The final report must include, at minimum, the following:

(A) Peak sound pressure level (SPL_{pk}), root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}), single strike sound exposure level (SEL_{ss}), integration time for SPL_{rms}, spectrum, and 24-hour cumulative SEL extrapolated from measurements at specified distances (*e.g.,* 750 m). All these levels must be reported in the form of median, mean, maximum, and minimum. The SEL and SPL power spectral density and one-third octave band levels (usually calculated as decidecade band levels) at the receiver locations should be reported;

(B) The sound levels reported must be in median and linear average (*i.e.,* average in linear space), and in dB;

(C) A description of depth and sediment type, as documented in the Construction and Operation Plan, at the recording and pile driving locations;

(D) Hammer energies required for pile installation and the number of strikes per pile;

(E) Hydrophone equipment and methods (*i.e.,* recording device, bandwidth/sampling rate, distance from the pile where recordings were made; depth of recording device(s));

(F) Description of the SFV PAM hardware and software, including software version used, calibration data, bandwidth capability and sensitivity of hydrophone(s), any filters used in hardware or software, any limitations with the equipment, and other relevant information;

(G) Description of UXO/MEC, weight, including donor charge weight, and why detonation was necessary;

(H) Local environmental conditions, such as wind speed, transmission loss data collected on-site (or the sound velocity profile), baseline pre- and post-activity ambient sound levels (broadband and/or within frequencies of concern);

(I) Spatial configuration of the noise attenuation device(s) relative to the pile;

(J) The extents of the Level A harassment and Level B harassment zones; and

(K) A description of the noise abatement system and operational parameters (*e.g.,* bubble flow rate, distance deployed from the pile, etc.) and any action taken to adjust the noise abatement system.

(10) Specific situations encountered during the development of Revolution Wind shall require immediate reporting to be undertaken. These situations and the relevant procedures are described in paragraphs (d)(10)(i) through (v) of this section.

(i) If a North Atlantic right whale is observed at any time by PSOs or personnel on or in the vicinity of any project vessel, or during vessel transit, Revolution Wind must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866) 755–6622, through the WhaleAlert app (*https://*

www.whalealert.org/), and to the U.S. Coast Guard via channel 16, as soon as feasible but no longer than 24 hours after the sighting. Information reported must include, at a minimum: time of sighting, location, and number of North Atlantic right whales observed.

(ii) When an observation of a marine mammal occurs during vessel transit, the following information must be recorded:

(A) Time, date, and location;

(B) The vessel's activity, heading, and speed;

(C) Sea state, water depth, and visibility;

(D) Marine mammal identification to the best of the observer's ability (*e.g.,* North Atlantic right whale, whale, dolphin, seal);

(E) Initial distance and bearing to marine mammal from vessel and closest point of approach; and

(F) Any avoidance measures taken in response to the marine mammal sighting.

(iii) If a North Atlantic right whale is detected via PAM, the date, time, location (*i.e.,* latitude and longitude of recorder) of the detection as well as the recording platform that had the detection must be reported to *nmfs.pacmdata@noaa.gov* as soon as feasible, but no longer than 24 hours after the detection. Full detection data and metadata must be submitted monthly on the 15th of every month for the previous month via the webform on the NMFS North Atlantic right whale Passive Acoustic Reporting System website (*https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates*).

(iv) In the event that the personnel involved in the activities defined in § 217.270(a) discover a stranded, entangled, injured, or dead marine mammal, Revolution Wind must immediately report the observation to the NMFS Office of Protected Resources (OPR), the NMFS Greater Atlantic Stranding Coordinator for the New England/Mid-Atlantic area (866–755–6622), and the U.S. Coast Guard within 24 hours. If the injury or death was caused by a project activity, Revolution Wind must immediately cease all activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Revolution Wind may not resume their activities until notified by NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(B) Species identification (if known) or description of the animal(s) involved;

(C) Condition of the animal(s) (including carcass condition if the animal is dead);

(D) Observed behaviors of the animal(s), if alive;

(E) If available, photographs or video footage of the animal(s); and

(F) General circumstances under which the animal was discovered.

(v) In the event of a vessel strike of a marine mammal by any vessel associated with the Revolution Wind Offshore Wind Farm Project, Revolution Wind must immediately report the strike incident to the NMFS OPR and the GARFO within and no later than 24 hours. Revolution Wind must immediately cease all activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Revolution Wind may not resume their activities until notified by NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Species identification (if known) or description of the animal(s) involved;

(C) Vessel's speed leading up to and during the incident;

(D) Vessel's course/heading and what operations were being conducted (if applicable);

(E) Status of all sound sources in use;

(F) 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;

(G) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

(H) Estimated size and length of animal that was struck;

(I) Description of the behavior of the marine mammal immediately preceding and following the strike;

(J) If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

(K) 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

(L) To the extent practicable, photographs or video footage of the animal(s).

§ 217.276 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, Revolution Wind must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed October 4, 2028, the expiration date of this subpart.

(c) If an LOA expires prior to October 4, 2028, the expiration date of this subpart, Revolution Wind may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Revolution Wind must apply for and obtain a modification of the LOA as described in § 217.277.

(e) The LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA must be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under this subpart.

(g) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.277 Modifications of Letter of Authorization.

(a) An LOA issued under §§ 217.272 and 217.276 or § 217.277 for the activity identified in § 217.270(a) shall be modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under this subpart were implemented.

(b) For a LOA modification request by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding

changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 217.272 and 217.276 or § 217.277 for the activities identified in § 217.270(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Revolution Wind regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in this subpart.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Revolution Wind's monitoring from the previous year(s);

(B) Results from other marine mammals and/or sound research or studies;

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent LOA; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in the LOA issued pursuant to §§ 217.272 and 217.276 or § 217.277, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 217.278–217.279 [Reserved]

[FR Doc. 2022–27491 Filed 12–16–22; 4:15 pm]

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Part III

Environmental Protection Agency

40 CFR Part 60

Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111(d); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2021–0527; FRL–8606–02–OAR]

RIN 2060–AV48

Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111(d)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to the implementing regulations that govern the processes and timelines for state and Federal plans that implement emission guidelines under Clean Air Act (CAA) section 111(d). The proposed amendments include revisions to the timing requirements for state plan submittal, the Environmental Protection Agency (EPA)'s action on state plan submissions, the EPA's promulgation of a Federal plan, and for when states must establish increments of progress. These proposed amendments address the vacatur of certain timing requirements by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *American Lung Association.* v. *EPA.* The EPA is also proposing to add regulatory mechanisms to improve flexibility and efficiency in the submission, review, approval, revision, and implementation of state plans. This action further proposes new requirements for meaningful engagement with pertinent stakeholders as part of state plan development, including, but not limited to, industry, small businesses, and communities most affected by and vulnerable to the impacts of the plan. This action additionally proposes clarifying requirements for states' consideration of 'remaining useful life and other factors' (RULOF) in applying a standard of performance. This action proposes to amend the definition of standard of performance and provide clarification associated with CAA section 111(d) compliance flexibilities, including trading or averaging. Finally, this action proposes requirements for the electronic submission of state plans and several other clarifications and minor revisions.

DATES:

Comments. Comments must be received on or before February 27, 2023.

Public hearing: The EPA will hold a virtual public hearing on January 24, 2023. See **SUPPLEMENTARY INFORMATION** for additional information on the hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2021–0527, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2021–0527 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2021–0527.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2021–0527, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

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

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Dr. Michelle Bergin, Sector Policies and Programs Division (Mail Code D205–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2627; fax number: (919) 541–4991; and email address: *bergin.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. The public hearing will be held via virtual platform on January 24, 2023, and will convene at 11 a.m. Eastern Time (ET) and conclude at 7 p.m. ET. If the EPA receives a high volume of registrations for the public hearing, we may continue the public hearing on January 25, 2023. On each hearing day, the EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce any further details at *https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr.*

Upon publication of this document in the **Federal Register**, the EPA will begin pre-registering speakers for the hearing. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be January 19, 2023. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to submit a copy of their oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

The EPA does not intend to publish a document in the **Federal Register** announcing updates. While the EPA expects the hearing to go forward as described in this section, please monitor *https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr* for any updates to the information described in this document, including information about the public hearing, or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.*

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by January 9, 2023. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2021–0527. All

documents in the docket are listed in the *Regulations.gov* index. 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. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2021–0527. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically through *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. See *Submitting CBI* for instructions for submitting this type of information.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *http://www.regulations.gov/* website allows you to submit your comment anonymously, which means the 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 the EPA without going through *https://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, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Throughout this proposal, the EPA is soliciting comment on numerous aspects of the proposed rulemaking. The EPA has indexed each explicit comment solicitation with an alpha-numeric identifier (*e.g.,* ''C–1'', ''C–2'', ''C–3'', . . .) to provide a framework for effective and efficient provision of comments. The EPA asks that commenters include the corresponding identifier when providing comments relevant to that solicitation in either a heading, or within the text of each comment (*e.g.,* ''In response to solicitation of comment C–1, . . .'') to make clear which comment solicitation is being addressed. The identifiers are helpful to the Agency for purposes of organizing its responses, but do not necessarily comprise an exhaustive index of issues on which the EPA is soliciting comment and which the public may address in their comments. The EPA is soliciting comment on the issues described in this proposal.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI, note the docket ID, and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office using the email address, *oaqpscbi@epa.gov,* and should include clear CBI markings and note the docket ID, as described above. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2021–0527. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACE Affordable Clean Energy Rule
ALA American Lung Association
BSER Best System of Emission Reduction
CAA Clean Air Act
CBI confidential business information
CDC Centers for Disease Control and Prevention
CDX Central Data Exchange
CFR Code of Federal Regulations
EG Emission Guideline
EGU electric generating unit
EPA Environmental Protection Agency
FIP Federal Implementation Plan
ICR Information Collection Request
NAAQS National Ambient Air Quality Standards
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PRA Paperwork Reduction Act
PM2.5 fine particulate matter
RFA Regulatory Flexibility Act
RIN Regulatory Information Number
RULOF remaining useful life and other factors
SIP State Implementation Plan
SPeCS State Planning Electronic Collaboration System

SSM startup, shutdown, and malfunctions
TAR Tribal Authority Rule
TIP Tribal Implementation Plan
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

Organization of this document. The information in this preamble is organized as follows:

I. General Information
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E. Remaining Useful Life and Other Factors (RULOF) Provisions
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Determination Under Section CAA 307(d)

I. General Information

A. Does this action apply to me?

This action applies to states in the development and submittal of state plans pursuant to CAA section 111(d), and to the EPA in promulgating a Federal plan pursuant to CAA section 111(d). After the EPA promulgates a final emission guideline (EG), each state that has one or more designated facilities must develop, adopt, and submit to the EPA, a state plan under CAA section 111(d). The term ''designated facility'' means ''any existing facility . . . which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility.'' See 40 CFR 60.21a(b). If a state fails to submit a plan or the EPA determines that a state plan is not satisfactory, the EPA has the authority to establish a Federal CAA section 111(d) plan in such instances.

Under the Tribal Authority Rule (TAR), eligible tribes may seek approval to implement a plan under CAA section 111(d) in a manner similar to a state. See 40 CFR part 49, subpart A. Tribes may, but are not required to, seek approval for treatment in a manner similar to a state for purposes of developing a Tribal Implementation Plan (TIP) implementing an EG. If a tribe obtains approval and submits a TIP, the EPA will use similar timelines and criteria and will follow similar procedures as those for state plans. Tribes that choose to develop plans will have the same flexibilities available to states in this process. The TAR authorizes tribes to submit CAA programs; however, it does not require tribes to develop CAA programs. Tribes may implement those programs, or even portions of programs, that are most relevant to the air quality needs of tribes. If a tribe does not seek and obtain the authority from the EPA to establish a TIP, the EPA has the authority to establish a Federal CAA section 111(d) plan for designated facilities that are located in areas of Indian country. A Federal plan would apply to all designated facilities located in the areas of Indian country covered by the Federal plan unless and until the EPA approves a TIP applicable to those facilities.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 60 subpart Ba proposed in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2021–0527). Following signature by the EPA Administrator, the EPA also will post a copy of this document to *https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr.*

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 301 and 111 of the CAA (42 U.S.C. 7411 and 7601). Section 301 of the CAA contains general provisions for the administration of the CAA. As described further in the next section, CAA section 111 requires the EPA to establish emission standards for certain stationary sources that, in the Administrator's judgment, ''cause[ ], or contribute[ ] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' CAA section 111(b) provides the EPA's authority to regulate new and modified sources, while CAA section 111(d) directs the EPA to ''prescribe regulations which shall establish a procedure'' for states to establish standards for existing sources of certain air pollutants to which a standard of performance would apply if such existing source were a new source. The EPA addresses its obligation under CAA section 111(d) to establish a procedure for states to submit plans both through its promulgation of the general implementing regulations addressed by this action as well as through promulgation of EGs for specific source categories.

B. What is the background for this action?

Clean Air Act section 111(d) governs the establishment of standards of performance for existing stationary sources. CAA section 111(d) directs the EPA to ''prescribe regulations which shall establish a procedure similar to that provided by [CAA section 110]'' for states to submit state plans to establish standards of performance for existing sources of certain air pollutants to which a standard of performance would apply if such an existing source were a new source under CAA section 111(b). Therefore, an existing source can only be regulated under CAA section 111(d) if it belongs to a source category that is regulated under CAA section 111(b). The EPA's implementing regulations use the term ''designated facility'' to identify those existing sources. See 40 CFR 60.21a(b).

CAA section 111(b)(1)(A) requires that a source category be included on the list for regulation if, ''in [the EPA

Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' Once a source category is listed, CAA section 111(b)(1)(B) requires that the EPA propose and then promulgate ''standards of performance'' for new sources in such source category. CAA section 111(a)(1) defines a ''standard of performance'' as ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' This provision requires the EPA to determine both the best system of emission reduction (BSER) for the regulated source category and the degree of emission limitation achievable through application of the BSER. The EPA must then, under CAA section 111(b)(1)(B), promulgate standards of performance for new sources that reflect that level of stringency.

Once the EPA promulgates standards of performance for new sources within a particular source category, the EPA is required, in certain circumstances, to regulate emissions from designated (existing) facilities in that same source category.[1] Under CAA section 111(d), the Agency has, to date, issued EGs regulating five pollutants from six source categories that remain in effect (*i.e.,* sulfuric acid plants (acid mist), phosphate fertilizer plants (fluorides), primary aluminum plants (fluorides), kraft pulp plants (total reduced sulfur), municipal solid waste landfills (landfill gases)), and fossil-fuel fired electric generating units (carbon dioxide). See ''Phosphate Fertilizer Plants; Final Guideline Document Availability,'' 42 FR 12022 (March 1, 1977); ''Standards of Performance for New Stationary Sources; Emission Guideline for Sulfuric Acid Mist,'' 42 FR 55796 (October 18, 1977); ''Kraft Pulp Mills, Notice of Availability of Final Guideline Document,'' 44 FR 29828 (May 22, 1979); ''Primary Aluminum Plants; Availability of Final Guideline Document,'' 45 FR 26294 (April 17, 1980); ''Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,'' 81 FR 59276 (August 29, 2016); ''Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations,'' 84 FR 32520 (July 8, 2019) (Affordable Clean Energy (ACE) Rule).[2] [3] On November 15, 2021, the EPA proposed EGs to regulate greenhouse gas emissions (in the form of methane limitations) from sources in the oil and natural gas industry. 86 FR 63110. In addition, the Agency has regulated additional pollutants for solid waste incineration units under CAA section 129 in accordance with CAA section 111(d).[4]

The mechanism for regulating designated facilities under CAA section 111(d) differs from the mechanism for regulating new facilities under CAA section 111(b). Pursuant CAA section 111(b), the EPA promulgates standards of performance that are directly applicable to new, modified, and reconstructed facilities in a specified source category. In contrast, CAA section 111(d) operates together with CAA section 111(a)(1) to collectively establish and define roles and responsibilities for both the EPA and the states in the regulation of designated facilities. Under the regulatory framework for designated facilities, states are authorized to establish standards of performance. However, such standards of performance must reflect the degree of emission limitation achievable through the application of the BSER[5] that the EPA has determined for the designated facilities in the source category. As with standards of performance under CAA section 111(b), the requirement for the EPA to determine the BSER derives from the definition of ''standard of performance'' under CAA section 111(a)(1). Further, CAA section 111(d)(1) requires the EPA's regulations to permit states, in applying a standard of performance to particular sources, to take into account the source's remaining useful life and other factors, a process addressed in more detail in section III.E of this preamble.

The EPA addresses its obligation under CAA section 111(d) to establish a procedure for states to submit plans both through its promulgation of general implementing regulations for section 111(d) as well as through promulgation of EGs for specific source categories. While CAA section 111(d)(1) authorizes states to develop state plans that establish standards of performance and provides states with certain discretion in determining the appropriate standards, CAA section 111(d)(2) provides the EPA a specific oversight role with respect to such state plans. This latter provision authorizes the EPA to prescribe a Federal plan for a state ''in cases where the state fails to submit a satisfactory plan.'' The states must therefore submit their plans to the EPA, and the EPA must evaluate each state plan to determine whether each plan is ''satisfactory.'' If a state fails to submit a plan or the EPA determines that a state plan is not satisfactory, CAA section 111(d)(2) gives the EPA the ''same authority'' to prescribe a Federal plan in such instances as it has to promulgate a Federal Implementation Plan (FIP) under CAA section 110(c).

In 1975, the EPA issued the first general implementing regulations to prescribe the process for the adoption and submittal of state plans for designated facilities under CAA section 111(d) (codified at 40 CFR part 60, subpart B (subpart B)). 40 FR 53340 (November 17, 1975). Responding to the direction to ''establish a procedure similar to that provided by'' CAA section 110, in promulgating subpart B the EPA aligned the timing requirements for state and Federal plans under CAA section 111(d) with the then-applicable timeframes for State

[1] In accordance with CAA section 111(d), states are required to submit plans pursuant to these regulations to establish standards of performance for existing sources for any air pollutant: (1) the emission of which is subject to a Federal New Source Performance Standard; and (2) which is neither a pollutant regulated under CAA section 108(a) (*i.e.,* criteria air pollutants such as ground-level ozone and particulate matter, and their precursors, like volatile organic compound) or a hazardous air pollutant regulated [from the same source category] under CAA section 112. See also definition of ''designated pollutant'' in 40 CFR 60.21a(a).

[2] The EPA has also issued several EGs that have subsequently been repealed or vacated by the courts. The EPA regulated mercury from coal-fired electric power plants in a 2005 rule that was vacated by the D.C. Circuit, ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule,'' 70 FR 28606 (May 18, 2005) (Clean Air Mercury Rule), vacated by *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008). The EPA also issued CAA section 111(d) EGs regulating GHG emissions from fossil fuel-fired electric power plants in a 2015 rule ''Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule,'' 80 FR 64662 (October 23, 2015) (Clean Power Plan). The EPA subsequently repealed and replaced the 2015 rule with the ACE Rule.

[3] The ACE Rule was initially vacated by *Am. Lung Ass'n* v. *EPA,* 985 F.3d 914 (D.C. Cir. 2021). The Supreme Court subsequently reversed and remanded the D.C. Circuit's opinion, *West Virginia* v. *EPA,* 142 S. Ct. 2587 (June 30, 2022). On October 27, 2022, the D.C. Circuit amended its judgement and recalled the partial mandate vacating the ACE Rule, effectively reinstating ACE. Order, *ALA* v. *EPA,* No. 19–1140, ECF No. 1970895.

[4] CAA Section 129 directs the EPA Administrator to develop regulations under CAA section 111 limiting emissions of nine air pollutants from four categories of solid waste incineration units.

[5] In this proposal, the EPA is also referring to ''the degree of emission limitation achievable through application of the BSER'' as the presumptive level of stringency.

Implementation Plans (SIPs) and FIPs prescribed in CAA section 110, as established by the 1970 CAA Amendments. The implementing regulations were not significantly revised after their original promulgation in 1975 [6] until 2019, when the EPA promulgated a new set of implementing regulations codified at 40 CFR part 60, subpart Ba. 84 FR 32520 (July 8, 2019) (subpart Ba).

In promulgating subpart Ba in 2019, the EPA intended to update and modernize the implementing regulations to align the procedures for CAA section 111(d) state and Federal plans with CAA amendments made after subpart B was first promulgated in 1975. Notably, subpart B did not align either with CAA section 111(d) as amended by Congress in 1977 or with the timelines in CAA section 110 as amended by Congress in 1990. The EPA therefore considered it appropriate to update the implementing regulations for CAA section 111(d) to mirror changes to CAA section 110, given that section 111(d)(1) of the CAA directs the EPA to ''prescribe regulations which shall establish a procedure similar to that provided by section 110'' of the CAA for states to submit plans to the EPA. In promulgating subpart Ba, the EPA directly aligned the timing requirements for CAA section 111(d) state and Federal plans (40 CFR 60.23a(a)(1) and 60.27a(c), respectively) with the timing requirements for SIPs and FIPs under CAA section 110 (see CAA section 110(a)(1) and 110(c)(1), respectively).

In promulgating subpart Ba, the EPA also added the definition of ''standard of performance'' (40 CFR 60.21a(f)) (defined under subpart B as ''emission standard'' (40 CFR 60.21(f))) and the remaining useful life provision (40 CFR 60.24a(e)) (referred under subpart B as the variance provision (40 CFR 60.24(d))). The EPA further added required minimum administrative and technical criteria for inclusion by state plans (40 CFR 60.27a(g)). Applying these criteria, the EPA determines whether a state plan or portion of a plan submitted is complete (referred to as a completeness review). Once a state plan or portion of a plan is determined to be complete, the EPA will approve or disapprove the plan or portions of the plan. For details on the EPA's rationale for the promulgation of these provisions see 84 FR 32520 (July 8, 2019).

Subpart Ba is applicable to any final EG published or ongoing after July 8, 2019. However, in this action, the EPA is proposing to amend subpart Ba to be applicable only to any final EG published after July 8, 2019 (see section III.G.2.i of this preamble). This includes, if finalized, the proposed EGs to regulate greenhouse gas emissions from sources in the oil and natural gas industry, to the extent the final EG does not contain EG-specific requirements superseding subpart Ba. 86 FR 63110, November 15, 2021. Subpart B (pre-2019) continues to apply to EGs promulgated prior to July 8, 2019, and to EGs issued pursuant to CAA section 129.

In January 2021, the D.C. Circuit vacated several provisions of subpart Ba, all of which relate to timelines for state plans and Federal plans. *Am. Lung Ass'n* v. *EPA,* 985 F.3d 914, 991. (D.C. Cir. 2021) (*ALA*).[7] In this vacatur, the court identified several flaws in the EPA's rationale for extending CAA section 111(d) state and Federal plan timelines. First, the court found that the EPA erred in adopting the timelines for SIPs and FIPs in CAA section 110 without meaningfully addressing the differences in the scale of effort required for development and evaluation of CAA section 110 SIPs, as compared with the scale of effort needed for CAA section 111(d) state plans. *Id.* at 992–93. The court also concluded that in promulgating the timelines in subpart Ba, the EPA failed to justify why the shorter deadlines under subpart B were unworkable. *Id.* at 993. Further, the court held that the EPA was required to consider the effect of its subpart Ba timelines on public health and welfare, consistent with the statutory purpose of CAA section 111(d). In the court's view, the EPA's ''complete failure to say anything at all about the public health and welfare implications of the extended timeframes'' meant that the EPA failed to consider an important aspect of the problem. *Id.* at 992 (citing *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.* 463 U.S. 29, 43 (1983)).

Based on these reasons, the court vacated the timeline for state plan submissions after publication of a final EG (40 CFR 60.23a(a)(1)), the EPA's deadline for taking action on state plan submissions (40 CFR 60.27a(b)), the EPA's deadline for promulgating a Federal plan (40 CFR 60.27a(c)), and the timeline associated with requirements for increments of progress (40 CFR 60.24a(d)). Because of the vacatur, subpart Ba currently does not provide generally applicable timelines for state plan submissions, the deadline for the EPA's promulgation of a Federal plan, and the timeline associated with requirements for increments of progress. The EPA notes that while it is proposing generally applicable timelines for the implementing regulations, a particular EG may include its own specific timelines. 40 CFR 60.20a(a)(1).

III. What actions are we proposing?

The EPA is proposing several revisions to subpart Ba both to address the vacatur of the timing provisions by the D.C. Circuit in *ALA,* and to further improve the state and Federal plan development and implementation process. In response to the *ALA* decision, this action proposes timeframes for (1) state plan submittal, (2) the EPA's action on state plan submissions, (3) the EPA's promulgation of a Federal plan, and (4) requirements to establish increments of progress (see section III.A of this preamble). This action further proposes to revise the timeframe for the EPA's determination of completeness on a state plan submission. Additionally, the EPA is proposing to revise the conditions under which the EPA must promulgate a Federal plan in instances where a state has not submitted a complete plan (see section III.B of this preamble).

The EPA is also proposing to enhance requirements for reasonable notice and opportunity for public participation in subpart Ba to require that states, as part of the state plan development or revision process, undertake outreach and meaningful engagement with a broad range of pertinent stakeholders. Pertinent stakeholders include communities most affected by and vulnerable to the impacts of the plan or plan revision (see section III.C of this preamble). Increased vulnerability may be attributable, among other reasons, to both an accumulation of negative and lack of positive environmental, health, economic, or social conditions within these populations or communities.

To improve flexibility and efficiency in the submission, review, approval, and implementation of state plans, the EPA is proposing to include the following regulatory mechanisms in subpart Ba, all of which currently exist under CAA section 110: (1) partial

[6] In 2012, the EPA revised several provisions of subpart B, mainly to include allowance systems as a form of an emission standard. 77 FR 9303 (February 16, 2012).

[7] The Supreme Court subsequently reversed and remanded the D.C. Circuit's opinion. *West Virginia* v. *EPA,* 142 S.Ct. 2587 (June 30, 2022). However, no Petitioner sought certiorari on, and the *West Virginia* decision did not implicate, the D.C. Circuit's vacatur of portions of subpart Ba. *See* Amended Judgment, *ALA* v. *EPA,* No. 19–1140 (D.C. Cir. October 27, 2022), ECF No. 1970898 (ordering that petitions for review challenging the timing portion of implementing regulations be granted).

approval/disapproval, (2) conditional approval, (3) allowance for parallel processing, (4) a mechanism for the EPA to call for plan revisions, and (5) an error correction mechanism (see section III.D).

The EPA is also proposing revisions to properly implement the remaining useful life and other factors (RULOF) provision of the statute. These revisions are intended to provide clarity and consistency for states and the EPA in considering RULOF when applying standards of performance to individual sources, while still fulfilling the statutory purpose of CAA section 111(d) (see sections III.E of this preamble). The EPA is also proposing to require electronic submissions of state plans (see section III.F of this preamble).

Finally, this action proposes clarifying amendments to the subpart Ba definition of standard of performance and proposes to amend the Agency's interpretation of CAA section 111(d) with respect to permissible compliance (see section III.G of this preamble). In particular, the EPA is proposing to determine that, under appropriate circumstances, the EPA may approve state plans that authorize sources to meet their emission limits in the aggregate, such as through standards that permit compliance via trading or averaging. In doing so, the EPA is also proposing to conclude that CAA section 111 does not limit the BSER to controls that can be applied at and to the source. The EPA is also proposing several additional minor clarifications or revisions as described in section III.G of this preamble.

The EPA recognizes that, under certain circumstances, some provisions of the implementing regulations may not fit the needs of a specific EG. Therefore, the implementing regulations provide that each EG may include specific implementing provisions in addition to or that supersede the requirements of subpart Ba. 40 CFR 60.20a(a)(1). The EPA will address unusual circumstances or facts that are not accommodated by the general provisions of subpart Ba through a specific EG as the time and processes needed for development and adoption of state plans to implement the EG may be affected by unusual characteristics of a source category. An example of an EG where the EPA is proposing to supersede certain requirements of subpart Ba to address the specific facts and circumstances of the source category (including to diverge from some of the general requirements proposed in this action) is the proposed EGs to regulate greenhouse gas emissions (in the form of methane limitations) from sources in the oil and natural gas industry.[8]

The EPA notes that the remaining provisions in subpart Ba were not affected by the *ALA* decision and remain legally effective. This includes 40 CFR 60.20a(a), which makes subpart Ba applicable to any final EG published after July 8, 2019. 40 CFR 60.20a(a). Therefore, the revisions to subpart Ba proposed in this action, if finalized, would apply to any EG published after July 8, 2019. The EPA is not soliciting comment on this action as it applies to any specific EG or source category. The EPA is only soliciting comment on the proposed changes to subpart Ba as specifically described in this preamble. The EPA is not reopening any other provisions of subpart Ba not addressed by these proposed changes. The EPA will only consider comments that pertain to the topics discussed in this action.

A. Revised Implementing Timelines

As described in section II.A. of this preamble above, the subpart Ba timing requirements were vacated by the D.C. Circuit in the *ALA* decision. These vacated timing requirements are: the timeline for state plan submissions, the timeline for the EPA to act on a state plan, the timeline for the EPA to promulgate a Federal plan, and the timeline that dictates when state plans must include increments of progress. These timelines are all critical to ensuring that the emission reductions anticipated by the EPA in an EG become federally enforceable measures and are timely implemented by the designated facilities. The EPA is proposing revised timelines for these key aspects of implementation that both appropriately accommodate the process required by states and the EPA to develop and evaluate plans to effectuate the EG and are consistent with the objective of CAA section 111(d) to ensure that designated facilities control emissions of pollutants that the EPA has determined may be reasonably anticipated to endanger public health or welfare. These timelines will be applicable to any final EG published after July 8, 2019, including those currently proposed to regulate greenhouse gas emissions (in the form of methane limitations) from sources in the oil and natural gas industry, to the extent the final EG does not contain EG-specific requirements superseding subpart Ba. 86 FR 63110, November 15, 2021.

As described in greater detail above in section II of this preamble, the D.C. Circuit's vacatur of the extended timelines in subpart Ba was based both on the EPA's failure to substantiate the necessity for the additional time at each step of the administrative process, and the EPA's failure to address how those extended implementation timelines would impact public health and welfare. Accordingly, the EPA has evaluated these factors and is proposing timelines, as described in the following sections, based on the minimum administrative time reasonably necessary for each step in the implementation process, thus minimizing impacts on public health and welfare while accommodating the time needed for states to develop an effective plan. This approach addresses both aspects of the *ALA* decision because the EPA and states will take no longer than necessary to develop and adopt plans that impose requirements consistent with the overall objectives of CAA section 111(d).

The EPA is proposing the following timelines to replace those vacated in *ALA,* as discussed in further detail in this preamble: 15 months for state plan submissions after publication of a final EG; 12 months for the EPA to take final action on a state plan after submission; 12 months for the EPA to promulgate a Federal plan either after the state plan deadline if a state has failed to submit a complete plan, or after the EPA's disapproval of a state plan submission; and, requiring state plans to include increments of progress if the plan requires final compliance with standards of performance later than 16 months after the plan submission deadline. A summary of the timelines is shown in Table 1.

[8] For example, see supplemental notice of proposed rulemaking titled ''Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,'' where, due to the size and variety of emission sources in the oil and gas sector, the EPA has proposed to permit states 18 months to submit state plans rather than the general 15 months proposed here.

TABLE 1—PROPOSED SUBPART Ba TIMELINES COMPARED WITH THOSE VACATED FROM SUBPART Ba AND WITH THOSE FROM SUBPART B

Process step	2022 Subpart Ba proposal	Subpart Ba (2019) vacated timelines	Subpart B (1975)
State Plan submittal after effective date of EG.	15 months	36 months	9 months.
State Plan completeness determination.	2 months after State Plan submission.	6 months after State Plan submission	N/A.
State Plan evaluation	12 months after completeness	12 months after completeness	4 months after State Plan submittal deadline.
EPA Federal Plan promulgation	12 months after failure to submit or disapproval.	24 months after finding of failure to submit or disapproval.	6 months after State Plan submittal deadline.
Requirements for Increments of Progress after submittal deadline.	If compliance is >16 months	If compliance is >24 months	If compliance is >12 months.

The EPA acknowledges these deadlines are not identical to those for SIPs under CAA section 110. This is consistent with the requirement of CAA section 111(d) that the EPA to promulgate a procedure ''similar'' to that of CAA section 110, rather than an identical procedure. This is also consistent with the *ALA* decision, which requires the EPA to ''engage meaningfully with the different scale'' of CAA section 111(d) and 110 plans. *Am. Lung Ass'n* v. *EPA,* 985 F.3d 914, 993 (D.C. Cir. 2021). Accordingly, the EPA evaluated each step of the implementation process to independently determine the appropriate duration of time to accomplish the given step as part of the overall process, and the timelines proposed in these implementing regulations represent what the EPA has determined will be necessary for the implementation of most EGs. An EG for a typical source category or pollutant, for which the proposed timelines would be appropriate, might include: an inventory of designated facilities; a well-defined BSER and presumptive level of stringency so that states need to do little analytical work to establish standards of performance; an EPA-provided model rule; and state plan requirements that do not significantly deviate from these general implementing regulations.

The EPA recognizes that there may be EGs for pollutants or source categories that require exceptions or accommodations to these general requirements. Examples of circumstances that may require an exception could include EGs that require states to perform extensive engineering and/or economic analyses for their plan; EGs with an exceptional need to expedite implementation (*e.g.,* immediate impact for health and welfare impacts); EGs that apply to an extraordinary number of designated facilities; or EGs that are novel and/or unusually complex. For situations like these, 40 CFR 60.20a(a)(1) provides that an EG may supersede any aspect of the implementing regulations, including the implementation timelines. It is within the EPA's discretion to determine whether a proposed change in implementation time may be justified within an individual EG based on these or other appropriate factors. For EGs that supersede implementation timelines, the EPA is proposing to require that the EPA both provide a justification for the differing timelines and address how the change in timeline will impact health and welfare. The EPA is not in this action seeking comment on whether to supersede the presumptive subpart Ba timelines for any particular EG.

1. State Plan Submission Timelines

This section discusses the EPA's proposal for the duration of time states will have to submit plans to the EPA following the publication of a final EG. Under CAA section 111(d), it is first the EPA's responsibility to establish a BSER and a presumptive level of stringency via a promulgated EG. It is then each state's obligation to submit a plan to the EPA which establishes standards of performance for each designated facility. The EPA is proposing to require that each state adopt and submit to the Administrator, within 15 months after publication of a final EG, a plan for the control of the designated pollutant(s) to which the EG applies.

The implementing regulations promulgated under subpart B currently provide that states have 9 months to submit a state plan after publication of a final EG. 40 CFR 60.23(a)(1). In 2019, the EPA promulgated subpart Ba and provided 3 years for states to submit plans, consistent with the timelines provided for submission of SIPs pursuant to CAA section 110(a)(1). This 3-year timeframe was vacated in the *ALA* decision, and thus currently there is no applicable deadline for state plan submissions required under EGs subject to subpart Ba. In evaluating the appropriate timeline for plan submittal to replace the vacated provision, the EPA reviewed steps that states need to carry out to develop, adopt, and submit a state plan to the EPA, and its history in implementing EGs under the timing provisions of subpart B. The EPA further evaluated statutory deadlines, contents, and processes for relatively comparable state plans under CAA section 129, and attainment planning SIPs pursuant CAA sections 189(a)(2)(B) and 189(b)(2)) for the 2012 National Ambient Air Quality Standards (NAAQS) for fine particulate matter ($PM_{2.5}$). 78 FR 3085 (January 15, 2013).

In developing a CAA section 111(d) state plan, a state must consider multiple components in meeting applicable requirements. Subpart Ba specifies the elements that must be included in a state plan submission (see 40 CFR 60.24a, 60.25a, 60.26a) and certain processes that a state plan must undergo in adopting and submitting a plan (see 40 CFR 60.23a). In addition to the requirements of these implementing regulations, there are also state-specific processes applicable to the development and adoption of a state plan. In particular, the component that the EPA expects to take the most time and have the most variability from state to state is the administrative process (*e.g.,* through legislative processes, regulation, or permits) that establishes standards of performance. State rulemaking usually involves several phases, including providing notice that the agency is considering adopting the rule; taking public comment; and approving or adopting the final rule. The final process required to formally adopt a rule is different in many states.[9]

[9] In many states, the agency must submit its rule to a particular independent commission or the legislature for review and approval before the rule is finally adopted. Generally, adopted rules are filed with a state entity, such as the Secretary of State, and eventually published in a register and placed into the state's administrative code. State law establishes when an adopted rule is effective.

Considering this variability, 15 months should adequately accommodate the differences in state processes necessary for the development of a state plan that meets applicable requirements. The EPA evaluated data from previously implemented EGs, and the statutory deadlines and data from analogous programs (*i.e.,* CAA sections 129 and 189), as described below, to help inform this proposed 15-month timeline. The EPA solicits comment on whether the proposed 15-month timeline adequately accommodates state-level administrative processes in developing and adopting plans without substantially or unnecessarily delaying emission reductions that are protective of public health or welfare (Comment A1–1).

As previously described, subpart B provides 9 months for states to submit plans after publication of a final EG. The EPA's review of state's timeliness for submitting CAA section 111(d) plans under the 9-month timeline indicates that most states either did not submit plans or submitted plans that were substantially late.[10] We note that the plans submitted under subpart B were not subject to the additional requirements the EPA is proposing for meaningful engagement and consideration of RULOF, respectively described in sections III.C and III.E of this preamble. For these reasons, the EPA finds that 9 months is not a suitable amount of time for most states to adequately develop a plan for an EG.

To help inform what is an appropriate proposal for the state plan submission deadline, the EPA also reviewed CAA section 129's statutory deadline and requirements for state plans, and the timeliness and responsiveness of states under CAA section 129 EGs. CAA section 129 references CAA section 111(d) in many instances, creating considerable overlap in the functionality of the programs. Notably, existing solid waste incineration units are subject to the requirements of both CAA sections 129 and 111(d). CAA section 129(b)(1). The processes for CAA sections 111(d) and 129 are very similar in that states are required to submit plans to implement and enforce the EPA's EGs. However, there are some key distinctions between the two programs, most notably that CAA section 129(b)(2) specifies that state plans be submitted no later than 1 year from the promulgation of a corresponding EG, whereas the statute does not specify a particular timeline for state plan submissions under CAA section 111(d) and is instead governed by the EPA's implementing regulations (*i.e.,* subparts B and Ba). Moreover, CAA section 129 plans are required by statute to be at least as protective as the EPA's EGs. However, CAA section 111(d) permits states to take into account remaining useful life and other factors, which suggests that the development of a CAA section 111(d) plan could involve more complicated analyses than a CAA section 129 plan (see section III.E for more information on RULOF provisions). The contrast between the CAA section 129 plans and CAA section 111(d) plans suggests that in determining the timeframe for CAA section 111(d) plan submissions the EPA should provide for a longer timeframe than the 1-year timeframe the statute provides under CAA section 129.

The EPA found that a considerable number of states have not made required state plan submissions in response to a CAA section 129 EG. In instances where states submitted CAA section 129 plans, a significant number of states submitted plans between 14 to 17 months after the promulgated EG.[11] This suggests that states will typically need more than 1 year to develop a state plan to implement an EG, particularly for a program that permits more source-specific analysis than under CAA section 129 as CAA section 111(d) does.

In the 2019 promulgation of subpart Ba, the EPA mirrored CAA section 110 by giving states 3 years to submit plans. As previously described, the court partly faulted the EPA for adopting the CAA section 110 timelines without accounting for the differences in scale and scope between CAA section 110 and 111(d) plans. The EPA has now more closely evaluated the statutory deadlines and requirements in the CAA section 110 implementation context to determine what is feasible for a CAA section 111(d) state plan submission timeline. The EPA specifically focused on statutory SIP submission deadline and requirements in the context of attainment plans for the 2012 $PM_{2.5}$ NAAQS under CAA section 189. CAA section 189(a)(2)(B) requires states to submit attainment planning SIPs within 18 months after an area is designated nonattainment. The 2012 $PM_{2.5}$ NAAQS attainment plans were, in most cases, more complicated for states to develop when compared to a typical plan under CAA sections 111(d). For example, attainment plans require states to determine how to control a variety of sources, based on extensive modeling and analyses, in order to bring a nonattainment area into attainment of the NAAQS by a specified attainment date. Under CAA section 111(d), it is clear which designated facilities must be subject to a state plan, and the standards of performance for these sources must reflect the level of stringency determined by the EG unless a state chooses to account for RULOF. As further described in section III.E of this preamble, accounting for RULOF is expected to be a limited, rather than broadly used, exception. The difference in complexity between the CAA section 189 plan requirements and the CAA section 111(d) plan requirements suggests that a timeline shorter than 18 months is more appropriate for development of CAA 111(d) state plans submissions.

Thus, based on the EPA's evaluation of states' responsiveness to previous CAA section 111(d) EGs, the contrast between the development of CAA section 111(d) plans and CAA section 129 plans, and the relative difference in complexity between attainment plan requirements under CAA section 189 and CAA section 111(d) state plan requirements, the EPA is proposing to require that state plans under CAA section 111(d) be due 15 months after publication of a final EG. This proposed timeframe is substantially shorter than the 3 years deadline vacated by the D.C. Circuit; however, the timeline should provide states adequate time to adopt and submit approvable plans without extending the timing such that significant adverse impacts to health and welfare are likely to occur from the foregone emission reductions during the state planning process. Allowing states sufficient time to develop feasible implementation plans for their designated facilities that adequately address public health and environmental objectives also ultimately helps ensure more timely implementation of an EG, and therefore achievement in actual emission reductions, than would an unattainable deadline that may result in the failure of states to submit plans and requiring the development and implementation a of Federal plan. The EPA is soliciting comment on the proposed state plan submission timeline and the analysis

[10] The EPA reviewed the information available in 40 CFR part 62. The supporting information reviewed is available at Docket ID No. EPA–HQ–OAR–2021–0527. Part 62 codifies the Administrator's approval and disapproval of state plans for the control of pollutants and facilities under CAA section 111(d), and under CAA section 129 as applicable, and the Administrator's promulgation of such plans or portions of plans thereof.

[11] The EPA reviewed the information available in 40 CFR part 62. The supporting information reviewed is available at Docket ID No. EPA–HQ–OAR–2021–0527. Part 62 codifies the Administrator's approval and disapproval of state plans for the control of pollutants and facilities under CAA section 111(d), and under CAA section 129 as applicable.

supporting the EPA's proposed determination regarding the amount of time reasonably necessary for plan development and submission. The EPA is also soliciting comment on whether the EPA should consider any other factors in setting this timeline (Comment A1–2).

The EPA recognizes that the court, in *ALA,* faulted the Agency for failing to consider the potential impacts to public health and welfare associated with extending planning deadlines. The EPA does not interpret the court's direction to require a quantitative measure of impact, but rather consideration of the importance of the public health and welfare goals when determining appropriate deadlines for implementation of regulations under CAA section 111(d). Because 15 months is the generally expeditious period of time in which the EPA finds that most states can create and submit a plan per the EPA's corresponding emission guidelines that is both comprehensive and legally sound, it follows that the EPA has appropriately considered the potential impacts to public health and welfare associated with this extension of time by providing no more time than the states reasonably need to ensure a plan is comprehensive and timely. To the extent the EPA considers deviating from these expeditious timeframes in promulgating an EG in the future, the EPA will consider the public health and welfare impacts associated with the change, consistent with the court's direction in *ALA,* particularly where the EPA is providing additional time for state plan development.

While the EPA is proposing and soliciting comment on all components of the implementation timelines proposed in this action, the EPA is especially interested in comments regarding the proposed state plan submission timeline. The EPA acknowledges that there are a number of individual state-specific factors that can affect the amount of time required for the development and submission of state plans. The EPA is therefore soliciting specific comments on details of state plan development and adoption processes and how those should inform a state plan submission deadline, including whether there are reasons why the EPA should consider either a longer or a shorter timeframe (Comment A1–3).

As discussed in section III.C of this preamble below, the EPA is proposing to revise subpart Ba to include a requirement for states to undertake outreach and meaningful engagement with pertinent stakeholders as part of the state plan development process. The EPA solicits comment on how much, if any, time this additional engagement will take in the state plan development process (Comment A1–4). The EPA recognizes that the time needed to conduct meaningful engagement will be highly dependent on the number and location of designated facilities addressed by an EG, as well as on the type of health or environmental impacts of the associated emissions. If stakeholder and public involvement required by the proposed amendments does not generate a large number of specific and unique comments, data, or other considerations, then the level of effort states will employ to review them will be lower in comparison to when meaningful engagement comments are voluminous. Also, to the extent that states already employ significant engagement with pertinent stakeholders, the proposed meaningful engagement amendments would not result in additional costs, while other states that do not have engagement procedures already in place may be required to increase their level of effort to engage with pertinent stakeholders.

In section III.E of this preamble, the EPA is also proposing revisions to the RULOF provision. These proposed revisions would clarify the procedures for considering RULOF by establishing a robust analytical framework that would require a state to provide a sufficient justification when applying a standard of performance that is less stringent than the EPA's presumptive level of stringency, thereby allowing the EPA to readily determine if the state's plan is satisfactory and therefore approvable. The proposed state plan submission timeline of 15 months should adequately provide time for states to conduct the analyses required by this provision; however, the EPA is soliciting comment on whether states will need additional time in the plan development to account for instances where RULOF is considered. The EPA is specifically requesting comment on how much additional time might be required for this consideration and how that additional time fits within the entire process of state plan development (Comment A1–5).

The proposed state plan submission timeline should be generally achievable by states. The EPA notes it is obligated to promulgate a Federal plan for states that have not submitted a plan by the submission deadline. Once the obligation to promulgate a Federal plan is triggered, it can only be tolled by the EPA's approval of a state plan. If a Federal plan is promulgated, a state may still submit a plan to replace the Federal plan. A Federal plan under CAA section 111(d) is a means to ensure timely implementation of EGs, and a state may choose to accept a Federal plan for their sources rather than submit a state plan. While the EPA encourages states to timely submit plans for EGs, there are no sanctions associated with failing to timely submit an approvable plan or with the implementation of a Federal plan.[12]

2. Timeline for the EPA To Determine Completeness of State Plans

Once a state plan has been submitted to the EPA, the EPA reviews the plan for ''completeness'' to determine whether the plan includes certain elements necessary to ensure that the EPA can substantively evaluate the plan. The EPA determines completeness by comparing the state's submission against the administrative and technical criteria specified in subpart Ba to see if the submission contains the elements specified therein (see 40 CFR 60.27a(g) for completeness criteria). In the 2019 promulgation of subpart Ba, the timeline provided for the EPA to determine the completeness of a state plan mirrored the language in CAA section 110(k)(1)(B): ''Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria [for completeness] have been met.''

After a state plan is complete through either an affirmative determination or by operation of law, the EPA will act on the state plan submission through notice-and-comment rulemaking. The proposed timeline for the EPA to act on a state plan submission can be found in section III.A.3 of this preamble below.

If a state plan submission does not contain the elements required by the completeness criteria, the EPA would find that the state has failed to submit a complete plan and notify the state through a letter. The determination of incompleteness treats the state as if the state has made no submission at all. The determination that a submission is incomplete and that the state has failed to submit a plan is ministerial in nature and requires no exercise of discretion or judgment on the Agency's part.

As part of the EPA's overall effort to set implementation timelines under

[12] CAA section 179 provides that sanctions should be applied in states that fail to submit approvable SIPs for certain specified requirements for NAAQS implementation. The EPA has not promulgated any similar sanctions provisions governing the submission of state plans pursuant to section 111(d).

CAA section 111(d) that are as expeditious as possible, the EPA is proposing to revise the timing element of the completeness review in subpart Ba. In light of the ministerial nature of the completeness determination, the EPA proposes to provide a maximum of 60 days from receipt of the state plan submission for the EPA to make a determination of completeness. The EPA is additionally proposing to provide that any state plan or plan revision submitted to the EPA that has not received a completeness determination within 60 days of receipt, shall on that date be deemed, by operation of law, to meet the completeness criteria, which will trigger the EPA's obligation to take substantive action on the state plan. Sixty days provides an expeditious timeframe for the EPA to evaluate state plans for completeness and to notify the states of the determination. Because the EPA may be required to evaluate up to 50 state plans during this period, in addition to plans submitted by territories, tribes and local governments, the EPA does not find that this timeframe could reasonably be shortened any further. The EPA is soliciting comment on the appropriateness of providing a 60-day timeline for the EPA to conclude its completeness review (Comment A2–1).

The EPA notes that, because the EPA's finding of a plan as incomplete puts a state in the legal status of not having submitted a plan at all, the status and potential delinquency of a state's plan is evaluated against the state plan submission deadline. If the EPA determines that a plan is incomplete and this occurs at some point after the state plan submission deadline, the EPA treats the state as if the state has made no submission at all and thus the EPA's authority to provide a Federal plan is triggered. If a state submits a plan prior to the state plan submission deadline and the EPA also makes a determination that the plan is incomplete prior to the state plan submission deadline, the EPA will treat the state as if the state has made no submission at all, but this determination does not yet trigger further action by the EPA. Instead, because the state still has an opportunity to submit a complete plan before the state plan submission deadline, the EPA's authority to promulgate a Federal plan is only triggered if the state fails to timely submit a new plan to replace the incomplete plan by the state plan deadline.

3. Timeline for the EPA's Action on State Plans

After a state plan has been determined to be complete or is deemed complete by operation of law, the EPA must evaluate and determine whether the plan or plan revision is approvable, in part or in whole (see section III.D.1 of this preamble for discussion on proposed partial plan approvals). In order to determine whether it is appropriate to approve or disapprove a state plan, CAA section 111(d) provides that the EPA must evaluate whether the plan is ''satisfactory,'' that is, whether the components of the plan meet all the requirements of the statute, these implementing regulations, and the corresponding EG, through a proposed notice-and-comment rulemaking. After the EPA reviews comments on the proposed action, the EPA will finalize its action to approve or disapprove the plan. If the EPA approves a state plan, the standards of performance and other components of that state plan become federally enforceable. If the state plan is disapproved, in part or in whole, the EPA is obligated to promulgate a Federal plan for designated facilities within that state (see section III.A.4 of this preamble below for the EPA's timeline to publish a Federal plan).

Subpart B requires the EPA to take action on applicable state plans (*e.g.,* approve or disapprove) within 4 months after the date required for submission. 40 CFR 60.27(b). In the development of subpart Ba, the EPA contended that 4 months was an inadequate time to review and take action on state plans and therefore instead provided a deadline of 12 months for final action on a state plan (mirroring the maximum time permitted under CAA section 110(k)(1)(2) for the EPA's action on complete SIPs). 84 FR 32520, July 8, 2019. In the *ALA* decision, the D.C. Circuit vacated this revised timeline in subpart Ba on the basis that the EPA did not adequately justify the extended timeframes and did not consider the public health and welfare impacts of extending the implementation times. As is discussed below, the EPA has now closely evaluated the process, steps, and timeframes for the EPA to substantively review and act upon each state plan submission through a public notice-and-comment rulemaking process. After considering the time anticipated to be necessary for generally expeditious EPA action on state plans, the EPA is again proposing to require that it must take final action on a state plan or plan revision submission within 12 months after a plan is determined to be complete or becomes complete by operation of law.[13]

The first step of the EPA acting on a plan is that once a state plan submittal has been deemed ''complete'' under 40 CFR 60.27a(g), an intra-agency workgroup reviews the plan components to determine whether they conform to the applicable regulatory requirements. The workgroup may require a broad range of expertise in legal, technical, and policy areas, potentially including attorneys, engineers, scientists, economists, air monitoring experts, health and welfare analysts, and/or policy analysts from across a variety of EPA programs. After review and coordination, the workgroup then develops recommendations for approval or disapproval of each plan component and presents them to Agency decision-makers for review. Once the Agency completes its internal decision-making process, the workgroup proceeds to prepare a written notice of proposed rulemaking. The notice of proposed rulemaking contains the EPA's legal, policy, and technical bases for its proposed action on a state plan submission, which must be thoroughly developed and explained in writing to provide clear and concise information and reasoning to support the public in understanding the Agency's decision and the justification for that decision, and so that the public may provide informed comments on the proposal. The EPA may further develop technical support documents as record support for the proposal. The draft proposed rulemaking and any record support then undergo a multi-layered review process across EPA offices and levels of management before being processed for signature. The process to evaluate the state plan, draft a proposed action on a CAA section 111(d) state plan, and get the proposed action edited, reviewed, and signed typically requires a minimum of between 6 to 8 months to complete. The signed notice of proposed rulemaking is then submitted for publication in the **Federal Register**, which may require several weeks processing prior to publication.

The publication of the proposed rulemaking triggers the start of a public comment period of at least 30 days with possible extension if requested. Because of the types of sources and pollutants regulated under CAA section 111(d), the EPA reasonably anticipates that many of its proposed actions on state plans will garner significant public interest from individuals, industry, states, and

[13] The deadlines for the EPA action under subpart Ba would apply to any state plan submission regardless of when it is submitted.

environmental and public health advocates. After completion of the comment period, the EPA then reviews all comments and determines whether, based on any comment, it should alter its proposed action or further augment the legal, policy, and technical rationales supporting that action. Comments received on a proposed action may include technical information that was not available to the EPA at the time of proposal. In the event technical data are received as part of comments on the proposed action, the EPA would then be required to review the new data and evaluate whether and how it should affect the EPA's proposed conclusions regarding the state plan. If a substantive comment is raised that merits reconsideration of the EPA's proposed action, the EPA may determine that it is necessary to revise and repropose its action on the state plan or it may go to the state for more information to help the Agency determine how to proceed.

Once this review of comments is complete, the workgroup drafts and presents updated recommendations for action for internal review and consideration by Agency decision-makers. Once the Agency completes its internal decision-making process, the workgroup then drafts a notice of final rulemaking on the plan submission, which includes responses to comments, any necessary record support, and may also include final regulatory text. The draft final action is then reviewed by senior management and other interested EPA offices within the Agency prior to signature of the final rulemaking approving or disapproving, in whole or in part, a state plan. It is reasonable to permit at least 4 to 7 months for evaluation of the comments received, any necessary technical analysis, decision-making, and drafting and review of the final action.

The duration of each step in this deliberative process varies. The amount of time the EPA needs to review a state plan submission and the time it needs to finalize a notice of proposed rulemaking, depends in part on the plan's complexity and the nature of the technical, policy, and legal issues that it implicates. For example, a state plan submission that invokes RULOF for several designated facilities is more complex and time consuming to review than a plan that simply establishes standards of performance reflecting the presumptive level of stringency for all sources. Similarly, the amount of time needed to respond to comments and issue a final rulemaking depends in part on the number and type of comments received on the EPA's proposed rulemaking. Additionally, the EPA reasonably anticipates that it will be required to review multiple plan submissions at a given time, and these phases of review for a given plan are impacted by the EPA's review of other state plan submissions, as the EPA will need to assure its review across multiple plans and regional offices is consistent from a legal, technical, and policy perspective.

The EPA finds 12 months is a reasonably expeditious timeframe to accommodate the EPA to act on a state plan or plan revision submission and the considerations described above, while ensuring that an EG is expeditiously implemented. The process and steps described above highlight the fact that it would be unreasonable, if not impossible, to accomplish all of the steps in a legally and technically sound manner within a 4-month timeframe as required under subpart B. Particularly, the EPA's proposed action has to be open for public comment for at least 30 days, therefore the 4-month timeline provided in subpart B only gives the EPA 3 months to do the substantive work of both the proposed and final actions, including evaluating the state plan submission, drafting preamble notices, responding to comments, and developing record support at both the proposed and final action stages. A 12-month timeframe after a plan is determined to be complete more reasonably accommodates the process and steps described above.[14]

The EPA recognizes that the court in *ALA* faulted the Agency for failing to consider the potential impacts to public health and welfare associated with extending planning deadlines. The EPA does not interpret the court's direction to require a quantitative measure of impact, but rather consideration of the importance of the public health and welfare goals of CAA section 111(d) when determining appropriate deadlines. Because 12 months is an adequate period of time in which the EPA can both expeditiously act on a plan submission *and* ensure that its action is technically and legally sound, it follows that the EPA has appropriately considered the potential impacts to public health and welfare associated with this extension of time by providing no more time than the EPA reasonably needs to ensure a plan submission contains appropriate and protective emission reduction measures. If the EPA does not have adequate time to evaluate a state plan submission, its ability to ensure the plan contains appropriate measures to satisfactorily implement and enforce the standards necessary to comply with the EG may be compromised, which would in turn compromise the EPA's ability to ensure that the public health and welfare objectives of the EG are satisfied.

The EPA is soliciting comment regarding its rationale for proposing a 12-month timeframe for the EPA's action on a complete state plan or plan revision submission, including whether there are reasons that the EPA should consider either a longer or a shorter timeframe (Comment A3–1). The EPA notes that this timeframe for the EPA's action on complete state plan submission would apply to any final EG regulating greenhouse gas emissions from sources in the oil and natural gas industry. 86 FR 63110, November 15, 2021.

4. Timeline for the EPA To Promulgate a Federal Plan

CAA section 111(d)(2) provides that the EPA has the same authority to prescribe a Federal plan for a state that fails to submit a satisfactory plan as it does for promulgating a FIP under CAA section 110(c). Accordingly, the EPA's obligation to promulgate a Federal plan is triggered in three situations: where a state does not submit a plan by the plan submission deadline; where the EPA determines a portion or all of a state plan submission did not meet the completeness criteria and the time period for state plan submission has elapsed and, therefore, the state is treated as having not submitted a required plan; and where the EPA disapproves a state's plan. 40 CFR 20.27a(c). In the first two instances of triggering a Federal plan, the EPA is proposing to require that its timeline to promulgate a Federal plan for those states would begin the day after the state plan is due.[15] In the third instance, the

[14] While the EPA would have the discretion to act on a state's submission more quickly than 12 months where specific circumstances allow (*e.g.,* where there are no public comments on the proposed action), the EPA does not believe that it would be reasonably possible to act significantly more quickly than 12 months in most cases.

[15] The EPA has discretion to address its obligation to promulgate a Federal plan in a variety of ways for states that do not have an approved state plan. For example the EPA may initially promulgate a single Federal plan that applies to all appropriate states and then update that Federal plan as necessary to accommodate the inclusion of other states that trigger the need for a Federal plan in the future (*e.g.,* a Federal plan that applies to states that fail to submit a plan can be updated to include applicability for states that later have a plan disapproved); or the EPA may promulgate Federal plans each time its authority to do so has been triggered (*e.g.,* the EPA will promulgate a Federal plan for all states that fail to submit a plan and another Federal plan for all states that have their plan disapproved).

EPA is proposing to require that its timeline to promulgate a Federal plan would begin at its disapproval of the state's plan.

The original implementing regulations in subpart B provided the EPA with 6 months to promulgate a Federal plan once its obligation to do so was triggered. 40 CFR 60.27(d). When the EPA promulgated subpart Ba in 2019, it concluded that this amount of time was insufficient and consequently extended the time for the EPA to promulgate a Federal plan to 24 months, mirroring the timeframe permitted for promulgation of a FIP under CAA section 110. 84 FR 32520, July 8, 2019. In the *ALA* decision, the D.C. Circuit vacated this revised timeline in subpart Ba on the basis that the EPA did not adequately justify the extended timeframe and did not consider the health and welfare impacts of extending the implementation timeframe.

In this action, the EPA reevaluated the process, steps, and timeframes for the EPA to promulgate a Federal plan through a public notice-and-comment rulemaking process.[16] Based on this assessment as presented below, the EPA is proposing to require that it promulgate a Federal plan within 12 months after either the date required for submission of a state plan (for states that fail to submit a complete plan) or the date the EPA disapproves a state's plan. The EPA is also proposing a change to the trigger for the EPA's obligation and timeline to provide a Federal plan for states that do not submit a timely plan and that discussion is found in section III.B of this preamble.

A Federal plan must meet the requirements of CAA section 111(d) and therefore contain the same components as a state plan, namely standards of performance for designated facilities and measures that provide for the implementation and enforcement of such standards. CAA section 111(d)(2)(B) also explicitly requires the EPA to consider RULOF in promulgating a standard of performance under a Federal plan. Additionally, Federal plans containing standards of performance are subject to the procedural requirements of CAA section 307(d), such as the requirements for proposed rulemaking and opportunity for public hearing. CAA section 307(d)(1)(C). 40 CFR 60.27a implements these various statutory requirements and contains general regulatory requirements for the EPA's promulgation of a Federal plan. To meet these applicable requirements, the process, and steps for the EPA to promulgate a Federal plan is described in the following paragraphs.

Once the EPA's obligation to promulgate a Federal plan is triggered, the EPA establishes an intra-agency workgroup to develop the rulemaking action to address that obligation. The workgroup first develops recommendations for the components of the Federal plan to be proposed, and on legal, policy, and technical rationales that support the recommendations. These components are identified in subpart Ba as well as in the corresponding EG and are generally the same as those required for a state plan. One of these fundamental components is the determination of standards of performance for designated facilities. Based on the requirements of CAA sections 111(d) and 111(a)(1), these standards must generally reflect the presumptive level of stringency the EPA determines as part of the EG. Depending on the form of the presumptive level of stringency given in a particular EG, the EPA may need to do additional work to calculate standards of performance that reflect this level of stringency. For example, an EG may provide the presumptive level of stringency as numerical emission rates, which a Federal plan could adopt as the requisite standards of performance. However, if an EG provides the presumptive level of stringency in a form other than numerical standards, the EPA may need to calculate appropriate standards of performance in the context of a Federal plan. Further, CAA section 111(d)(2) requires the EPA to consider RULOF for sources in the source category in setting standards of performance as part of a Federal plan which requires the EPA, at least, to identify and evaluate the remaining useful lives, among other appropriate factors, and accordingly establish corresponding standards of performance. The development of a Federal plan may also necessitate a determination of appropriate testing, monitoring, reporting, and recordkeeping requirements to implement the standard if the EG does not provide presumptive requirements to address those aspects of implementation. Further, the EPA will need to consider associated compliance times for designated facilities in circumstances where they are not provided by an EG, or in cases where a standard of performance is adjusted to account for RULOF. There may also be situations where increments of progress are warranted, and the EPA will correspondingly need to identify and determine the appropriate increments of progress. The development of a Federal plan with these components will also include the element of meaningful engagement, as being proposed in this action and further described in section III.C of this preamble.

Once the recommendations for each component are developed, the workgroup presents them to Agency decision-makers for review. After the Agency completes its internal decision-making process, the workgroup proceeds to prepare a written notice of proposed rulemaking. The proposal must include the following elements, as required by CAA section 307(d)(3): the factual data on which the proposed rulemaking is based; the methodology used in obtaining the data and in analyzing the data; and the major legal interpretations and policy considerations underlying the proposed rulemaking. These elements must be thoroughly developed and explained in the proposal to meaningfully provide the public adequate information to comment on the proposal. The EPA may further develop a technical support document as record support for the proposal.

The draft proposed rulemaking and any record support are then reviewed by the relevant EPA offices and processed for signature. The signed notice of proposed rulemaking is then submitted for publication in the **Federal Register**. To develop the proposed Federal plan rulemaking, establish unique standards for RULOF, allow review of materials by senior management, go through an interagency review process and have the package signed typically requires a

[16] The EPA reviewed the information available in 40 CFR part 62 associated with the promulgation of Federal Plans under CAA section 111(d). The supporting information reviewed is available at Docket ID No. EPA–HQ–OAR–2021–0527. Under the provisions of CAA section 111 and subpart B, the EPA promulgated Federal plans for municipal solid waste landfills EG 40 CFR part 60 subpart Cc (Federal plan codified at 40 CFR part 62 subpart GGG) and municipal solid waste landfills EG 40 CFR part 60 subpart Cf (Federal plan codified at 40 CFR part 62 subpart OOO).

The EPA also reviewed information available in 40 CFR part 62 associated with the promulgation of Federal Plans under CAA 129. The supporting information reviewed is available at Docket ID No. EPA–HQ–OAR–2021–0527. Under the provisions of CAA sections 111 and 129 and subpart B, the EPA has promulgated Federal plans for large municipal waste combustors EG 40 CFR part 60 subpart Cb (Federal plan codified at 40 CFR part 62 subpart FFF); small municipal waste combustors EG 40 CFR part 60 subpart BBBB (Federal plan codified at 40 CFR part 62 subpart JJJ); hospital, medical, and infectious waste incinerators EG 40 CFR part 60 subpart Ce (Federal plan codified at 40 CFR part 62 subpart HHH); commercial and industrial solid waste incinerators EG 40 CFR part 60 subpart DDDD (Federal plan codified at 40 CFR part 62 subpart III) and sewage sludge incinerators EG 40 CFR part 60 subpart MMMM (Federal plan codified at 40 CFR part 62 subpart LLL).

minimum of between six to 9 months to complete.

As previously noted, the EPA's promulgation of a Federal plan is subject to the requirements of CAA section 307(d), which includes providing the public with an opportunity to provide an oral presentation at a public hearing. CAA section 307(d)(5). The Federal Register Act requires the EPA to provide sufficient notice of a public hearing, which (in the absence of a different time specifically prescribed by the relevant Act of Congress) is satisfied if the EPA provides at least 15 days' notice. 44 U.S.C. 1508. Section 307(d)(5) of the CAA further provides that the EPA must keep the record for the proposed action open for public comment for 30 days after any public hearing for the submission of rebuttal and supplemental information. Because the EPA reasonably expects to provide notice of the required public hearing at the time its proposed action is published in the **Federal Register**, in order to allow for both a 15-day notice of the public hearing and a subsequent 30-day comment period on the open record, the EPA should allow for at least 45 days for public comment on the notice of proposed action.

As with state plans, because of the types of sources and pollutants regulated under CAA section 111(d), the EPA reasonably anticipates that many of its proposed actions on a Federal plan will garner significant public interest from individuals, industry, states, and environmental and public health advocates. After completion of the comment period, the EPA then reviews all comments and determines whether, based on any comment, it should alter any components of the proposed Federal plan, or further augment the legal, policy, and technical rationales supporting that proposed action. Additionally, in the EPA's experience, comments may include technical information that was not in front of the Agency at the time of proposal. In the event technical data are received as part of comments on the proposed action, the EPA would then be required to review the new data and evaluate whether and how it should affect the EPA's proposed Federal plan. If a substantive comment is raised that merits reconsideration of any component in the proposed Federal plan, the EPA would need to repropose the plan.

Once this review of comments is complete, the workgroup drafts and presents updated recommendations for internal review and decision making. Once the Agency completes its internal decision-making process, the workgroup then drafts a notice of final rulemaking, which includes responses to comments and any necessary record support, and final regulatory text as the Federal plan directly regulates certain designated facilities. The draft final action is then reviewed by relevant offices within the Agency prior to signature of the final rule promulgating the Federal plan. The EPA typically anticipates that the process of reviewing comments received, making corresponding changes to the rulemaking, and promulgating the final Federal plan to be between 4 and 8 months.

The duration of each step in this deliberative process varies. The amount of time the EPA needs to develop, propose, and finalize a Federal plan depends in part of the plan's complexity and the nature of the technical, policy, and legal issues that it implicates. For example, some states needing a Federal plan may have thousands, if not hundreds of thousands, of designated facilities that the EPA will need to establish standards of performance and implementation measures for, while other Federal plans may be significantly smaller in scale. Similarly, the amount of time needed to respond to comments and issue a final rule depends in part on the number and type of comments received on the EPA's proposed rulemaking. Additionally, the EPA reasonably anticipates that it may need to promulgate a Federal plan for multiple states at a given time, which can amplify the amount of time and work needed.

The EPA has determined that 12 months reasonably accommodates the amount of time that the EPA needs to undertake the process, steps, and the considerations described above, while ensuring that an EG is expeditiously implemented. The process and steps described above that must be taken in promulgating a Federal plan highlight the fact that it would be unreasonable, if not an impossibility, to accomplish all of the steps in a legally and technically sound manner within a 6-month timeframe as required under subpart B.[17]

As with the EPA's proposal for its timeline to act on state plan submissions, 12 months is generally the period of time in which the EPA can both expeditiously act on a plan submission *and* ensure it is technically and legally sound. Therefore, this extension of time considers potential impacts to public health and welfare by giving the EPA a reasonably expeditious timeframe to promulgate a Federal plan that contains appropriate and protective emission reduction measures. This is especially true in the context of a Federal plan, where there is otherwise no state plan in place that is adequately protective of public health and welfare. If the EPA does not have adequate time to promulgate a Federal plan, its ability to ensure the plan contains appropriate measures to satisfactorily implement and enforce the standards necessary to comply with the EG may be compromised, which would in turn compromise the EPA's ability to ensure that the public health and welfare objectives of the EG are satisfied.

The EPA is soliciting comment regarding its rationale for proposing a 12-month timeframe for the EPA's promulgation of a Federal plan, including whether there are reasons why the EPA should consider either a longer or a shorter timeframe (Comment A4–1). The EPA notes that this timeframe for the EPA's promulgation of a Federal plan would apply to any final EG regulating greenhouse gas emissions from sources in the oil and natural gas industry. 86 FR 63110, November 15, 2021.

The EPA notes that a state may submit a plan to replace a Federal plan, even after the state plan submission deadline. However, once the EPA's authority and obligation to promulgate a Federal plan has been triggered, the act of a state submitting a plan alone does not abrogate the EPA's authority or obligatory timeline to promulgate a Federal plan. Only an approved state plan can supplant an already promulgated Federal plan or abrogate the EPA's responsibility to timely promulgate a Federal plan. Where a state submits a late plan, that may have the practical effect of concurrent timelines for promulgation of the Federal plan and the EPA's action on that late state plan; the EPA is not obligated to act on a late state plan prior to promulgating a Federal plan (40 CFR 60.27a(d)).

5. Timeline for Increments of Progress

As part of the EPA's statutory responsibility to determine the BSER and related presumptive level of stringency, the EPA also determines in an EG ''the time within which compliance with standards of performance can be achieved.'' 40 CFR 60.22a(b)(5). As previously described, while it is the states' responsibility to provide standards of performance, those

[17] While the EPA would have the discretion to promulgate a Federal plan more quickly than 12 months where specific circumstances allow (*e.g.,* where there are no public comments on the proposed action), the EPA does not believe that would be reasonably possible to act significantly more quickly than 12 months in most cases.

standards of performance must reflect the presumptive level of stringency, unless a state chooses to account for RULOF for a particular source. Accordingly, states also have an obligation to include the corresponding compliance schedules as part of their state plans.[18] Specifically the standards and compliance schedules ''shall be no less stringent than the corresponding emission guideline'' (40 CFR 60.24a(c)) unless the RULOF provision is invoked (see section III.E of this preamble for discussion of proposed revisions to this provision). These compliance schedules are an integral component to realizing the emission reductions required by an EG to address the health and welfare impacts from a relevant source category and pollutant. The sooner that the standards are implemented, the more quickly the public health and welfare benefits of those reductions can be achieved.

In the 1975 subpart B implementing regulations for CAA section 111(d), the EPA required that any compliance schedule extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. 40 CFR 60.24(e). In the 2019 promulgation of subpart Ba, the EPA modified this requirement to apply to any compliance schedule extending more than 24 months from the state plan submittal deadline to align with the extended timeline for state plan submissions. As discussed previously, the D.C. Circuit vacated the extended implementation timelines in subpart Ba, including the timeline for increments of progress.[19]

Both subparts B and Ba require that standards of performance are implemented in a timely manner through provisions that require legally enforceable increments of progress if the compliance schedule extends beyond a specific time frame.[20] In the definition of ''increments of progress'', the EPA provides requirements for legally enforceable increments of progress that states must include as a part of the standard of performance for a given designated facility.[21] The use of increments of progress will vary from EG to EG based on the source category and type of regulation. There are also situations that may lead the EPA to limit or prohibit the use of increments of progress in a particular EG based on the nature of the BSER and presumptive standards, for example if the overall implementation timeline for a particular EG is relatively short. The EPA may alternatively provide presumptive increments of progress for a specific EG. The EPA will address these circumstances as appropriate in a specific EG, if the general requirements for increments of progress of subpart Ba need to be superseded.

Because increments of progress are important to expeditiously addressing public health and welfare, the EPA is proposing to generally require that any compliance schedule extending more than 16 months from the date required for submittal of a state plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. This proposed time period accounts for the 60-day completeness review following a state plan submittal and the 12-month period for the state plan review proposed in this action, and further provides a 2-month buffer for the case of a state plan approval by the EPA (approval occurring 14 months after the plan submission deadline) before increments of progress are required. While this time period of 16 months is longer than the 12 months previously provided under subpart B, it is significantly shorter than the 24 months vacated from subpart Ba. Additionally, the time between a state plan approval and the initiation of requirements for increments of progress is less than both the 8 months previously provided by subpart B and less than the 6-month buffer provided by the vacated subpart Ba timeline. Providing a 2-month buffer after approval of plans but before the increments of progress are required allows for the owner or operators of designated facilities reasonable time to initiate actions associated with the increments of progress before these are required.

This proposed timeline for increments of progress will ensure standards of performance are implemented as expeditiously as possible so that the intended emission reductions are achieved, and the public health and welfare are protected. The EPA solicits comment on the proposed requirement that CAA 111(d) plans include increments of progress for any compliance schedule extending more than 16 months from the state plan submission deadline, and whether a different timeline for increments of progress should be considered. If another timeline is considered, the EPA requests specific comments on why this other timeline is more appropriate than 16 months (Comment A5–1).

B. Federal Plan Authority and Timeline Upon Failure To Submit a Plan

In subpart Ba, the EPA incorporated language from CAA sections 110(c)(1)(A) and 110(k)(1)(B) addressing the circumstances which trigger the EPA's authority for promulgating a Federal plan. Specifically, the EPA adopted language at 40 CFR 60.27a(c)(1), which requires the EPA to promulgate a Federal plan after it finds that a state fails to submit a required plan or plan revision or finds that the plan or plan revision does not satisfy the completeness criteria under 40 CFR 60.27a(g). The EPA is currently required, under 40 CFR 60.27a(g), to determine whether completeness criteria have been met no later than 6 months after the date by which a state is required to submit a plan. These current provisions under subpart Ba taken together mean that, no later than 6 months after the state plan submission deadline has passed, the EPA must make a determination (often referred to as a ''finding of failure to submit'') as to whether any states have failed to submit a plan that meets the completeness criteria, and such finding is what triggers the EPA's obligation and timeline to promulgate a Federal plan.[22]

The EPA acknowledges that in the CAA section 110 context, it has not always timely met its obligation to issue a finding of failure to submit, which further delays the timing for when the EPA promulgates a FIP to achieve the necessary emission reductions. Accordingly, the EPA finds that there is an opportunity to streamline the process in the CAA section 111(d) context to ensure that the emission reductions anticipated by the promulgation of the EG are realized in a timely way through

[18] ''Each plan shall include standards of performance and compliance schedules.'' 40 CFR 60.24a(a).

[19] Petitioners did not challenge, and the court did not vacate, the substantive requirement for increments of progress.

[20] Subpart Ba at 40 CFR 60.24a(a) and 60.24a(d), and subpart B at 40 CFR 60.24(a) and 60.24(e)(1).

[21] 40 CFR 60.21a(h) defines ''increments of progress'' and requires states to include the following steps: (1) Submittal of a final control plan for the designated facility to the appropriate air pollution control agency; (2) Awarding of contracts for emission control systems or for process modifications, or issuance of orders for the purchase of component parts to accomplish emission control or process modification; (3) Initiation of on-site construction or installation of emission control equipment or process change; (4) Completion of on-site construction or installation of emission control equipment or process change; and (5) Final compliance.

[22] Note that this procedure does not address circumstances when the EPA promulgates a Federal plan for states whose plan is disapproved. In these circumstances, the EPA's disapproval itself is the conclusion that the state plan submission was unsatisfactory and triggers the EPA's obligation and timeline to promulgate a Federal plan.

the promulgation of any necessary Federal plan. Rather than requiring the EPA to affirmatively issue a finding of failure to submit before the EPA's obligation to issue a Federal plan is triggered, the EPA is proposing that the EPA's timeline for issuing a Federal plan for any state that has not submitted a complete plan will be triggered by the state plan submission deadline, consistent with the requirements under subpart B. In this proposed change for subpart Ba, the EPA's obligation and timeline to promulgate a Federal plan starts the day after state plans are due. Accordingly, based on the proposed timeline described in section III.A.4 of this preamble above, the EPA is proposing that the EPA will have 12 months from the state plan deadline to promulgate a Federal plan for states that do not submit a plan. Note, the EPA is also proposing 12 months to promulgate a Federal plan for states whose plans are disapproved, but in those instances the EPA's obligation and timeline to provide a Federal plan is based on its disapproval of a state plan.

As part of this proposal to trigger the timeline for the EPA to promulgate a Federal plan based on the state plan submission date instead of from when the EPA makes a finding of failure to submit, the EPA considered the value and role of such finding. A finding of failure to submit was intended to serve three purposes under subpart Ba, consistent with its purpose under CAA section 110: to notify the public of the status of state plan submissions (*i.e.,* providing transparency to the process); to notify states that the EPA has not received a plan; and to formally start the clock for the EPA to promulgate a Federal plan. While these concepts are generally an important part of the overall Federal plan development and implementation process, the EPA finds that in the CAA section 111(d) context there is minimal value in coupling the notification aspects of a finding of failure with the initiation of the clock for the EPA to promulgate a Federal plan. These aspects are not inextricably linked to one another in that nothing necessitates a finding of failure to submit as the vehicle that triggers the timeline for the EPA to promulgate a Federal plan. By decoupling the timeline from the finding of failure to submit, the timeline to provide a Federal plan by the EPA can be triggered without the interim step and potential lag associated with a finding of failure to submit. By removing this interim process for promulgating a Federal plan, the EPA will be required to promulgate the Federal plan more expeditiously, and, in turn, overall implementation of the corresponding EG will be timelier. This proposal is also consistent with the spirit of the *ALA* decision, where the D.C. Circuit emphasized the need for implementation timelines that consider potential impacts on public health and welfare. By expeditiously and efficiently promulgating a Federal plan and by removing an interim step of a finding of failure, the EPA is further addressing the potential impacts of implementation times on health and welfare.

The EPA notes that its proposal does not affect the EPA's obligation under CAA section 110(c) to promulgate a FIP within 2 years of making a finding that a state has failed to submit a complete SIP. In the case of the CAA section 110, the obligation for the EPA to first make a finding of failure to submit is derived from the statute, whereas nothing in CAA section 111(d) obligates the EPA to make such a finding before promulgating a Federal plan. CAA section 111(d)(1) directs the EPA to promulgate a process ''similar'' to that of CAA section 110, rather than a process that is identical. Therefore, the fact that a finding of failure to submit serves as the legal predicate for the EPA's obligation to issue a FIP under CAA section 110 does not mean that the EPA is also required to treat such a finding as a legal predicate for a Federal plan under CAA section 111(d). While a finding of failure to submit has value in notifying states and the public of the status of plans, the EPA does not find that it is integral to the timing of promulgating a Federal plan for states that do not submit plans. The EPA is therefore proposing to retain the requirement to make a finding of failure to submit, though this finding will no longer be considered the event that triggers the timeline for the EPA's issuance of a Federal plan. The EPA will make this finding by publishing a notice in the **Federal Register** anytime between the deadline for state plan submissions and the EPA's promulgation of a Federal plan. The EPA is soliciting comment on its proposal to link the authority and timeline for a Federal plan to the state plan deadline rather than to a finding of failure to submit (Comment B–1).

This proposed change is consistent with the requirements that applied to the EPA's issuance of CAA section 111(d) plans under subpart B before subpart Ba was issued in 2019. In subpart B (*i.e.,* the previously applicable implementing regulations for CAA section 111(d) EGs and currently applicable implementing regulations for CAA section 129 EGs), the EPA's obligation to promulgate a Federal plan is triggered by the state plan deadline. The EPA is proposing to revise 40 CFR 60.27a(c)(1) to adopt similar language from subpart B under 40 CFR 60.27(d). The EPA is seeking comment on its proposal to link the authority and timeline for a Federal plan to the state plan deadline particularly based on experiences with the application of subpart B's Federal plan authority to CAA section 129 implementation and other Federal plans issued under CAA section 111(d) where the authority and timeline for a Federal plan are based on the state plan deadline (Comment B–2).

C. Requirement for Outreach and Meaningful Engagement

The fundamental purpose of CAA section 111 is to reduce emissions from certain stationary sources that cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Therefore, a key consideration in the state's development of a state plan, in any significant plan revision,[23] and in the EPA's development of a Federal plan pursuant to an EG promulgated under CAA section 111(d) is the potential impact of the proposed plan requirements on public health and welfare. A robust and meaningful public participation process during plan development is critical to ensuring that the full range of these impacts are understood and considered.

States often rely primarily on public hearings as the foundation of their public engagement in their state plan development process because a public hearing is explicitly required pursuant to the applicable regulations. The existing provisions in subpart Ba (40 CFR 60.23a(c) through (f)) detail the public participation requirements associated with the development of a state plan. Per these implementing regulations, states must provide certain notice of, and conduct one or more public hearings on, their state plan before such plan is adopted and submitted to the EPA for review and action.[24] However, robust and meaningful public involvement in the development of a plan should sometimes go beyond the minimum requirement to hold a public hearing depending on who is most affected by and vulnerable to the impacts being addressed by the plan. The CAA section 111(d) program addresses existing

[23] Significant state plan revision includes, but is not limited to, any revision to standards of performance or to measures that provide for the implementation or enforcement of such standards.

[24] States may cancel a public hearing if no request for one is received during the required notification period. 40 CFR 60.23a(e).

facilities; however, communities may not have had a voice when the source was originally constructed, or previous outreach may have focused largely on engaging the sources and the industry itself.

In this action, the EPA is proposing to strengthen the public participation provisions in subpart Ba by requiring meaningful engagement with pertinent stakeholders in the state's development of a state plan, in any significant plan revision, and in the EPA's development of a Federal plan pursuant to an EG promulgated under CAA section 111(d). In particular, the EPA is proposing to add the requirement for meaningful engagement with pertinent stakeholders into 40 CFR 60.23a(i) and 60.27a(f) and to define meaningful engagement and pertinent stakeholders in 40 CFR 60.21a.

The EPA is proposing to define meaningful engagement as it applies to this subpart as ''. . . timely engagement with pertinent stakeholder representation in the plan development or plan revision process. Such engagement must not be disproportionate in favor of certain stakeholders. It must include the development of public participation strategies to overcome linguistic, cultural, institutional, geographic, and other barriers to participation to assure pertinent stakeholder representation, recognizing that diverse constituencies may be present within any particular stakeholder community. It must include early outreach, sharing information, and soliciting input on the state plan.'' The EPA is proposing to define that pertinent stakeholders ''. . . include, but are not limited to, industry, small businesses, and communities most affected by and vulnerable to the impacts of the plan or plan revision.''

In particular, pertinent stakeholders include those who are most affected by and vulnerable to the health or environmental impacts of pollution from the designated facilities addressed by the plan or plan revision. Increased vulnerability of communities may be attributable to, among other reasons, both an accumulation of negative and lack of positive environmental, health, economic, or social conditions within these populations or communities. Examples of such communities have historically included, but are not limited to, communities of color (often referred to as ''minority'' communities), low-income communities, Tribal and indigenous populations, and communities in the United States that potentially experience disproportionate health or environmental harms and risks as a result of greater vulnerability to environmental hazards. Sensitive populations (*e.g.,* infants and children, pregnant women, the elderly, individuals with disabilities exacerbated by environmental hazards) may also be most affected by and vulnerable to the impacts of the plan or plan revision depending on the pollutants or other factors addressed by an EG. An example of greater vulnerability to environmental hazards more generally is populations lacking the resources and representation to combat the effects of climate change, which could include populations exposed to greater drought or flooding, or damaged crops, food, and water supplies.

Tribal communities or communities in neighboring states may also be impacted by a state plan and, if so, should be identified as pertinent stakeholders. In addition, to the extent a designated facility would qualify for a less stringent standard through consideration of RULOF as described in section III.E.8 of this preamble, the state, must identify and engage with the communities most affected by and vulnerable to the health and environmental impacts from the designated facility considered in a state plan for RULOF provisions. The EPA expects that the inclusion of the definitions of meaningful engagement and pertinent stakeholders in subpart Ba provide the States specificity around the meaningful engagement requirement while allowing for flexibility in the implementation of such requirements.

The requirement for meaningful engagement will ensure that states share relevant information with and solicit input from pertinent stakeholders at critical junctures during plan development, which helps ensure that a plan is adequately addressing the potential impacts to public health and welfare that are the core concern of CAA section 111. Meaningful engagement can provide valuable information regarding health and welfare impacts experienced by the public (*e.g.,* reoccurring respiratory illness, missed work or school days due to illness associated with pollution, and other impacts) and allow regulatory authorities to explore additional options to improve public health and welfare. Because the CAA section 111(d) program is designed to address widely varying types of air pollutants that may have very different types of impacts, from highly localized to regional or global, ensuring fair and balanced participation among a broad set of pertinent stakeholders is critical. Early engagement is especially important for those stakeholders directly impacted by a particular state plan. In particular, the processes for meaningful engagement must allow for fair and balanced participation and must allow communities most affected by and vulnerable to the impacts of a plan an opportunity to be informed of and weigh in on that plan.

The EPA's authority for proposing to strengthen the public participation provisions by requiring meaningful engagement is provided by the authority of both CAA sections 111(d) and 301(a)(1). Under CAA section 111(d), one of the EPA's obligations is to promulgate a process ''similar'' to that of CAA section 110 under which states submit plans that implement emission reductions consistent with the BSER. CAA section 110(a)(1) requires states to adopt and submit SIPs after ''reasonable notice and public hearings.'' The Act does not define what constitutes ''reasonable notice and public hearings'' under CAA section 110, and therefore the EPA may reasonably interpret this requirement in promulgating a process under which states submit state plans.

Subpart Ba currently includes certain requirements for notice and public hearing under 40 CFR 60.23a(c) through (f). The notice requirements include prominent advertisement to the public of the date, time, and place of the public hearing, 30 days prior to the date of such hearing, and the advertisement requirement may be satisfied through the internet. *Id.* at (d). A state may choose to cancel a public hearing if no request for one is received during the required notification period.

The EPA recognizes that a fundamental purpose of the Act's notice and public hearing requirements is for all affected members of the public, and not just a particular subset, to participate in pollution control planning processes that impact their health and welfare.[25] Accordingly, in order for a meaningful opportunity for the public to participate in hearings over CAA section 111(d) state plans, the notice of such hearings must be reasonably adequate in its ability to reach affected members of the public. Many states provide for notification of public engagement through the internet, however there cannot be a presumption that such notification is adequate in reaching all those who are impacted by a CAA section 111(d) state plan and would

[25] Consistent with this principle of providing reasonable notice under the CAA, under programs other than CAA section 111(d), the EPA similarly requires states to provide specific notice to an area affected by a particular proposed action. See, *e.g.,* 40 CFR 51.161(b)(1) requiring specific notice for an area affected by a state or local agency's analysis of the effect on air quality in the context of the New Source Review program; 40 CFR 51.102(d)(2), (4), and (5) requiring specific notice for an area affected by a CAA section 110 SIP submission.

benefit the most from participating in a public hearing. For example, data shows that as many as 30 million Americans do not have access to broadband infrastructure that delivers even minimally sufficient speeds, and that 25 percent of adults ages 65 and older report never going online.[26] Examples of prominent advertisement for a public hearing, in addition to notice through the internet, may include notice through newspapers, libraries, schools, hospitals, travel centers, community centers, places of worship, gas stations, convenience stores, casinos, smoke shops, Tribal Assistance for Needy Families offices, Indian Health Services, clinics, and/or other community health and social services as appropriate for the emission guideline addressed.

Given the public health and welfare objectives of CAA section 111(d) in regulating specific existing sources, it is reasonable to require meaningful engagement as part of the state plan development public participation process in order to further these objectives. Additionally, CAA section 301(a)(1) provides that the EPA is authorized to prescribe such regulations ''as are necessary to carry out [its] functions under [the CAA].'' The proposed meaningful engagement requirement would effectuate the EPA's function under CAA section 111(d) in prescribing a process under which states submit plans to implement the statutory directives of this section. Therefore, the EPA is proposing additional meaningful engagement requirements in subpart Ba to ensure that pertinent stakeholders have reasonable notice of relevant information and the opportunity to participate in the state plan development throughout the process.

During the state plan process, the EPA expects states to identify the pertinent stakeholders, utilizing additional guidance that will be provided by applicable EG. In particular, the EG will provide information on impacts of designated pollutant emissions that EPA expects will assist the states in the identification of their pertinent stakeholders. As part of efforts to ensure meaningful engagement, states will share information and solicit input on plan development and on any accompanying assessments. This engagement will help ensure that plans achieve the appropriate level of emission reductions, that communities most affected by and vulnerable to the health and environmental impacts from the designated facilities share in the benefits of the state plan, and that these communities are protected from being adversely impacted by the plan. In addition, the EPA recognizes that emissions from the designated facilities could cross state and/or Tribal borders, and therefore may affect communities in neighboring states or Tribal lands. The EPA is soliciting comment on the proposed definitions of pertinent stakeholders and of meaningful engagement (Comment C–1) and on the proposed meaningful engagement requirement (Comment C–2). The EPA is also soliciting comment on how meaningful engagement should apply to pertinent stakeholders inside and outside of the borders of the state that is developing a state plan, for example if a state should coordinate with the neighboring state and/or Tribes for outreach or directly contact the affected communities (Comment C–3).

To ensure that a robust and meaningful public engagement process occurs as the states develop their CAA section 111(d) plans, the EPA is also proposing to amend the requirements in 40 CFR 60.27a(g) to include as part of the completeness criteria the requirements for states to demonstrate in their plan submittal how they provided meaningful engagement with the pertinent stakeholders. The state would be required to provide, in their plan submittal, evidence of meaningful engagement, including a list of the pertinent stakeholders, a summary of engagement conducted, and a summary of the stakeholder input provided. The EPA would evaluate the states' demonstrations regarding meaningful public engagement as part of its completeness evaluation of a state plan submittal. If a state plan submission does not meet the required elements for notice and opportunity for public participation, including requirements for meaningful engagement, this may be grounds for the EPA to find the submission incomplete or to disapprove the plan. The EPA is soliciting comment on the proposed inclusion of meaningful engagement in completeness criteria for state plan submission, (Comment C–4), as well as requesting examples or models of meaningful engagement performed by states, including best practices and challenges (Comment C–5).

The EPA further notes that the implementing regulations allow a state to request the approval of different state procedures for public participation pursuant 40 CFR 60.23a(h). The EPA proposes to require that such alternate state procedures do not supersede the meaningful engagement requirements, so that a state would still be required to comply with the meaningful participation requirements even if they apply for a different procedure than the other public notice and hearing requirements under 40 CFR 60.23a. The EPA is also proposing under 40 CFR 60.23a(i)(1) that states may apply for, and the EPA may approve, alternate meaningful engagement procedures if, in the judgement of the Administrator, the procedures, although different from the requirements of this subpart, in fact provide for adequate notice to and meaningful participation of the public. The EPA is soliciting comment on the distinction between request for approval of alternate state procedures to meet public notice and hearing requirements from those to meet meaningful engagement, and comment on the consideration of request for approval of alternate meaningful engagement procedures (Comment C–6).

D. Regulatory Mechanisms for State Plan Implementation

CAA section 111(d)(1) requires the EPA to promulgate regulations that establish a procedure ''similar'' to that provided by CAA section 110 for each state to ''submit to [the EPA] a state plan which . . . establishes standards of performance . . . and . . . provides for the implementation and enforcement of such standards.'' The EPA reasonably interprets this provision, particularly the ''similar'' clause, as referring to all the procedural provisions provided in CAA section 110 which serve the same purposes of providing useful flexibilities for states' and EPA's actions that help ensure emission reductions are appropriately and timely implemented.

The EPA is proposing to incorporate five regulatory mechanisms as amendments to the implementing regulations under 40 CFR part 60, subpart Ba, governing the processes under which states submit plans and the EPA acts on those plans. The regulatory mechanisms that are being proposed in this action include: (1) partial approval and disapproval of state plans by the EPA; (2) conditional approval of state plans by the EPA; (3) parallel processing of plans by the EPA and states; (4) a mechanism for a state plan call by the EPA of previously approved state plan revisions; and (5) an error correction mechanism for the EPA to revise its

[26] FACT SHEET: Biden-Harris Administration Mobilizes Resources to Connect Tribal Nations to Reliable, High-Speed internet (December 22, 2021). *https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/22/fact-sheet-biden-harris-administration-mobilizes-resources-to-connect-tribal-nations-to-reliable-high-speed-internet/*; 7 percent of Americans don't use the internet. Who are they? Pew Research Center (April 2, 2021), *https://www.pewresearch.org/fact-tank/2021/04/02/7-of-americans-dont-use-the-internet-who-are-they/*.

prior action on a state plan.[27] These mechanisms update the implementing regulations to better align with the flexible procedural tools that Congress added into section 110 of the CAA in the 1990 Amendments. The EPA is proposing to adopt and incorporate the mechanisms into subpart Ba as the EPA has interpreted and applied them in the context of CAA section 110.

The interpretation that CAA section 111(d)(1) authorizes the EPA to adopt procedures ''similar'' to those under CAA section 110 for the overall state plan process, and not just the initial plan submission process, is strengthened by the provisions in CAA section 111(d)(2), which provide that the EPA has the ''same'' authority to enforce state plan requirements as it does for SIPs under CAA sections 113 and 114, and to promulgate a Federal plan for a state that has failed to submit a satisfactory plan, as under CAA section 110(c). This is because, read together, CAA section 111(d)(1) and (2) provide the set of essential procedural requirements for state and Federal plans that generally reflect the essential procedural requirements for SIPs and FIPs in section 110.[28] In that context, it is reasonable to read CAA section 111(d)(1) as authorizing the EPA to promulgate procedures for section 111(d) that are comparable to CAA section 110 procedures for the overall state plan process, which is associated with those requirements.

The availability of these five regulatory mechanisms would streamline the state plan review and approval process, accommodate variable state processes, facilitate cooperative federalism, further protect public health and welfare, and generally enhance the implementation of the CAA section 111(d) program. Together, these mechanisms provide greater flexibility, reduce processing time, and have proven to be very useful tools for the review and processing of CAA section 110 SIPs. The EPA is seeking comment from all stakeholders on the incorporation of these five proposed mechanisms into subpart Ba (Comment D–1).

1. Partial Approval and Disapproval

The EPA is proposing a provision similar to that under CAA section 110(k)(3) for the EPA to partially approve and partially disapprove severable portions of a state plan submitted under CAA section 111(d). Under CAA section 110(k)(3), ''[i]f a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.'' Subpart Ba currently authorizes the EPA to ''approve or disapprove [the state] plan or revision or each portion thereof.'' (40 CFR 60.27a(b)). The EPA proposes to revise this provision so that it is similar to CAA section 110(k)(3), providing clarity on the EPA's authority to partially approve plans and the circumstances under which it may be used.

Pursuant to this proposal, the EPA may partially approve or partially disapprove a state plan when portions of the plan are approvable, but a discrete, severable portion is not. In such cases, the purposes of a CAA section 111(d) EG would be better served by allowing the state to move forward with implementing those portions of the plan that are approvable, rather than to disapprove the full plan. This mechanism is consistent with the *ALA* decision's emphasis on ensuring timely mitigation of harms to public health and welfare, as problematic parts of a state plan submission would not stall the implementation of emission reductions at designated facilities for which a portion of a plan could be approved, thus efficiently reducing the time from EG promulgation to implementation of emission reductions at those facilities.

As proposed, the portion of a state plan that the EPA may partially approve must be ''severable.'' A portion is severable when: (1) the approvable portion of the plan does not depend on or affect the portion of the plan that cannot be approved, and (2) approving a portion of the plan without approving the remainder does not alter the approved portion of a state plan in any way that renders it more stringent than the state's intent. See *Bethlehem Steel* v. *Gorsuch,* 742 F.2d 1028, 1034 (7th Cir. 1984). The EPA's proposed decision to partially approve and partially disapprove a plan must go through notice and comment rulemaking. As a result, the public will have an opportunity to submit comment on the appropriateness and legal application of this mechanism on a particular state plan submission. A partial disapproval of a plan submission would have the same legal effect as a full disapproval for purposes of the EPA's authority under CAA section 111(d)(2)(A) to promulgate, for the partially disapproved portion of the plan, a Federal plan for the state. See section III.A.4 of this preamble for proposed timelines for promulgation of a Federal plan. If the EPA does promulgate a Federal plan for a partially disapproved portion, the state may, at any time, submit a revised plan to replace that portion. If the state does so, and the EPA approves the revised plan, then the EPA would withdraw the Federal plan for that state.

This partial approval/disapproval mechanism also enables states to submit, and authorizes the EPA to approve or disapprove, state plans that are partial in nature and to address only certain elements of a broader program. For example, with this mechanism, states would be able to submit partial plans intended to replace discrete portions of a Federal plan, where appropriate. As proposed, partial submittals must meet all completeness criteria.

The EPA is soliciting comment on the reasonableness and appropriateness of this proposed partial approval/disapproval mechanism as described in this section (Comment D1–1).

2. Conditional Approval

The EPA is proposing a mechanism analogous to the authority under CAA section 110(k)(4) to grant the EPA the ability to conditionally approve a state plan under CAA section 111(d). Under CAA section 110(k)(4), ''[t]he Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.'' This provision authorizes the EPA to conditionally approve a plan submission that substantially meets the requirements of an EG but that requires some additional, specified revisions to be fully

[27] These regulatory mechanisms were proposed to be added to subpart B in 2015 and largely received support from states, the public, and stakeholders, but were never finalized. 80 FR 64965 (October 23, 2015).

[28] Compare CAA section 111(d)(1) (requiring states to submit state plans that include specified types of measures that, in turn, meet minimum EPA requirements) and section 111(d)(2) (indicating that the EPA must review and approve or disapprove state plans, requiring the EPA to promulgate a Federal plan if the state does not submit a satisfactory plan, authorizing the EPA to enforce state plan measures) with section 110(a)(1)–(2) (requiring states to submit SIPs that include specified types of measures that in turn meet minimum EPA requirements), section 110(k) (requiring the EPA to review and approve or disapprove SIPs), section 110(c) (requiring the EPA to promulgate a FIP if the state does not submit a plan or the EPA disapproves the state plan) and 113(a)(1) (authorizing the EPA to enforce SIP measures).

approvable. For the EPA to conditionally approve a submission, the state Governor or their designee must commit to adopt and submit specific enforceable provisions to remedy the stipulated plan deficiency. The provisions required to be submitted by the state pursuant to a conditional approval would be treated as an obligation to submit a plan revision and be subject to the same processes and timeframes for the EPA action as other plan revisions (*e.g.,* completeness determination, approval and/or disapproval). The EPA proposes that the state be required to commit to adopt and submit the necessary revisions to the EPA no later than 1 year from the effective date of the conditional approval.

As proposed, if the state fails to meet its commitment to submit the measures within 1 year, the conditional approval automatically converts to a disapproval. If a conditionally approved state plan converts to a disapproval due to either the failure of the state to submit the required measures or if the EPA finds the submitted measures to be unsatisfactory, such disapproval would be grounds for implementation of a Federal plan under CAA section 111(d)(2)(A). The EPA will publish a notice in the **Federal Register** and, if appropriate, on the public website established for the EG notifying the public that the conditional approval is converted to a disapproval. As described in section III.A.4 of this preamble, the EPA will promulgate a Federal plan within 12 months of state's failure to submit the required measures or the EPA's disapproval of measures submitted to address the conditional approval.

Incorporating this mechanism under the implementing regulations for CAA section 111(d) would have the benefit of allowing a state with a substantially complete and approvable program to begin implementing it, while also promptly making specific changes that ensure it fully meets the requirements of CAA section 111(d) and of the applicable EGs.

The EPA solicits comment on this proposed mechanism, including the timeframe for state adoption and submission of revisions to address the deficiencies that serve as the basis for the conditional approval (Comment D2–1), and the process and timing for promulgating a Federal plan if approvable revisions are not submitted (Comment D2–2).

3. Parallel Processing

The EPA is proposing to include a mechanism similar to that for SIPs under 40 CFR part 51 appendix V, section 2.3.1., for parallel processing a plan that does not meet all of the administrative completeness criteria under 40 CFR 60.27a(g)(2). This streamlined process allows the EPA to propose approval of such a plan in parallel with the state completing its process to fully adopt the plan in accordance with the required administrative completeness criteria, and then allows the EPA to finalize approval once those criteria have been fully satisfied.

In order to parallel process a plan, the EPA proposes to require that the state must meet the following requirements. The state must submit the proposed plan with a letter requesting the EPA propose approval through parallel processing in lieu of the letter required under 40 CFR 60.27a(g)(2)(i). Further, a state would be temporarily exempt from the administrative completeness criteria as defined by 40 CFR 60.27a(g)(2) regarding legal adoption of the plan (40 CFR 60.27a(g)(2)(ii) and (v)) and from public participation criteria (40 CFR 60.27a(g)(2)(vi), (vii), and (viii)), including the meaningful engagement criteria proposed in this action (see III.C of this preamble above, proposed at 40 CFR 60.27a(g)(2)(ix)), as appropriate. However, as with parallel processing for SIPs under 40 CFR part 51 appendix V, the EPA proposes to require that, in lieu of these administrative criteria, the state must include a schedule for final adoption or issuance of the plan and a copy of the proposed/draft regulation or the document indicating the proposed changes to be made, where applicable. Note that a proposed plan submitted for parallel processing must still meet all the criteria for technical completeness as defined by 40 CFR 60.27a(g)(3) and meet all other administrative completeness criteria as defined by 40 CFR 60.27a(g)(2). If these conditions are met, the submitted plan may be considered for purposes of the EPA's initial plan evaluation and proposed rulemaking action.

The exceptions to the administrative criteria described above only apply to the EPA's proposed action. If the EPA has proposed approval through parallel processing, the state must still submit a fully adopted and final plan that meets all of the completeness criteria under 40 CFR 60.27a(g) before the EPA can finalize its approval, including the requirements for legal adoption and public engagement. If the state finalizes and submits to the EPA a plan that includes changes from the plan the EPA has proposed for approval under parallel processing, the EPA will evaluate those changes for significance. If any such changes are found by the EPA to be significant (*e.g.,* changes to the stringency or applicability of a particular standard of performance), then the state submittal would be treated as an initial submission and the EPA would be required to re-propose its action on the final plan and to provide an opportunity for public comment.

Note further that once the state plan submission deadline passes, the EPA retains the authority to initiate development of a Federal plan at any time for a state that has not submitted a complete plan, even if a state has requested parallel processing and the EPA has proposed an action. The EPA intends to continue working collaboratively with states who are in the process of adopting and submitting state plans but notes that states must remain mindful of regulatory deadlines for CAA section 111(d) plan submissions even when seeking to use the parallel processing mechanism.

The EPA is requesting comment on the reasonableness of its proposal to add a parallel processing mechanism to subpart Ba (Comment D3–1), including the conditions under which a state may request parallel processing (Comment D3–2) and the conditions under which the EPA may allow for parallel processing (Comment D3–3).

4. State Plan Call

Under CAA section 110(k)(5), the EPA may call for a revision of a state plan ''[w]henever the Administrator finds that the . . . plan . . . is substantially inadequate to . . . comply with any requirement of [the Act].'' The EPA is proposing to add a mechanism analogous to this ''SIP call'' provision to subpart Ba under CAA section 111(d) which would authorize the EPA to find that a previously approved state plan does not meet the applicable requirements of the CAA or of the relevant EG and to call for a plan revision. This mechanism is a useful tool for ensuring that state plans continue to meet the requirements of the EGs and of the CAA over time. This is particularly important because EGs that achieve emission reductions from specific source categories may be implemented over many years.

The proposed state plan call mechanism would permit EPA to require a state to submit a revised state plan whenever it finds an approved CAA section 111(d) plan is ''substantially inadequate'' to comply with applicable requirements of the statute, the implementing regulations, and/or the applicable EG. The EPA finds that a plan call would be generally appropriate under two circumstances.

The first is when legal or technical conditions arise after the EPA's approval of a state plan that undermines the basis for the approval. Under these conditions, the approved plan could be considered substantially inadequate and require revision to align with current conditions. For example, a court decision subsequent to the approval of a plan may render that plan substantially inadequate to meet applicable requirements resulting from the change in law.[29] Additionally, the EPA may determine that technical conditions, such as design assumptions, about control measures that were the basis for a state plan approval later prove to be inaccurate, meaning that the plan would be substantially inadequate to achieve the emission reductions required by the EG and therefore the plan should be revised.[30] In response to a state plan call under such legal or technical circumstances, a state would be required to submit a plan revision so that the state plan is substantially adequate to meet applicable requirements, such as by updating a provision affected by a court decision or by revising control measures to achieve the required emission reductions.

The second circumstance under which the EPA could apply the state plan call mechanism is when a state fails to adequately implement an approved state plan. In this case, the approved state plan facially meets all applicable requirements, but a failure in implementation (*e.g.,* due to changes in available funding, resources, or legal authority at the state level) renders the plan substantially inadequate to meet the requirements of the EG and CAA section 111(d). In this circumstance, a state, in response to a plan call, would either be required to submit a plan revision that aligns with the state's actual implementation of the plan or to provide demonstration that the plan is being adequately implemented as approved.

Under the proposed state plan call provision, consistent with the SIP call process under CAA section 110(k)(5), after the EPA finds that a state's approved section 111(d) plan is substantially inadequate to comply with applicable requirements, the EPA shall publish notice of its finding in the **Federal Register**. The plan call notice will identify the plan inadequacies leading to the plan call and establish reasonable deadlines for submission of plan revisions and/or for demonstration of appropriate implementation of the approved plan.[31]

The EPA is further proposing to require that any deadline it establishes for the submission of a state plan revision shall not exceed 12 months after the date of the call for plan revisions. The EPA proposes to determine that, while this period is less than the time allotted for the submission of a full state plan (proposed in III.A.1 of this preamble above as 15 months), it provides a reasonable timeframe for public outreach and state processes while ensuring the deficiency is expeditiously corrected to address any outstanding public health and welfare concerns associated with a deficient plan, consistent with the *ALA* decision. The deadline for submission of state plan revisions to address the identified inadequacies will start when notice of the action is published in the **Federal Register**.

Any failure of a state to submit necessary revisions by the date set in the call for state plan revisions constitutes a failure to submit a required plan submission. Therefore, pursuant to CAA section 111(d)(2)(A), the EPA would have the authority to promulgate a Federal plan for the state within 12 months, as proposed in section III.A.4 of this preamble, after the necessary revisions are due. If the state fails to submit a plan revision, to make an adequate demonstration within the prescribed time, or if the EPA disapproves a submission, then the EPA will promulgate a Federal plan addressing the deficiency for sources within that state.[32]

The EPA solicits comment on the proposed state plan call mechanism as described in this section (Comment D4–1), including the circumstances of use (Comment D4–2), the process of notification (Comment D4–3), and the proposed maximum deadline for submission of plan revisions (Comment D4–4).

5. Error Correction

Under CAA section 110(k)(6), the EPA may, on its own, revise its prior action on a state plan under certain circumstances: ''[w]henever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State.'' The EPA is proposing to add a mechanism analogous to this 'error correction' provision to subpart Ba under CAA section 111(d).

This error correction provision would authorize the EPA to revise its prior action when the EPA determines its own action on the state plan was in error. Specifically, this provision would allow the EPA to revise its prior action in the same manner as used for the original action (*e.g.,* through rulemaking) without requiring any further submissions from the state. In this manner, the proposed error correction mechanism does away with unnecessary burdens on states to respond to an error made by the EPA, such as submitting a plan revision and the public participation related requirements under 40 CFR 60.23a (*e.g.,* providing notice and holding a public hearing).

CAA section 110(k)(6) is phrased broadly, and its legislative history makes clear that it ''explicitly authorizes EPA on its own motion to make a determination to correct any errors it may make in taking any action, such as . . . approving or disapproving any plan.'' See House Report No. 101–490 at 220. The circumstances that may give rise to an error that the EPA may correct with this mechanism depend on the specific facts and plan at issue, and the use of the mechanism is more appropriately justified on a case-by-case basis. The EPA has previously used CAA section 110(k)(6) for correction of technical or clerical errors,[33] for removal of substantive provisions from an EPA-approved state plan that did not relate to attainment of the NAAQS or other CAA program,[34] and when EPA, in error and without knowledge, approved a SIP that did not meet applicable requirements at the time of

[29] An example of this circumstance in the context of CAA section 110 is the 2015 ''SSM SIP Call'', which required states to correct previously approved SIP provisions based on subsequent court decisions regarding startup, shutdown, and malfunctions (SSM) operations. 80 FR 33840, June 12, 2015.

[30] For example, the 1998 ''NO_X SIP call'' required states to submit SIP revisions addressing NO_X emissions found, after SIP approvals, to significantly impact the attainment of air quality standards in other states due to atmospheric transport. 63 FR 57356, October 27, 1998.

[31] If the EPA has promulgated a Federal plan to implement an EG that does not contain the deficiency, a potential corrective action could include a plan revision to adopt the Federal plan.

[32] If the EPA has promulgated a Federal plan to implement an EG that does not contain the deficiency, the EPA could apply the existing Federal plan to the state if appropriate.

[33] For example, see 74 FR 57051, November 3, 2009, for correction of clerical and typographical errors in a portion of an Arizona SIP.

[34] For example, see 85 FR 73636, November 19, 2020, for removal of an air pollution nuisance rule from an Ohio SIP and 86 FR 24505, May 7, 2021, for removal of asbestos requirements from a Kentucky SIP.

approval.[35] These examples are not the only circumstances when the EPA has used CAA section 110(k)(6) in the past and do not limit the EPA for circumstances of error correction under section 111(d) in the future.

While the EPA maintains that this proposed error mechanism would be available for acting on state plans when appropriate, the EPA expects that it will work with states, as it has done previously in the SIP context, to correct any deficiencies in their plans. The EPA is soliciting comment on this error correction mechanism (Comment D5–1) and the conditions under which it may be applied (Comment D5–2). The EPA is seeking comment on these five proposed mechanisms from all stakeholders.

E. Remaining Useful Life and Other Factors (RULOF) Provisions

The EPA is proposing revisions to 40 CFR 60.24a(e) in order to provide clear requirements for the consideration of RULOF in state plans that propose to set a less stringent standard for a particular source.[36] This provision currently allows states to consider RULOF to apply a less stringent standard of performance for a designated facility or class of facilities if they demonstrate one of the three following circumstances: unreasonable cost of control resulting from plant age, location, or basic process design; physical impossibility of installing necessary control equipment; or other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable. The implementing regulations also specify that, absent such a demonstration, the state's standards of performance must be ''no less stringent than the corresponding'' EG. 40 CFR 60.24a(c). This proposal would largely retain this provision, including the three circumstances under which a less stringent standard of performance may be applied, and provide further clarification of what a state must demonstrate in order to invoke RULOF when submitting a state plan. Specifically, the proposal would require the state to demonstrate that a particular facility cannot reasonably achieve the degree of emission limitation achievable through application of the BSER, based on one or more of the three circumstances. The EPA is also proposing to clarify the third circumstance by specifying that a state may apply a less stringent standard if the state demonstrates, to the EPA's satisfaction, that factors specific to the facility are fundamentally different than those considered by the EPA in determining the BSER.

Section III.E.1 of this preamble describes the statutory and regulatory background, and section III.E.2 of this preamble explains the agency's rationale for its revisions. Sections III.E.3–8 of this preamble describe further proposed additions to the RULOF provision in cases where states seek to apply a standard that is less stringent than the degree of emission limitation achievable through application of the BSER. These proposed additions include requirements for the calculation of a less stringent standard, contingency requirements in cases where an operating condition is the basis for RULOF, and the consideration of impacted communities. Finally, section III.E.9 of this preamble describes proposed revisions to address cases where states seek to apply a more stringent standard.

1. Statutory and Regulatory Background

Under CAA section 111(d), the EPA is required to promulgate regulations under which states submit plans establishing standards of performance for designated facilities. While states establish the standards of performance, there is a fundamental obligation under CAA section 111(d) that such standards reflect the degree of emission limitation achievable through the application of the BSER, as determined by the EPA. As previously described, this obligation derives from the definition of ''standard of performance'' under CAA section 111(a)(1). The EPA identifies the degree of emission limitation achievable through application of the BSER as part of its EG. 40 CFR 60.22a(b)(5). While standards of performance must generally reflect the degree of emission limitation achievable through application of the BSER, CAA section 111(d)(1) also requires that the EPA regulations permit the states, in applying a standard of performance to a particular designated facility, to take into account the designated facility's RULOF.

The 1970 version of CAA section 111(d) made no reference to the consideration of RULOF in the context of standards for existing sources. In the 1975 regulations promulgating subpart B, however, the EPA included a so-called variance provision. For health-based pollutants, states could apply a standard of performance less stringent than the EPA's EGs based on cost, physical impossibility, and other factors specific to a designated facility that make the application of a less stringent standard significantly more reasonable. 40 CFR 60.24(f). For welfare-based pollutants, states could apply a less stringent standard by balancing the requirements of an EG ''against other factors of public concern.'' 40 CFR 60.24(d). As part of the 1977 CAA amendments, Congress amended CAA section 111(d)(1) to require that the EPA's regulations under this section ''shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.'' At the time, the EPA considered the variance provision under subpart B to meet this requirement and did not revise the provision subsequent to the 1977 CAA amendments until promulgating new implementing regulations in 2019 under subpart Ba. As part of the 2019 revisions, the EPA removed the health and welfare-based pollutants distinction and collapsed the associated requirements of the previous variance provision into a single, new RULOF provision. 40 CFR 60.24a(e).[37]

2. Rationale for the Proposed Revisions

As previously described, the statute expressly requires the EPA to permit states to consider RULOF for a particular designated facility when applying a standard of performance to that facility. The consideration of remaining useful life in particular can be an important consideration, as the cost of control for a specific designated facility that is expected to cease operations in the near term could significantly vary from the average cost calculations done as part of the BSER determination for the source category as a whole. In such an instance, and in others as described throughout section III.E of this preamble, a less stringent standard may be justifiable in lieu of a standard of performance that reflects the presumptive level of stringency. However, as currently written, the RULOF provision in subpart Ba does not provide clear parameters for states on how and when to apply a standard less stringent than the presumptive level of stringency given in an EG to a particular source.

As written, the references to reasonableness in this provision are potentially subject to widely differing interpretations and inconsistent

[35] For example, see 86 FR 23054, April 30, 2021, for error correction with respect to Kentucky's ''good neighbor obligations'' and SIP disapproval.

[36] The court's vacatur in *ALA* did not impact 40 CFR 60.24a(e).

[37] Petitioners did not challenge, and the court in *ALA* did not vacate, the new RULOF provision under 40 CFR 60.24a(e).

application among states developing plans, and by the EPA in reviewing them. Without a clear analytical framework for applying RULOF, the current provision may be used by states to set less stringent standards such that they could effectively undermine the overall presumptive level of stringency envisioned by the EPA's BSER determination and render it meaningless. Such a result is contrary to the overarching purpose of CAA section 111(d), which is generally to require meaningful emission reductions from designated facilities based on the BSER in order to mitigate pollution which endangers public health or welfare.

Additionally, while states have discretion to consider RULOF under CAA section 111(d), it is the EPA's responsibility to determine whether a state plan is ''satisfactory,'' [38] which includes evaluating whether RULOF was appropriately considered. The relevant dictionary meaning of ''satisfactory'' is ''fulfilling all demands or requirements.'' The American College Dictionary (''ACD'') 1078 (C.L. Barnhart, ed. 1970). In addition to the requirements of the applicable emission guideline, state plans must be consistent with the underlying statutory purpose of mitigating the air pollution emissions which endanger public health or welfare. Thus, the most reasonable interpretation of a ''satisfactory plan'' is a CAA section 111(d) plan that meets the applicable conditions or requirements, which means that the EPA must assess a state's application of RULOF to determine whether it meets the regulatory requirements and whether the state employed RULOF in a manner that supports the statutory purpose. That is, the EPA must determine both whether the plan meets the requirements of the particular emission guideline, as well as meets the requirements of the implementing regulations that the EPA is directed to promulgate pursuant to CAA section 111(d).[39]

The EPA's determination of whether each plan is ''satisfactory'', including the application of RULOF, must be generally consistent from one plan to another. If the states do not have clear parameters for how to consider RULOF when applying a standard of performance to a designated facility, then they face the risk of submitting plans that the EPA may not be able to consistently approve as satisfactory. For example, under the current broadly structured provision, two states could consider RULOF for two identically situated designated facilities and apply completely different standards of performance on the basis of the same factors. In this example, it may be difficult for the EPA to substantiate finding both plans satisfactory in a consistent manner, and the states and sources risk uncertainty as to whether each of the differing standards of performance would be approvable. Accordingly, providing a clear analytical framework for the invocation of RULOF will provide regulatory certainty for states and the regulated community as they seek to craft satisfactory plans that EPA can ultimately approve.

Notably, CAA section 111(d) does not require states to consider RULOF, but rather requires that the EPA's regulations ''permit'' states to do so. In other words, the EPA must provide states with the ability to account for RULOF, but states may instead choose to establish a standard of performance that is the same as the presumptive level of stringency set forth in the EGs. The optionality, rather than mandate, for states to account for RULOF further supports the notion that this provision is not intended to undermine the presumptive level of stringency in an EG for the source category broadly. The EPA is not aware of any CAA section 111(d) EGs under which an EPA-approved state plan has previously considered RULOF to apply a standard of performance that deviates from the presumptive level of stringency. Clarifying parameters may better enable states to effectively use this provision in developing their state plans without undermining the overall purpose of CAA section 111 to mitigate pollution which endangers public health or welfare.

For these reasons, the EPA is proposing to revise the RULOF provision under subpart Ba, consistent with the statutory construct and goals of CAA section 111(d), in order to provide states and sources with clarity regarding the requirements that apply to the development and approvability of state plans that consider RULOF when applying a standard of performance to a particular designated facility. The following describes the guiding principles for the EPA's proposed revisions.

CAA section 111(a)(1) requires that the EPA determine the BSER is ''adequately demonstrated'' for the regulated source category. In determining whether a given system of emission reduction qualifies as BSER, CAA section 111(a)(1) requires that the EPA take into account ''the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements.'' The EPA's proposed revisions to clarify the RULOF provision do so by tethering the states' RULOF demonstration to the statutory factors the EPA considered in the BSER determination. This is appropriate under the statute because the EPA will have demonstrated that the BSER identified in the EG is ''adequately demonstrated'' as achievable for sources broadly within the source category. Therefore, RULOF is appropriately applied to permit states to address instances where the application of the BSER factors to a particular designated facility is fundamentally different than the determinations made to support the BSER and presumptive level of stringency in the EG. For example, the D.C. Circuit has stated that to be ''adequately demonstrated,'' the system must be ''reasonably reliable, reasonably efficient, and . . . reasonably expected to serve the interests of pollution control without becoming exorbitantly costly in an economic or environmental way.'' *Essex Chem. Corp.* v. *Ruckelshaus,* 486 F.2d 427, 433 (D.C. Cir. 1973). The court has further stated that the EPA may not adopt a standard in evaluating cost that would be ''exorbitant,'' [40] ''greater than the industry could bear and survive,'' [41] ''excessive,'' [42] or ''unreasonable.'' [43] These formulations use reasonableness in light of the statutory factors as the standard in evaluating cost, so that a control technology may be considered the ''best system of emission reduction . . . adequately demonstrated'' if its costs are reasonable (*i.e.,* not exorbitant, excessive, or greater than the industry can bear), but cannot be considered the BSER if its costs are unreasonable. Similarly, in making the BSER

[38] CAA section 111(d)(2)(A) authorizes the EPA to promulgate a Federal plan for any state that ''fails to submit a satisfactory plan'' establishing standards of performance under section 111(d)(1). Accordingly, the EPA interprets ''satisfactory'' as the standard by which the EPA reviews state plan submissions.

[39] Although there is no case law specifically on the standard of review of a section 111(d)(1) state plan or the EPA's duty to approve satisfactory plans, the EPA's action on a 111(d)(1) state plan is structurally identical to the EPA's action on a SIP. Under section 110(k)(3), EPA must approve a SIP that meets all requirements of the Act. See *Train* v. *NRDC,* 421 U.S. 60 (1975) (discussing the 1970 version of the Act); *Virginia* v. *EPA,* 108 F.3d 1397, 1408–10 (D.C. Cir. 1995) (discussing the 1970, 1977, and 1990 versions).

[40] *Lignite Energy Council* v. *EPA,* 198 F.3d 930, 933 (D.C. Cir. 1999).

[41] *Portland Cement Ass'n* v. *EPA,* 513 F.2d 506, 508 (D.C. Cir. 1975).

[42] *Sierra Club* v. *Costle,* 657 F.2d 298, 343 (D.C. Cir. 1981).

[43] *Sierra Club* v. *Costle,* 657 F.2d 298, 343 (D.C. Cir. 1981).

determination, the EPA must evaluate whether a system of emission reduction is ''adequately demonstrated'' for the source category based on the physical possibility and technical feasibility of control. Under this construct, it naturally follows that most designated facilities within the source category should be able to implement the BSER at a reasonable cost to achieve the presumptive level of stringency, and that RULOF will be justifiable only for a subset of sources for which implementing the BSER would impose unreasonable costs or not be feasible due to unusual circumstances that are not applicable to the broader source category that the EPA considered when determining the BSER.[44]

The proposed revisions to the regulatory RULOF provision, as described in section III.E. 3–8 of this preamble, are also consistent with how the EPA has approached RULOF in the implementing regulations previously. Subparts B and Ba both currently contain the same three circumstances for when states may account for RULOF, and reasonableness in light of the statutory criteria is an element of all three circumstances. Under those subparts as currently written, states may consider RULOF if they can demonstrate unreasonable cost of control, physical impossibility of control, or other factors that make application of a less stringent standard ''significantly more reasonable.'' 40 CFR 60.24(f) and 60.24a(e). The EPA's proposal retains the first circumstance in whole and revises the second one to add ''technical infeasibility'' of installing a control as a situation where application of consideration of RULOF may be appropriate. The proposal further clarifies the third catch-all circumstance, which the first two circumstances also fall under, by specifying that states may consider RULOF to apply a less stringent standard if factors specific to a facility are fundamentally different from the factors considered in the determination of the BSER in an EG. The proposed clarification of this third criteria provides parameters for states and the EPA in developing and assessing state plans, as this criteria was previously vague and potentially open-ended as to the circumstances under which states could consider RULOF.

The ''fundamentally different'' standard, which undergirds all three circumstances, is also consistent with other variance provisions that courts have upheld for environmental statutes. For example, in *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011 (D.C. Cir. 1978), the court considered a regulatory provision promulgated under the Clean Water Act (CWA) that permitted owners to seek a variance from the EPA's national effluent limitation guidelines under CWA sections 301(b)(1)(A) and 304(b)(1). The EPA's regulation permitted a variance where an individual operator demonstrates a ''fundamental difference'' between a CWA section 304(b)(1)(B) factor at its facility and the EPA's regulatory findings about the factor ''on a national basis.'' *Id.* at 1039. The court upheld this standard as ensuring a meaningful opportunity for an operator to seek dispensation from a limitation that would demand more of the individual facility than of the industry generally, but also noted that such a provision is not a license for avoidance of the Act's strict pollution control requirements. *Id.* at 1035.

For the reasons described in this section, the EPA is proposing to clarify the existing RULOF provision under 40 CFR 60.24a(e) by: (1) revising the threshold requirements for consideration of RULOF; (2) adding requirements for calculating a less stringent standard accounting for RULOF; (3) adding requirements for consideration of communities most affected by and vulnerable to the health and environmental impacts from the designated facilities being addressed; and (4) adding requirements for the types of information and evidence the states must provide to support the invocation of RULOF in a state plan. The EPA solicits comment on the proposed revisions described in the following sections (Comment E2–1), including the use of the BSER factors as a framework governing the invocation and application of the RULOF provision (Comment E2–2). The EPA notes a specific EG may provide additional requirements or supersede the requirements of the implementing regulations. 40 CFR 60.20a(a)(1). This extends to any requirements of the RULOF provision, as the EPA cannot necessarily anticipate the appropriate and potentially unique implementation needs for every future EG. The EPA solicits comment on the circumstances under which it would be appropriate for an EG to provide additional requirements or supersede the requirements of these proposed revisions to the RULOF provision (Comment E2–3).

The EPA also solicits comment about whether, instead of establishing firm requirements for the application of RULOF, the EPA should instead consider establishing a framework, consistent with the proposed requirements in the following discussion, pursuant to which state plans would be considered presumptively approvable (Comment E2–4). In this scenario, states would have certainty regarding what type of demonstration the EPA would find satisfactory as they develop their plans, but states could also submit an alternative RULOF demonstration for the EPA's consideration. In the latter case, states would bear the burden of proving to the EPA that they have proposed a satisfactory alternative analysis and standard, considering all factors relevant to addressing emissions from the source or sources at issue. The EPA also solicits comment on what different approaches might be appropriate for a state in applying RULOF to a particular source and that the EPA should consider in determining whether to finalize the provisions discussed below, either as requirements or as presumptions (Comment E2–5).

Note that the EPA considers the proposed RULOF provisions to apply in circumstances distinct from the flexible compliance mechanisms, such as trading and averaging, discussed in section III.G.1 of this preamble. In other words, these provisions would apply where a state intends to *depart* from the presumptive standards in the EG and propose a less stringent standard for a designated facility (or class of facilities), and not where a state intends to *comply* by demonstrating that a facility or group of facilities subject to a state program would, in the aggregate, achieve equivalent or better reductions than if the state instead imposed the presumptive standards required under the EG at individual designated facilities.

3. Threshold Requirements for Considering Remaining Useful Life and Other Factors

Under the existing RULOF provision in subpart Ba, 40 CFR 60.24a(e), a state may only account for RULOF in applying a standard of performance provided that it makes a demonstration based on one of three criteria. These criteria are: (1) unreasonable cost of control resulting from plant age,

[44] This construct is also supported by CAA section 111(d) use of the term ''establishing'' in directing states to create and set standards of performance. As previously described, ''standard of performance'' is defined under CAA section 111(a)(1) as reflecting the degree of emission limitation achievable through application of the BSER, which sets the initial parameters for development of the standards of performance by states. The statute does not provide that states may account for RULOF in ''establishing'' standards of performance in the first instance, but permits states to do so in ''applying'' such standards to a particular source.

location, or basic process design; (2) physical impossibility of installing necessary control equipment; or (3) other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable. However, the existing version of this provision in subpart Ba provides no further guidance on what constitutes reasonableness or unreasonableness for these demonstrations. The EPA proposes to clarify this provision by revising it to require that in order to account for RULOF in applying a less stringent standard of performance to a designated facility, a state must demonstrate that the designated facility cannot reasonably apply the BSER to achieve the degree of emission limitation determined by the EPA because it entails (1) an unreasonable cost of control resulting from plant age, location, or basic process design; (2) physical impossibility or technical infeasibility of installing necessary control equipment; or (3) other circumstances specific to the facility (or class of facilities) that are fundamentally different from the information considered in the determination of the BSER in the emission guidelines.[45] The first criterion remains the same as under the existing RULOF provision in 40 CFR 60.24a(e). For the second criterion, the EPA is proposing to add a reference to technical infeasibility, as a similar yet distinct factor from that of physical impossibility of control. Finally, the EPA is proposing to revise the third criterion by referring to any circumstances at a specific designated facility that are ''fundamentally different from the information [the EPA] considered in the determination of the best system of emission reduction'', rather than the current regulation, which applies to factors ''that make application of a less stringent standard or final compliance time significantly more reasonable.'' This revision to the third criterion will ensure that application of RULOF is akin to the types of circumstances anticipated by the first two criteria and consistent with the statutory construct of CAA section 111(d), as further described below, rather than based on subjective criteria that is untethered to the statute and that could result in widely diverging and potentially arbitrary application by states.

The EPA proposes to require that, in order to demonstrate that a designated facility cannot reasonably meet the presumptive level of stringency based on one of these three criteria, the state must show that implementing the BSER is not reasonable for the designated facility due to fundamental differences between the factors the EPA considered in determining the BSER, such as cost and technical feasibility of control, and circumstances at the designated facility.

Per the requirements of CAA section 111(a)(1), the EPA determines the BSER by first identifying control methods that it considers to be adequately demonstrated, and then determining which are the best systems by evaluating (1) the cost of achieving such reduction, (2) health and environmental impacts, (3) energy requirements, (4) the amount of reductions, and (5) advancement of technology. So, for example, if the EPA applied a specific dollar-per-ton threshold in determining the BSER, the state would be required to show that the cost of implementing the BSER in order to achieve the presumptive level of stringency at a particular designated facility is unreasonably high relative to the EPA's cost threshold applied in the EG. Or, by way of further example, if the EPA were to determine that a specific back-end control technology at a 95 percent reduction in emissions of a specific pollutant is the BSER for a source category, a state could evaluate whether it would be physically possible to install that control technology at a designated facility given the size and physical constraints needed to install it. If the state could show that the cost-per-ton was significantly higher at a specific designated facility or that a specific designated facility does not have adequate space to reasonably accommodate the installation, that designated source may be evaluated for a less stringent standard because of the consideration of RULOF. Requiring states to hew to the same types of factors and analyses considered in the EPA's BSER determination in making the demonstration that the BSER is not reasonable to implement at a particular designated facility is consistent with the statutory construct that defines RULOF as a limited exception to the level of stringency otherwise required by the BSER.

In examining the factors that the EPA considered in determining the BSER and how they apply to a specific facility, states may not invoke RULOF based on minor, non-fundamental differences. There could be instances where a designated facility may not be able to comply with the level of stringency required by the EG based on the precise metrics of the BSER determination but is able to do so within a reasonable margin. For example, if the EPA determined a BSER based on a cost-effectiveness threshold of $500/ton, it would not be reasonable for a state to apply the RULOF provision to propose a less stringent standard for a designated facility that can meet the standard of performance at a slightly higher cost, such as $525/ton. There might also be instances where the EPA determines the BSER for a source category as a particular technology, but a particular designated facility does not currently have the capability to implement that technology, and it would be cost prohibitive to gain that capability. However, if that designated facility has the ability instead to reasonably install a different, non-BSER technology to achieve the presumptive level of stringency, the designated facility would not be eligible for a less stringent standard that accounts for RULOF. The EPA notes the examples described here are meant to be illustrative hypotheticals and are not determinative of whether state plans that include similar scenarios would be approvable under a specific EG.

The EPA acknowledges that what is considered reasonable in light of the statutory factors is a fact-specific inquiry based on the source category and pollutant that is being regulated pursuant to a particular EG, and that the EPA cannot anticipate and address all circumstances that may arise in these general implementing regulations. Thus, the EPA may consider additional factors and establish additional requirements governing the consideration of RULOF, including what deviations from the presumptive standard may be considered reasonable, in a particular EG.

The EPA solicits comment on the proposal to require states to demonstrate, as a threshold matter when determining whether a state may account for RULOF in order to set a less stringent standard, that the designated facility cannot reasonably apply the BSER to achieve the presumptive level of stringency determined by the EPA (Comment E3–1). The EPA further solicits comment whether other considerations should inform the circumstances under which the EPA should permit RULOF to be used to set a less stringent standard for a particular source (Comment E3–2).

[45] States may also account for RULOF when applying standards of performance to a class of designated facilities. For purposes of administrative efficiency, a state may be able to calculate a uniform standard of performance that accounts for RULOF using a single set of demonstrations to meet the proposed requirements described in this section if the group of sources has similar characteristics.

4. Calculation of a Standard Which Accounts for Remaining Useful Life and Other Factors

If a state has made the proposed demonstration that accounting for RULOF is appropriate for a particular designated facility, the state may then apply a less stringent standard. The current RULOF provision in subpart Ba is silent as to how a less stringent standard should be calculated, raising the potential for inconsistent application of this provision across states and the potential for the imposition of a standard less stringent than what would be reasonably achievable by a designated facility. In order to fill this gap and ensure the integrity of the CAA section 111(d) program, the EPA is proposing several requirements that would apply for the calculation of a standard of performance that accounts for RULOF. The proposed requirements described in this section are designed to provide a framework for the state's analysis in evaluating and identifying a less stringent standard, and in doing so would prevent the application of a standard that is less stringent than what is otherwise reasonably achievable by a particular designated facility, while remaining general in order to account for possible differences across source categories and designated facilities that may be addressed by specific EGs.

The EPA is first proposing to require that the state determine and include, as part of the plan submission, a source-specific BSER for the designated facility. As described previously, the statute requires the EPA to determine the BSER by considering control methods that it considers to be adequately demonstrated, and then determining which are the best systems by evaluating (1) the cost of achieving such reduction, (2) health and environmental impacts, (3) energy requirements, (4) the amount of reductions, and (5) advancement of technology. To be consistent with this statutory construct, the EPA proposes that in determining a less stringent BSER for a designated facility, a state must also consider all these factors in applying RULOF for that source.

Specifically, the state in its plan submission must identify all control technologies available for the source and evaluate the BSER factors for each technology, using the same metrics and evaluating them in the same manner as the EPA did in developing the EG using the five criteria noted above.[46] For example, if the EPA evaluated capital costs as part of its cost analysis in setting the BSER, the state must do the same in evaluating a control technology for an individual designated facility, rather than selecting a different cost metric. The state must then calculate the emission reductions that applying the source-specific BSER would achieve and select the standard which reflects this degree of emission limitation. This standard must be in the form or forms (*e.g.,* numerical rate-based emission standard) as required by the specific EG. The EPA notes there may be cases where a state determines that a designated facility cannot reasonably implement the BSER but can instead reasonably implement another control measure to achieve the same level of stringency required by an EG. In such cases, the standard of performance that reflects the source-specific BSER would be the same level of stringency as the degree of emission limitation achievable through application of the EPA's BSER.

The EPA solicits comment on these proposed requirements for the calculation and form or forms of the less stringent standard that accounts for remaining useful life and other factors (Comment E4–1). The EPA believes that the five identified BSER factors generally address all relevant information that states would reasonably consider in evaluating the emission reductions reasonably achievable for a designated facility. Moreover, the EPA considers that these factors provide states with the discretion to weigh these factors in determining the BSER and establishing a reasonable standard of performance for the source. However, the EPA solicits comments on whether there are additional factors, not already accounted for in the BSER analysis, that the EPA should permit states to consider in determining the less stringent standard for an individual source (Comment E4–2). The EPA also solicits comments on whether we should consider these factors to be part of a presumptively approvable framework for applying a less stringent standard of performance, rather than requirements, and, if so, what different approaches states might use to evaluate and identify less stringent standards that the EPA should consider to be satisfactory in evaluating state plans that apply RULOF (Comment E4–3).

The EPA notes that CAA section 111(d) requires that state plans include measures that provide for the implementation and enforcement of a standard of performance. This requirement therefore applies to any standard of performance established by a state that accounts for RULOF. Such measures include monitoring, reporting, and recordkeeping requirements, as required by 40 CFR 60.25a, as well as any additional measures specified under an applicable EG. In particular, any standard of performance that accounts for RULOF is also subject to the requirement under subpart Ba that the state plan submission include a demonstration that each standard is quantifiable, non-duplicative, permanent, verifiable, and enforceable. 40 CFR 60.27a(g)(3)(vi). The EPA is not proposing to modify these requirements, and therefore not reopening them in this action.

5. Contingency Requirements

The EPA recognizes that a source's operations may change over time in ways that cannot always be anticipated or foreseen by the EPA, state, or designated facility. This is particularly true where a state seeks to rely on a designated facility's operational conditions, such as the source's remaining useful life or restricted capacity, as a basis for setting a less stringent standard. If the designated facility subsequently changes its operating conditions after the state applies a less stringent standard of performance, there is potential for the standard to not match what is reasonably achievable by a designated facility, resulting in forgone emission reductions and undermining the level of stringency set by an EG. For example, a state may seek to invoke RULOF for an electric generating unit (EGU) on the basis that it is running at lower utilization (and therefore less efficiently) than is anticipated by the BSER and intends to do so for the duration of the compliance period required by an EG. Under this scenario, the state may be able to demonstrate that it is not reasonably cost-effective for the designated facility to implement the BSER in order to achieve the presumptive level of stringency, and the state could set a less stringent standard of performance for this EGU. However, because reduced utilization is not a physical constraint on the designated facility's operations, it is possible that the source's utilization could increase in the future without any other legal constraint.

The implementing regulations do not currently address this potential scenario. To address this issue, the EPA is proposing to add a contingency requirement to the RULOF provision

[46] To the extent that a state seeks to apply RULOF to a class of facilities that the state can demonstrate are similarly situated in all meaningful ways, the EPA proposes to permit the state to conduct an aggregate analysis of these factors for the entire class.

that would require a state to include in its state plan a condition making a source's operating condition, such as remaining useful life or restricted capacity, enforceable whenever the state seeks to rely on that operating condition as the basis for a less stringent standard. This requirement would not extend to instances where a state applies a less stringent standard on the basis of an unalterable condition that is not within the designated source's control, such as technical infeasibility, space limitations, water access, or geologic sequestration access. Rather, this requirement addresses operating conditions such as operation times, operational frequency, process temperature and/or pressure, fuel parameters, and other conditions that are subject to the discretion and control of the designated facility.

As previously discussed, the state plan submission must also include measures for the implementation and enforcement of a standard that accounts for RULOF. For standards that are based on operating conditions that a facility has discretion over and can control, the operating condition and any other measure that provides for the implementation and enforcement of the less stringent standard must be included in the plan submission and as a component of the standard of performance. For example, if a state applies a less stringent standard for a designated facility on the basis of a lower capacity factor, the plan submission must include an enforceable requirement for the source to operate at or below that capacity factor, and include monitoring, reporting, and recordkeeping requirements that will allow the state, the EPA, and the public to ensure that the source is in fact operating at that lower capacity. A specific EG may detail supplemental or different requirements on implementing the proposed general requirement that a state plan submission include both the operating condition that is the basis for a less stringent standard, and measures to provide for the implementation and enforcement of such standard.

The EPA notes there may be circumstances under which a designated facility's operating conditions change permanently so that there may be a potential violation of the contingency requirements approved as federally enforceable components of the state plan. For example, a designated facility that was previously running at lower capacity now plans to run at a higher capacity full time, which conflicts with the federally enforceable state plan requirement that the facility operate at the lower capacity. To address this concern, a state may submit a plan revision to reflect the change in operating conditions. Such a plan revision must include a new standard of performance that accounts for the change in operating conditions. The plan revision would need to include a standard of performance that reflects the level of stringency required by the EG and meet all applicable requirements, or if a less stringent standard is still warranted for other reasons, the plan revision would need to meet all of the applicable requirements for considering RULOF. The new standard of performance would only become effective upon the EPA's determination that the plan revision is satisfactory.

The EPA requests comment on the proposed contingency requirements to address the concern that a designated facility's operations may change over time in ways that do not match the original rationale for a less stringent standard (Comment E5–1).

6. Requirements Specific to Remaining Useful Life

Remaining useful life is the one ''factor'' that CAA section 111(d) explicitly requires that the EPA permit states to consider in applying a standard of performance. While the age of a fleet can be a consideration of a BSER determination, it is a factor that can have considerable variability and the annualized costs can change considerably based on the applied technology at a particular designated facility and the amortization period. When the EPA determines a BSER, it considers cost and, in many instances, the EPA specifically considers annualized costs associated with payment of the technology associated with the BSER. The shorter that payback period is (*i.e.,* shorter remaining useful life), the less cost-effective that BSER may become. The current RULOF provision generally allows for a state to account for remaining useful life to set a less stringent standard. However, the provision does not provide guidance or parameters on when and how a state may do so. Consistent with the principles described previously in this section (section III.E), the EPA is proposing certain requirements for when a state seeks to apply a less stringent standard on grounds that a designated facility will retire in the near future.

The EPA is proposing to require that in order to account for remaining useful life in setting a less stringent standard for a particular designated facility, the source's retirement date must be no later than a date to be established by the EPA in an EG, or if the EPA does not provide such a date in an EG, a date determined by the state using the methodology and considerations provided by EPA in the EG. More specifically, in order for a state to determine whether a retiring source qualifies for a less stringent standard, the EPA is proposing to require either that the Agency must identify in an EG an outermost remaining useful life date that would provide the latest retirement date that states can rely on for a designated facility or that the Agency must provide the methodology and considerations to be applied by states as part of their plans in determining whether a retiring source qualifies for a less stringent standard.

The outermost retirement date or the methodology to establish such date for a designated facility will be established based on the technical record for the EG, and as with any requirement of an EG, subject to notice-and-comment rulemaking through the EG proposal. By identifying the outermost retirement date or methodology that states may use to account for remaining useful life, the EPA is ensuring consistency and appropriate implementation of an EG across designated facilities and states. If the EPA did not identify an outermost retirement date or specified methodology and conditions, then a state plan could attempt to account for the remaining useful life for a designated facility whose retirement date does not reasonably warrant a less stringent standard, undermining the control objectives of the EG and CAA section 111(d) itself. Based on these concerns, the EPA is proposing that states may account for remaining useful life if the retirement date is not further out than the outermost date identified or determined through the methodology and conditions provided by the EPA in the applicable EG.

If a designated facility's retirement date is within the period identified by the EPA in an EG or by the state in its plan through the methodology provided, then the state may account for the remaining useful life of that source in applying a less stringent standard of performance. As previously discussed, the EPA is proposing to require that when an operational condition is used as the basis for applying a less stringent standard, the state plan must include that condition as a federally enforceable requirement. Accordingly, if a state applies a less stringent standard by accounting for remaining useful life, the EPA is proposing to require that the state plan must include the retirement date for the designated facility as an enforceable commitment and include measures that provide for the implementation and enforcement of

such commitment. For example, the state could adopt a regulation or enter into an agreed order requiring the designated facility to shut down by a certain date, and that regulation or agreed order should then be incorporated into the state plan. The state could also choose to incorporate the shutdown date into a permit and incorporate that permit into the state plan.

The EPA is further proposing to add an explicit requirement in the implementing regulations that the state impose a standard that applies to a designated facility until its retirement. This standard must reflect a reasonably achievable source-specific BSER and be calculated and supported by the demonstration described in section III.E.3 of this preamble. The EPA recognizes that, in some instances, a designated facility may intend to retire imminently after the promulgation of an EG, and in such cases it may not be reasonable to require any controls based on the source's exceptionally short remaining useful life. In the case of an imminently retiring source, the EPA is proposing that the state apply a standard no less stringent than one that reflects the designated facility's business as usual. This requirement equitably accommodates practical considerations without impermissibly exacerbating the impacts of the pollutant regulated under CAA section 111(d). The EPA generally expects that an ''imminent'' retirement is one that is about to happen in the near term relative to the compliance date in the EG. The EPA may also define what is considered to be the timeframe for an imminent retirement for purposes of a specific EG, with consideration to the time and costs associated with meeting compliance obligations for a given BSER and associated standard of performance. For example, if a BSER for a given EG is established to be a back-end control device with a 90 percent reduction of the given pollutant from the emission stream, there may be considerable time and money to be invested in meeting that compliance obligation. The EPA may define the timeframe that qualifies as an imminent retirement for this situation to be in line with the time needed to install the control device plus some additional marginal time that the EPA deems to fit within the timeline of ''imminence'' given the specific nature and analytics associated with the source category and BSER. This definition of the timeframe for an imminent retirement would differ from an example situation where the BSER is established to be operation and maintenance techniques which may require minimal lead time and capital costs. In this counter example, the EPA may define in the respective EG a short timeframe for imminent retirements or may instead establish that there is no such timeframe that qualifies for a business-as-usual standard and that retiring sources must comply with an interim standard that requires some appropriate level of control. If the EPA defines an imminent timeframe in a specific EG a state may then apply a business as usual standard to a retiring designated facility that is retiring within such timeframe. The EPA intends to provide guidance as appropriate in the context of a specific EG regarding the calculation of a business as usual standard.

The EPA solicits comment on the proposed requirements specific to the consideration of remaining useful life as described in this section (Comment E6–1).

7. The EPA's Standard of Review of State Plans Invoking RULOF

Under CAA section 111(d)(2), the EPA has the obligation to determine whether a state plan submission is ''satisfactory.'' This obligation extends to all aspects of a state plan, including the application of a less stringent standard of performance that accounts for RULOF. The revisions to the RULOF provision under the implementing regulations are intended to provide parameters not only for the development of CAA section 111(d) state plans, but for the EPA to evaluate for the approvability of such plans. The EPA is proposing the following requirements to further bolster the RULOF provision and to facilitate the EPA's review of a state plan to determine whether the plan implementing the RULOF provision is ''satisfactory.'' As an initial matter, the EPA proposes to explicitly require that the state must carry the burden of making the demonstrations required under the RULOF provision. States carry the primary responsibility to develop plans that meet the requirements of CAA section 111(d) and therefore have the obligation to justify any accounting for RULOF that they invoke in support of standards less stringent than those provided by the EG. While the EPA has discretion to supplement a state's demonstration, the EPA may also find that a state plan's failure to include a sufficient RULOF demonstration is a basis for concluding the plan is not ''satisfactory'' and therefore disapprove the plan.

The EPA is further proposing that for the required demonstrations, the state must use information that is applicable to and appropriate for the specific designated facility, and the state must show how information is applicable and appropriate. As RULOF is a source-specific determination, it is appropriate to require that the information used to justify a less stringent standard for a particular designated facility be applicable to and appropriate for that source. The EPA anticipates that in most circumstances, site-specific information will be the most applicable and appropriate to use for these demonstrations and proposes to require site-specific information where available. In some instances, site-specific information may not be available, and a state may instead be able to use general information about a source category to evaluate a particular designated facility. In such cases, the state plan submission must provide both the general information and a clear assessment of how the information is applicable to and appropriate for the designated facility. The use of general information must also be appropriate and consistent with the overall assessment and conclusions regarding consideration of RULOF for the specific designated facility.

Finally, the EPA proposes to require that the information used for a state's demonstrations under the new RULOF provisions must come from reliable and adequately documented sources, such as EPA sources and publications, permits, environmental consultants, control technology vendors, and inspection reports. Requiring the use of such sources will help ensure that an accounting of RULOF is premised on legitimate, verifiable, and transparent information. The EPA notes that an EG may also specify aspects of the demonstrations that require certification from third-party industry experts, such as certified engineering firms. The EPA solicits comment on the proposed list of information sources (Comment E7–1) and whether other sources should be considered as reliable and adequately documented sources of information for purposes of the RULOF demonstration, including but not limited to reliable and adequately documented sources of cost information (Comment E7–2).[47]

These requirements will aid both the EPA in evaluating whether RULOF has been appropriately accounted for, and the public in commenting on the EPA's proposed action on a state plan that

[47] The EPA acknowledges there may be reliable and adequately documented sources of information other than those described in this section. The EPA encourages states to consult with their Regional Offices if there are questions about whether a particular source of information would meet the applicable requirements.

includes a less stringent standard on the basis of RULOF. The EPA solicits comment on the proposed requirements described in this section regarding the EPA's standard of review for state plans that invoke consideration of RULOF (Comment E7–3).

8. Consideration of Impacted Communities

CAA section 111(d) does not specify what are the ''other factors'' that the EPA's regulations should permit for a state to consider in applying a standard of performance. The EPA interprets this as providing discretion for the EPA to identify the appropriate factors and conditions under which the circumstance may be reasonably invoked in establishing a standard less stringent than the EG. Additionally, CAA section 111(d)(2)'s requirement that the EPA determine whether a state plan is ''satisfactory'' applies to such plan's consideration of RULOF in applying a standard of performance to a particular facility. Accordingly, the EPA must determine whether a plan's consideration of RULOF is consistent with section 111(d)'s overall health and welfare objectives.

While the consideration of RULOF can be warranted to apply a less stringent standard of performance to a particular facility, such standards have the potential to result in disparate health and environmental impacts to communities most affected by and vulnerable to those impacts from the designated facilities being addressed by the state plan. These communities could be put in the position of bearing the brunt of the greater health or environmental impacts resulting from that source implementing less stringent emission controls than would otherwise have been required pursuant to the EG. The EPA considers that a lack of attention to such potential outcomes would be antithetical to the public health and welfare goals of CAA section 111(d) and the CAA generally.

In order to address the potential exacerbation of health and environmental impacts to these communities as a result of applying a less stringent standard, the EPA is proposing to require states to consider such impacts when applying the RULOF provision to establish those standards. The EPA is proposing to require that, to the extent a designated facility would qualify for a less stringent standard through consideration of RULOF, the state, in calculating such standard, must consider the potential health and environmental impacts and potential benefits of control to communities most affected by and vulnerable to the impacts from the designated facility considered in a state plan for RULOF provisions. These communities will be identified by the state as pertinent stakeholders under the proposed meaningful engagement requirements described in section III.C of this preamble.

The EPA proposes to require that state plan submissions seeking to invoke RULOF for a source must identify where and how a less stringent standard impacts these communities. In evaluating a RULOF option for a facility, states should describe the health and environmental impacts anticipated from the application of RULOF for such communities, along with any feedback the state received during meaningful engagement regarding its draft state plan submission, including on any standards of performance that consider RULOF. Additionally, to the extent there is a range of options for reasonably controlling a source based on RULOF, the EPA is proposing that in determining the appropriate standard of performance, states should consider the health and environmental impacts to the communities most affected by and vulnerable to the impacts from the designated facility considered in a state plan for RULOF provisions and provide in the state plan submission a summary of the results that depicts potential impacts for those communities for that range of reasonable control options.

This requirement to consider the health and environmental impacts in any standards of performance taking into account RULOF is consistent with the definition of ''standard of performance'' in CAA section 111(a)(1). This definition requires the EPA to take into account health and environmental impacts in determining the BSER. As described in this section, if a designated facility qualifies for a less stringent standard based on RULOF, the EPA is proposing the state plan must identify a source-specific BSER based on the same factors and metrics the EPA considered in determining the BSER in the EG. Therefore, state plans must consider health and environmental impacts in determining a source-specific BSER informing a RULOF standard, just as the EPA is statutorily required to take into account these factors in making its BSER determination.

As an example, the state plan submission could include a comparative analysis assessing potential controls on a designated facility and the corresponding potential impacts on affected vulnerable communities in controlling the source. If the comparative analysis shows that a designated facility may be controlled at a certain cost threshold higher than required under the EPA's proposed revisions to the RULOF provision, and such control benefits a vulnerable community that would otherwise be adversely impacted by a less stringent standard, the state in accounting for RULOF could use that cost threshold to apply a standard of performance. Given that the statute provides states with the discretion, rather than mandate, to consider RULOF in applying a standard of performance under CAA section 111(d), it is reasonable for states to consider the potential health and environmental impacts to communities most affected by and vulnerable to the impacts from a particular designated facility in calculating the level of stringency for such standard.[48]

The EPA recognizes that the consideration of communities in the standard setting process, such as what constitutes a benefit to a vulnerable community and what is a reasonable level of control, is highly dependent on the designated pollutant and source category subject to an EG. For example, a comparative analysis for a localized pollutant may be quantified and evaluated differently from the analysis for a global pollutant. The EPA is therefore proposing general requirements for the consideration of impacts to vulnerable communities, and, where feasible, an EG will provide more specific guidance or requirements on how to meet these provisions under the implementing regulations.

Additionally, under CAA section 111(d)(2)(B), the EPA has the authority to prescribe a Federal plan promulgating standards of performance for designated facilities located in a state that fails to submit a satisfactory plan. Consistent with the statute's mandate for the EPA's regulations under CAA section 111(d) to permit states to account for RULOF, this provision further directs that the EPA ''shall'' take into account RULOF in promulgating standards of performance for a Federal plan. Therefore, because the statute uses the same ''other factors'' phrasing in both CAA sections 111(d)(1) governing state plans and 111(d)(2) governing Federal plans, the EPA proposes to require that health and environmental impacts to vulnerable communities be considered in both the

[48] As previously described, CAA section 111(d) gives states the discretion to consider RULOF for a particular source and are not required to do so. States thus have the authority to choose to impose a more stringent standard, including the presumptive standard, than would be permissible under RULOF for other reasons, *e.g.* based on consideration of communities other than identified impacted communities.

state and Federal plan contexts when accounting for RULOF.

The EPA solicits comment on the proposed requirements described in this section for consideration of vulnerable communities in the context of RULOF (Comment E8–1).

9. Authority To Apply More Stringent Standards as Part of the State Plan

The current RULOF provision in subpart Ba under 40 CFR 60.24a(e) governs instances where states seek to apply a less stringent standard of performance to a particular designated facility. In promulgating this provision, the EPA received comments contending that if states may consider factors that justify less stringent standards, they must also be permitted to consider factors that would justify greater stringency than required by an EG, such as more expeditious compliance obligations or the retirement of a source. EPA's Responses to Public Comments on the EPA's Proposed Revisions to Emission Guideline Implementing Regulations at 56 (Docket ID No. EPA–HQ–OAR–2017–0355–26740) (July 8, 2019). In response to these comments, the EPA explained that it interpreted the statutory RULOF provision as intended to authorize only standards of performance that are less stringent than the presumptive level of stringency required by a particular EG. *Id.* at 57. The EPA has reevaluated its prior interpretation and is now proposing to amend subpart Ba to reflect its revised interpretation that the statute authorizes the EPA to permit states to consider other factors that justify application of a more stringent standard to a particular source than required by an EG. See *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009). The EPA's rationale for its revised interpretation and proposal is as follows.

First, allowing states to apply a more stringent standard as part of their CAA section 111(d) plans is consistent with CAA section 116, which generally authorizes states to include more stringent standards of performance or requirements regarding control or abatement of air pollution in their plans. The provisions at 40 CFR 60.24a(f) provide that nothing in the implementing regulations shall be construed to preclude states from adopting or enforcing a standard of performance or compliance schedule that is more stringent than required by an EG. This language is consistent with the anti-preemption requirements of CAA section 116. CAA section 116 provides that nothing in the statute shall preclude or deny the right of states to adopt or enforce ''any standard or limitation respecting emissions of air pollutants.'' While CAA section 116 clearly does not preclude a state from adopting or enforcing a standard of performance more stringent than required under CAA section 111(d), 40 CFR 60.24a(f) does not explicitly speak to whether the EPA can approve a state plan that includes such standard of performance. However, the EPA finds that CAA section 116, as interpreted through the Supreme Court decision in *Union Electric Co.* v. *EPA,* gives the EPA the authority to approve such state plan under CAA section 111(d). 427 U.S. 246, 263–64 (1976). The EPA proposes to modify this provision, clarifying that to the extent a state chooses to submit a plan that includes standards of performance or compliance schedules that are more stringent than the requirements of a final EG, states have the authority to do so under this provision and CAA section 116. Further, the EPA proposes to clarify that it has the obligation, and therefore the authority, to review and approve such plans and render the more stringent requirements federally enforceable if all applicable requirements are met.

The EPA acknowledges that it previously took the position in the ACE Rule that *Union Electric* does not control the question of whether CAA section 111(d) state plans may be more stringent than Federal requirements. The EPA took this position in the ACE Rule on the basis that *Union Electric* on its face applies only to CAA section 110, and that it is ''potentially salient'' that CAA section 111(d) is predicated on specific technologies whereas CAA section 110 gives states broad latitude in the measures used for attaining the NAAQS. 84 FR 32559–61. The EPA no longer takes this position. Upon further evaluation, the EPA finds that, because of the structural similarities between CAA sections 110 and 111(d), CAA section 116 as interpreted by *Union Electric* requires the EPA to approve CAA section 111(d) state plans that are more stringent than required by the EG. See *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009).

The Court in *Union Electric* rejected a construction of CAA sections 110 and 116 that measures more stringent than those required to attain the NAAQS cannot be approved into a federally enforceable SIP but can be adopted and enforced only as a matter of state law. The Court found that such an interpretation of CAA section 116 ''would not only require the Administrator to expend considerable time and energy determining whether a state plan was precisely tailored to meet the Federal standards but would simultaneously require States desiring stricter standards to enact and enforce two sets of emission standards, one federally approved plan and one stricter state plan.'' 427 U.S. at 263–64. The Court concluded there was no basis ''for visiting such wasteful burdens upon the States and the Administrator.'' *Id.* Both CAA sections 111(d) and 110 are structurally similar in that both require EPA to establish targets to meet the objectives of each respective section (*i.e.* the level of stringency set by an EG under CAA section 111(d), and attainment and maintenance of the NAAQS under CAA section 110) and states must adopt and submit to the EPA plans which include requirements to meet these targets. Specifically, the EPA establishes a presumptive level of stringency in an EG, and state plans under CAA section 111(d) must include standards of performance that generally reflect this level of stringency. Because CAA section 116 applies to ''any standard or limitation'', this provision clearly applies to standards of performance adopted under CAA section 111(d). Therefore, the Court's rationale in *Union Electric* also applies to CAA section 111(d). Requiring states to enact and enforce two sets of standards of performance, one that is a federally approved CAA section 111(d) plan and one that is a stricter set of state requirements, runs directly afoul of *Union Electric's* holding that there is no basis for interpreting CAA section 116 in such manner.

Moreover, there is nothing in CAA section 111(d) that precludes states from adopting, and EPA from approving, more stringent standards of performance. As described previously, while standards of performance must generally reflect the presumptive level of stringency identified in an EG, CAA section 111(d) also requires the EPA to permit states to ''take into consideration, among other factors, the remaining useful life'' in applying a standard of performance to a particular designated facility. Aside from the explicit reference to remaining useful life, the statute is silent as to what the ''other factors'' are that states may consider in applying a standard of performance and whether such factors can be used only to weaken the stringency of a standard of performance for a particular designated facility. Therefore, the EPA may reasonably interpret this ambiguity both as to what the ''other factors'' are that states may use to apply a standard of performance to a particular source, and how such consideration may affect the stringency of such standard. Accordingly, the EPA

reasonably interprets this phrase as authorizing states to consider other factors in exercising their discretion to apply a more stringent standard to particular a source. This is a reasonable interpretation of the statute because if Congress intended the RULOF provision to be used only to allow states to apply less stringent standards, it would have clearly specified that its intent or enumerated ''other factors'' that are appropriate for relaxing the stringency of a standard. The statute's explicit reference to remaining useful life shows that if there were factors that Congress specifically wanted the EPA to allow or disallow states to consider, it knew how to expressly make its intent clear in the RULOF provision.

In addition to finding that the statute does not preclude the EPA's reasonable interpretation of the statutory RULOF provision as described above, the EPA has reevaluated the bases for its prior interpretation that states may only consider RULOF to apply a less stringent standard and determined those bases were flawed. In taking its prior interpretation, the EPA noted that the new regulatory RULOF provision under subpart Ba at 40 CFR 60.24a(e) was substantively similar to the variance provision under subpart B, which authorizes the use of other factors that ''make application of a less stringent standard or final compliance time significantly more reasonable.'' 40 CFR 60.24(f)(3). The EPA reasoned that because the variance provision under subpart B is similar to and predated Congress's addition of the statutory RULOF provision to CAA section 111(d) as part of the 1977 CAA Amendments, ''Congress effectively ratified the EPA's implementing regulations' clear construct that remaining useful life and other factors are only relevant in the context of setting less stringent standards.'' EPA's Responses to Public Comments on the EPA's Proposed Revisions to Emission Guideline Implementing Regulations at 57 (Docket ID# No. EPA–HQ–OAR–2017–0355–26740) (July 8, 2019). The EPA has closely reexamined the variance provision under subpart B and the RULOF provision under CAA section 111(d) and does not find that these provisions support the proposition that Congress clearly ratified the aspect of the variance provision in subpart B allowing states to apply only less stringent standards under certain circumstances. There are notable differences between the subpart B variance provision and the CAA section 111(d) RULOF provision that indicate Congress did not intend to incorporate and ratify all aspects of the EPA's regulatory approach when amending CAA section 111(d) in 1977. Particularly, for pollutants found to cause or contribute to endangerment of public health, subpart B allows states to apply a less stringent standard under certain circumstances unless the EPA provides otherwise in a specific EG for a particular designated facility or class of facilities. 40 CFR 60.24(c), (f). Subpart B places no similar exception for states in authorizing them to seek a variance for a standard addressing a pollutant for which the EPA has made a welfare-based, but not public health-based, endangerment finding under 111(b)(1)(A). 40 CFR 60.24(d). By contrast, the statutory RULOF provision does not make a similar distinction between public health and welfare-based pollutants, which the EPA itself acknowledged in promulgating the regulatory RULOF provision in subpart Ba. 84 FR 32570, July 8, 2019. Therefore, the EPA cannot clearly ascertain whether the statutory RULOF provision ratified the variance provision under subpart B, given that certain key elements of the latter are not present in the former. There is nothing in CAA section 111(d) or the legislative history that suggests Congress enacted the statutory RULOF provision by ratifying certain elements of the regulatory variance provision in subpart B but not others.

Additionally, in taking its prior position that states may only consider RULOF to apply a less stringent standard, the EPA asserted that the legislative history of the 1977 CAA Amendments supported its interpretation. The EPA highlighted the following statement in the House conference report adopting the amendment to add the statutory RULOF provision: ''The section also makes clear that standards adopted for existing sources under section 111(d) of the Act are to be based on available means of emission control (not necessarily technological) and must, unless the State decides to be more stringent, take into account the remaining useful life of the existing sources.'' H.R. Conf. Rep. No. 94–1742, (Sep. 30, 1976), 1977 CAA Legis. Hist. at 88. Based on this statement, the EPA found that the caveat that states have the choice to not invoke the RULOF provision and instead ''be more stringent'' suggests that considering RULOF is only intended to allow a state to make a standard less stringent. The EPA now finds that its prior reliance on this legislative history was flawed. The cited statement only speaks to remaining useful life, which is a factor that inherently suggests a less stringent standard, but it is completely silent as to the ''other factors'' the statute references. Thus, there is no indication that Congress intended to limit the ''other factors'' that states may apply in developing their plans only to permit less stringent, and not more stringent standards. Rather, the cited statement explicitly acknowledges that states may choose to ''be more stringent'', which supports the EPA's interpretation of the statute to permit states to consider other factors to set standards more stringent than the degree of emission limitation achievable through application of the BSER.

Interpreting the statutory RULOF provision as authorizing states to apply a more stringent standard of performance to a particular source is also consistent with the purpose and structure of CAA section 111(d). CAA section 111(d) clearly contemplates cooperative federalism, where states bear the obligation to establish standards of performance. Nothing under CAA section 111(d) suggests that the EPA has the authority to preclude states from determining that it is appropriate to regulate certain sources within their jurisdiction more strictly than otherwise required by Federal requirements. To do so would be arbitrary and capricious in light of the overarching purpose of CAA section 111(d), which is to require emission reductions from existing sources for certain pollutants that endanger public health or welfare. It is inconsistent with the purpose of CAA section 111(d) and the role it confers upon states for the EPA to constrain them from further reducing emissions that harm their citizens, and the EPA does not see a reasonable basis for doing so.

Other factors states may wish to account for in applying a more stringent standard than required under an EG include, but are not limited to, early retirements, and availability of control technologies that allow a source to achieve greater emission reductions. However, the EPA cannot in the implementing regulations anticipate each and every factor under which a state may seek to apply a more stringent standard. Therefore, the EPA is proposing general requirements under which states may use the RULOF provision to apply a more stringent standard and may identify any further parameters in a specific EG. The EPA is also proposing to require that states seeking to apply a more stringent standard of performance based on other factors must adequately demonstrate that the different standard is in fact more stringent than the presumptive

level of stringency. Such standard of performance must meet all applicable statutory and regulatory requirements, including that it is adequately demonstrated,[49] and the state plan must include measures that provide for the implementation and enforcement of the standard as with any standard of performance under CAA section 111(d).

For the reasons described in this section, the EPA proposes to revise the RULOF provision under subpart Ba to permit states to consider factors which justify applying a standard of performance that is more stringent than required under an EG. The EPA solicits comment on its proposed interpretation of the statutory RULOF provision and revision to the regulatory provision (Comment E9–1).

Moreover, the EPA proposes to clarify that under subpart Ba, per the authority of CAA sections 111(d) and 116, states may include more stringent standards of performance in their plans and that the EPA must approve and render such standards as federally enforceable, so long as the minimum requirements of the EG and subpart Ba are met.[50] The EPA solicits comment on its proposal as described in this section (Comment E9–2).

F. Provision for Electronic Submission of State Plans

The provision at 40 CFR 60.23a(a)(1) currently requires state plan submissions to be made in accordance with the provision in 40 CFR 60.4. Pursuant to 40 CFR 60.4(a), all requests, reports, applications, submittals, and other communications to the Administrator pursuant to 40 CFR part 60 shall be submitted in duplicate to the appropriate regional office of the EPA. The provision in 40 CFR 60.4(a) then proceeds to include a list of the corresponding addresses for each regional office. In this action we are proposing to revise 40 CFR 60.23a(a)(1) to require electronic submission of state plans instead of paper copies as according to 40 CFR 60.4. In particular, we are proposing to add a sentence to 40 CFR 60.23a(a)(1) that reads as follows: ''The submission of such plan shall be made in electronic format according with § 60.23a(a)(3) or as specified in an applicable emission guideline.'' In 40 CFR 60.23a(a)(3), the EPA is proposing the general requirements associated with the electronic submittal of plans.

As previously described, CAA section 111(d) requires the EPA to promulgate a ''procedure'' similar to that of CAA section 110 under which states submit plans. The statute does not prescribe a specific platform for plan submissions, and the EPA reasonably interprets the procedure it must promulgate under the statute as allowing it to require electronic submission. Requiring electronic submission is reasonable for the following reasons. Providing for electronic submittal of CAA section 111(d) state plans in subpart Ba in place of paper submittals aligns with current trends in electronic data management and as implemented in the individual EGs, will result in less burden on the states. It is the EPA's experience that the electronic submittal of information increases the ease and efficiency of data submittal and data accessibility. The EPA's experience with the electronic submittal process for SIPs under CAA section 110 has been successful as all the states are now using the State Planning Electronic Collaboration System (SPeCS). SPeCS is a user-friendly, web-based system that enables state air agencies to officially submit SIPs and associated information electronically for review and approval to meet their CAA obligations related to attaining and maintaining the NAAQS. SPeCS for SIPs is the EPA's preferred method for receiving such SIPs submissions. The EPA has worked extensively with state air agency representatives and partnered with E-Enterprise for the Environment and the Environmental Council of the States to develop this integrated electronic submission, review, and tracking system for SIPs. SPeCS can be accessed by the states through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The CDX is the Agency's electronic reporting site and performs functions for receiving acceptable data in various formats. The CDX registration site supports the requirements and procedures set forth under the EPA's Cross-Media Electronic Reporting Regulation, 40 CFR part 3.

The EPA is proposing to include in 40 CFR 60.23a(a)(3) the general requirements associated with the electronic submittal of a state plan in subpart Ba. As proposed, 40 CFR 60.23a(a)(3) will require state plan submission to the EPA be via the use of SPeCS or through an analogous electronic reporting tool provided by the EPA for the submission of any plan required by this subpart. The EPA is also proposing to include in the new provision at 40 CFR 60.23a(a)(3) language to specify that states are not to transmit confidential business information (CBI) through SPeCS. Even though state plans submitted to the EPA for review and approval pursuant to CAA section 111(d) through SPeCS are not to contain CBI, this language will also address the submittal of CBI in the event there is a need for such information to be submitted to the EPA. Any other specific requirements associated with the electronic submittal of a particular state plan will be provided within the corresponding EG. The requirements for electronic submission of CAA section 111(d) state plans in EGs will ensure that these Federal records are created, retained, and maintained in electronic format. Electronic submittal will also improve the Agency's efficiency and effectiveness in the receipt and review of state plans. The electronic submittal of state plans may also provide continuity in the event of a disaster like the one our nation experienced with COVID–19. The EPA requests comment on whether the EPA should provide for electronic submittals of plans as an option instead of as a requirement (Comment F–1). The EPA requests comment on whether a requirement for electronic submissions of 111(d) state plans should be via SPeCS or whether another electronic mechanism should be considered as appropriate for CAA section 111(d) state plan submittals (Comment F–2).

G. Other Proposed Modifications and Clarifications

1. Standard of Performance and Compliance Flexibility

i. Definition of Standard of Performance

The EPA proposes to amend 40 CFR 60.21a(f) and 60.24a(b) to clarify that the definition of ''Standard of performance'' allows for state plans to include standards in the form of an allowable mass limit of emissions. The current regulatory definition states that under CAA section 111 the establishment of standards of performance is to reflect the degree of emission limitation achievable through the application of the BSER, as determined by the EPA. Per the definition in 40 CFR 60.21a(f), such a standard for emissions of air pollutants includes, ''but [is] not limited

[49] The EPA is not proposing to require the state to conduct a source-specific BSER analysis for purposes of applying a more stringent standard, as the EPA proposes to require for application of a less stringent standard. So long as the standard will achieve equivalent or better emission reductions than required by the EG, the EPA believes it is appropriate to defer to the state's discretion to, for example, choose to impose more costly controls on an individual source.

[50] The EPA notes that its authority is constrained to approving measures which comport with applicable statutory requirements. For example, CAA section 111(d) only contemplates that state plans would include requirements for designated facilities regulated by a particular EG; therefore, the EPA concludes that section 116 does not provide it with the authority to approve and render federally enforceable measures on entities other than those on designated facilities.

to a legally enforceable regulation setting forth an allowable rate or limit of emissions into the atmosphere, or prescribing a design, equipment, work practice, or operational standard, or combination thereof''. The term ''an allowable rate or limit of emissions'' was intended to encompass standards of performance based on quantity, rate, or concentration of emissions of air pollutants, consistent with the definition of ''emission limitation'' and ''emission standard'' in CAA section 302(k).[51] To address any potential ambiguity about this term, the EPA is proposing to amend this provision to clarify that the term ''an allowable rate or limit of emissions'' means ''an allowable rate, quantity, or concentration of emissions'' of air pollutants. The EPA is also proposing to amend the definition of standard of performance under 40 CFR 60.24a(b) to read ''. . . in the form of an allowable rate, quantity, or concentration of emissions'' rather than ''. . . either be based on allowable rate or limit of emission''. Moreover, the EPA proposes to remove the phrase ''but not limited to'' from 40 CFR 60.21a(f) as unnecessary and potentially confusing verbiage that is redundant of the word ''including,'' particularly where the definition already identifies a wide breadth of potential standards that may be included in a state plan.

ii. Compliance Flexibilities, Including Trading or Averaging

CAA section 111(d) and these implementing regulations authorize the EPA to approve state plans establishing standards of performance that meet the emission guidelines promulgated by the EPA, including plans that authorize sources to meet their emission limits in the aggregate, such as through standards that permit compliance via trading or averaging. (The EPA herein refers to all these flexibilities as trading or averaging.) In taking this position that CAA section 111(d) and these implementing regulations authorize the EPA to approve state plans that include trading or averaging, the EPA is reversing, after reconsideration, the contrary interpretation of CAA section 111(d) provided in the ACE Rule. As a related matter, the EPA is also reversing the ACE Rule's interpretation that CAA section 111 limits the best system of emission reduction (BSER) to controls that can be applied at and to the source (commonly referred to as inside-the-fenceline controls).

Provisions of Section 111. Under CAA section 111(d)(1), each state is required to submit to the EPA ''a plan which . . . establishes standards of performance for any existing source'' that emits certain types of air pollutants, and which ''provides for the implementation and enforcement of such standards of performance.'' Under CAA section 111(a)(1), a ''standard of performance'' is defined as ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction . . . adequately demonstrated.'' Under CAA section 111(a)(6) and (a)(3), ''existing source'' is defined as a ''stationary source,'' which, in turn, is defined, in relevant part, as ''any building, structure, facility or installation. . . .''

Rulemaking and Caselaw. In the Clean Power Plan (CPP), the EPA interpreted the term ''system'' in CAA section 111(a)(1) to be broad and therefore to authorize the EPA to consider a wide range of measures from which to select the BSER. 80 FR 64662, 64720 (October 23, 2015). Similarly, the CPP took the position that states had broad flexibility in choosing compliance measures for their state plans. See, *e.g.,* 80 FR 64887, October 23, 2015. The CPP went on to determine that generation shifting qualified as the BSER, 80 FR 64707, October 23, 2015, and that states could include trading or averaging programs in their state plans for compliance. 80 FR 64840, October 23, 2015.

The ACE Rule included the repeal of the CPP. It interpreted CAA section 111 so that the type of ''system'' that the EPA may select as the BSER is limited to a control measure that could be applied inside the fenceline of each source to reduce emissions at each source. 84 FR 32523–24, July 8, 2019. Specifically, the ACE Rule argued that the requirements in CAA section 111(d)(1), (a)(3), and (a)(6) that each state establish a standard of performance ''for'' ''any existing source,'' defined, in general, as any ''building . . . [or] facility,'' and the requirements in CAA section 111(a)(1) that the degree of emission limitation must be ''achievable'' through the ''application'' of the BSER, by their terms, impose this limitation. The ACE Rule also concluded that the compliance measures the states include in their plans must ''correspond with the approach used to set the standard in the first place,'' 84 FR 32556, July 8, 2019, and therefore must also be limited to inside-the-fenceline measures that reduce the emissions of each source. For these reasons, the ACE Rule invalidated the CPP's generation-shifting system as the BSER, on grounds that it was an outside-the-fenceline measure, and precluded states from allowing their sources to trade or average to demonstrate compliance with their emission standards. 84 FR 32556–57, July 8, 2019.

In 2021, the D.C. Circuit vacated the ACE Rule. *American Lung Ass'n* v. *EPA,* 985 F.3d 914. The Court held, among other things, that CAA section 111(d) does not limit the EPA, in determining the BSER, to inside-the-fenceline measures. The Court explained that contrary to the ACE Rule, the above-noted requirements in CAA section 111 that each state establish a standard of performance ''for'' any existing ''building . . . [or] facility,'' mean that the state must establish standards applicable to each regulated stationary source; and the requirements that the degree of emission limitation must be achievable through the ''application'' of the BSER could be read to mean that the sources must be able to apply the system to reduce emissions across the source category. None of these requirements, the Court further explained, can be read to mandate that the BSER is limited to some measure that each source can apply to its own facility to reduce its own emissions in a specified amount. *Id.* at 944–51. The Court further held that the ACE Rule's premise for viewing compliance measures as limited to inside-the-fenceline, which is that BSER measures are so limited, was invalid for the same reason. The Court indicated that while requiring symmetry between the nature of the BSER and compliance measures ''would be reasonable'' where necessary to preserve the environmental outcomes a particular BSER was designed to achieve, a universal restriction on compliance measures could not be sustained by policy concerns that were not similarly universal. *Id.* at 957–58.

In 2022, the U.S. Supreme Court reversed the D.C. Circuit's vacatur of the ACE Rule's embedded repeal of the Clean Power Plan. *West Virginia* v. *EPA,* 142 S. Ct. 2587 (2022). The Supreme Court made clear that CAA section 111 authorizes the EPA to determine the BSER and the amount of emission limitation that state plans must achieve. *Id.* at 2601–02. However, the Supreme Court invalidated the CPP's generation-shifting BSER under the major questions doctrine, explaining that the term ''system'' does not provide the ''clear congressional authorization,'' *id.* at 2614 (internal quotation marks omitted), needed to support a BSER ''of such

[51] See 84 FR 32570, July 8, 2019 (explaining that the definition of ''standard of performance'' at 40 CFR 60.24a(b) is intended to permit either rate- or mass-based forms, depending on the considerations specific to a particular emission guideline).

magnitude and consequence.'' *Id.* at 2615–16. The Court declined to address the D.C. Circuit's decision that the text of CAA section 111 did not limit the type of ''system'' the EPA could consider as the BSER to inside-the-fenceline measures. *See id.* at 2615 (''We have no occasion to decide whether the statutory phrase ''system of emission reduction'' refers exclusively to measures that improve the pollution performance of individual sources, such that all other actions are ineligible to qualify as the BSER.'' (emphasis in original)). Nor did the Court rule on the scope of the states' compliance flexibilities.

The EPA Interpretation. As noted above, the EPA has reconsidered the ACE Rule's interpretation of the compliance flexibilities available to States under CAA section 111 and now proposes to disagree that averaging and trading are universally precluded. With respect to compliance measures, the EPA proposes to agree with the D.C. Circuit's reasoning in rejecting the ACE Rule's limitations on those measures. *American Lung Ass'n,* 985 F.3d at 957–58. As noted above, CAA section 111(d)(1) provides, in relevant part, that states ''establish[ ],'' ''implement[ ],'' and ''enforce[ ]'' ''standards of performance for any existing source.'' CAA section 111(d) does not, by its terms, preclude states from having flexibility in determining which measures will best achieve compliance with the EPA's emission guidelines.

Such flexibility is consistent with the framework of cooperative federalism that CAA section 111(d) establishes, which vests states with substantial discretion. As the U.S. Supreme Court has explained, CAA section 111(d) ''envisions extensive cooperation between Federal and state authorities, generally permitting each State to take the first cut at determining how best to achieve EPA emissions standards within its domain.'' *American Elec. Power Co.* v. *Connecticut,* 564 U.S. 410, 428 (2011) (citations omitted). It should be noted that the flexibility that CAA section 111(d) grants to states in adopting measures for their state plans is by no means unfettered; rather, section 111(d)(2) requires the EPA to review state plans to assure that they are ''satisfactory.''

For the reasons just noted, the EPA proposes to disagree with the ACE Rule's conclusion that state plan compliance measures must always correspond with the approach the EPA uses to set the BSER, where the environmental outcomes of the emissions guidelines are not compromised by a lack of alignment. Moreover, after reconsideration, the EPA also proposes to reject the ACE Rule's interpretation that various provisions in CAA section 111 limit the type of ''system'' that may qualify as the BSER to inside-the-fenceline measures. 84 FR 32556, July 8, 2019. Thus, there could be no comparable inside-the-fenceline statutory limitation on states' compliance flexibilities in developing their state plans. The EPA proposes to agree with the part of the D.C. Circuit's decision in *American Lung Ass'n,* 985 F.3d at 944–51, that rejected the ACE Rule's inside-the-fenceline statutory interpretation.

The EPA recognizes, however, that while the U.S. Supreme Court in *West Virginia* expressly declined to address this part of the D.C. Circuit's decision, it did impose limits, through the application of the major questions doctrine, on the type of ''system'' that may qualify as the BSER. 142 S. Ct. at 2615–16. The EPA does not propose in this action to address the scope of those limits. Thus, the EPA is not proposing in this action to address whether it could include trading or averaging as part of the BSER—nor, for that matter, is it proposing to identify any particular control mechanism that could or could not be part of the BSER—in light of those limits. Instead, the EPA may address further those limits, and their implications for the legality of particular systems of emission reduction and state compliance measures, in future emission guidelines.

Under the EPA's proposed interpretation of CAA section 111, the provision permits each state to adopt measures that allow its sources to meet their emission limits in the aggregate, when the EPA determines, in any particular emission guideline, that it is appropriate to do so, given, inter alia, the pollutant, sources, and standards of performance at issue. Thus, it is the EPA's proposed position that CAA section 111(d) authorizes the EPA to approve state plans, in particular emission guidelines, that achieve the requisite emission limitation through the aggregate reductions from their sources, including through trading or averaging, where appropriate for a particular emission guideline and consistent with the intended environmental outcomes of the guideline.

We also note that the EPA has authorized trading or averaging as compliance methods in several emission guidelines. In 1995, the EPA authorized emissions trading in emission guidelines for municipal waste combustors. 60 FR 65387, 65402 (December 19, 1995); see 40 CFR 60.33b(d)(2) (''A State plan may establish a program to allow owners or operators of municipal waste combustor plants to engage in trading of nitrogen oxides emission credits.''). In 2005, the EPA authorized allowance trading in the Clean Air Mercury Rule, 70 FR 28606, 28617 (May 18, 2005). This rule was vacated by the D.C. Circuit on other grounds. *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008). Moreover, alongside the 2005 Mercury Rule, the EPA amended the CAA section 111 implementing regulations subpart B to provide that a state's ''[e]mission standards [may] be based on an allowance system,'' 70 FR 28649, May 18, 2005 (promulgating 40 CFR 60.24(b)(1) (2005)), provisions that by their terms contemplated trading and that remained in place until rescinded by the ACE Rule. In addition, the 2015 CPP also authorized trading or averaging as a compliance strategy. 80 FR 64662, 64840 (October 23, 2015). Thus, the EPA has long interpreted CAA section 111(d) as permitting, in appropriate circumstances, flexible mechanisms to comply with the EPA's emission guidelines, and the EPA now proposes to return to this interpretation.

In addition, there is no provision in these implementing regulations that precludes state plans from authorizing sources to trade or average to demonstrate compliance with their standards. In particular, the proposed revisions in the definition of ''standard of performance'' in these regulations, described in section III.G.1.a of this preamble, would not impose that limit. For example, states could authorize their sources to comply with an ''allowable quantity . . . of emissions'' by trading allowances or with an ''allowable rate . . . of emissions'' by trading or averaging credits. It should be noted that in promulgating particular emission guidelines, the EPA proposes that it may preclude certain flexibilities, on the grounds, for example, that for the particular source category or pollutant in question, implementation of those flexibilities would undermine the amount of emission reductions that the EPA designed the guidelines to achieve and thus would not achieve equivalent emissions reductions.

2. Minor Amendments or Clarifications

The EPA is proposing the following minor amendments to the regulatory text in subpart Ba to address the following editorial and other minor clarifications.

i. The EPA is proposing to amend the applicability provision for subpart Ba under 40 CFR 60.20a, to clarify that the provisions of subpart Ba are applicable

to EGs published after July 8, 2019. The current language in this provision states that subpart Ba also applies to EGs if implementation of such guidelines is ongoing as of July 8, 2019. However, such EGs are a null set,[52] therefore the EPA is proposing to remove this text so that it is clear that the provisions in subpart Ba only apply to final EGs published after July 8, 2019. Emission guidelines issued prior to July 8, 2019, are subject to the provisions of subpart B instead of subpart Ba.

ii. The EPA proposes to amend 40 CFR 60.21a(e), 60.22a(c), 60.24a(c), and 60.24a(n)(1) and (2) by deleting subpart C from the provisions because EGs can be codified in other subparts of this part and not only in subpart C of this part.

iii. The EPA proposes to amend 40 CFR 60.27a(a) by replacing the word ''shorten'' with ''amend''. The applicability provision at 40 CFR 60.20a(a)(1) states that ''each emission guideline may include specific provisions in addition to or that supersede requirements of this subpart.'' However, the provision in 40 CFR 60.27a(a) only provides for the Administrator to ''shorten the period for submission of any plan or plan revision or portion thereof''. To make these two provisions consistent in light of the proposed timelines for plan submission included in this action, the EPA is proposing to replace the word ''shorten'' with ''amend.''

iv. The EPA is also proposing an editorial amendment to 40 CFR part 60 subpart A at 60.1(a) to add a reference to subpart Ba. The applicability provision in 40 CFR 60.1(a) states that ''Except as provided in subparts B and C, the provisions of this part apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility''. We are proposing to amend this provision to include reference to subpart Ba in addition to subparts B and C.

The EPA solicits comment on the proposed clarifications as described in section III.G.2 of this preamble. (Comment G2–1).

3. Submission of Emissions Data and Related Information

The EPA proposes to amend 40 CFR 60.25a(a) by deleting reference to 40 CFR part 60 appendix D because the system specified for information submittal by the appendix is no longer in use. The proposed amendments clarify that the applicable EG will specify the system for submission of the inventory of designated facilities, including emission data for the designated pollutants and any additional required information.

4. State Permit and Enforcement Authority

Questions have previously arisen as to whether states may establish standards of performance and other plan requirements as part of state permits and administrative orders. The EPA is not proposing a regulatory amendment on this point but confirms that subpart Ba allows for standards of performance and other state plan requirements to be established as part of state permits and administrative orders, which are then incorporated into the state plan. See 40 CFR 60.27a(g)(2)(ii).

However, the EPA notes that the permit or administrative order alone may not be sufficient to meet the requirements of an EG or the implementing regulations, including the completeness criteria under 40 CFR 60.27a(g). For instance, a plan submittal must include supporting material demonstrating the state's legal authority to implement and enforce each component of its plan, including the standards of performance. *Id.* at 40 CFR 60.27a(g)(2)(iii). In addition, the specific EGs may also require demonstrations that may not be satisfied by terms of a permit or administrative order. To the extent that these and other requirements are not met by the terms of the incorporated permits and administrative orders, states will need to include materials in a state plan submission demonstrating how the plan meets those requirements. If a state does choose to use permits or administrative orders to establish standards of performance, it needs to demonstrate that it has the legal authority to do so. The implementing regulations do not themselves provide any independent or additional authority to issue permits and administrative orders under states' EPA approved title I and title V permitting programs. The EPA solicits comment on these proposed clarifications to state permit and enforcement authority (Comment G4–1).

IV. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

This action proposes amendments to 40 CFR part 60, subpart Ba, the general provisions that provide a framework for the development, adoption, and submittal of state plans for implementation of CAA section 111(d) EGs. The EGs provide for regulation of emissions of designated pollutants from existing facilities within specific source categories. The proposed amendments will only be applicable to EGs promulgated after July 8, 2019, to the extent the EG does not supersede the requirements of subpart Ba. The proposed amendments will not impact legacy EGs subject to the requirements of 40 CFR part 60, subpart B.

The impacts of the amendments proposed here on the benefits and costs of a potential EG subject to subpart Ba can vary greatly depending on the source category, number and location of designated facilities, and the designated pollutant and potential controls addressed. Additionally, the EPA may propose to supersede these general provisions in a particular EG, as needed and with appropriate justification. Emission guidelines are subject to notice and comment rulemaking, providing the opportunity for stakeholders, including the public, to consider the impacts of implementing or superseding these amendments during those rule making actions.

The EPA expects that the overall impacts of the implementation of the amendments to subpart Ba being proposed in this action will improve the implementation of EGs under CAA section 111(d). In particular, the EPA expects that the timelines proposed in this action both appropriately accommodate the process required by states and the EPA to develop and evaluate plans to effectuate an EG and are consistent with the objective of CAA section 111(d) to ensure that designated facilities expeditiously control emissions of pollutants that the EPA has determined may be reasonably anticipated to endanger public health or welfare. The potential impacts of

[52] The Municipal Solid Waste Landfills EG, which is currently being implemented, has its own applicability provisions and is subject to subpart B.

amendments associated with timelines is addressed in more detail below.

As described in detail in section III.A.1 of this preamble, the EPA is proposing 15 months for state plan submissions after publication of a final EG. The EPA expects the additional time proposed for subpart Ba compared with the 9 months provided in subpart B will better accommodate the process required by states and the EPA to develop plans to effectuate the applicable EG. Under the proposed state plan submission timeframe, the costs of developing the plans may be spread over 6 additional months. These additional 6 months also provide for the time needed by states to meet the proposed requirements associated with meaningful engagement and RULOF. As discussed in sections III.A.1 and III.A.3 of this preamble, the EPA does not interpret the *ALA* court's direction to require a quantitative measure of impact, but rather consideration of the importance of the public health and welfare goals when determining appropriate deadlines for implementation of regulations under CAA section 111(d). In proposing the state plan submittal timeline, the EPA is allowing states sufficient time to develop feasible implementation plans for their designated facilities that adequately address public health and environmental objectives. By allowing sufficient time for states to develop their state plans, the EPA has considered the importance of the public health and welfare goals as the proposed state planning process timing ultimately helps ensure timelier implementation of an EG, and therefore achievement of actual emission reductions, than would an unattainable deadline that may result in the failure of states to submit plans and require the development and implementation of a Federal plan. In addition, a successful submittal of approvable state plans will avoid an attendant expenditure of Federal resources associated with the development of a Federal plan.

As described in detail in sections III.A.3 and III.A.4 of this preamble, the EPA is proposing 12 months for the EPA to take final action on a state plan after a submission is found to be complete and 12 months for the EPA to promulgate a Federal plan either after the state plan deadline, if a state has failed to submit a complete plan, or after the EPA's disapproval of a state plan submission. The EPA is further proposing to streamline the timeframe for the EPA's determination of completeness on a state plan submission from six months to 60 days from receipt of the state plan submission (see section III.A.2 of this preamble). As described in detail in section III of this preamble, because these proposed timeframes provide for the administrative time reasonably necessary for EPA to accomplish such actions in an expeditious manner, the EPA expects these timeframes will minimize the impacts on public health and welfare while ensuring that an EG is expeditiously implemented.

As described in detail in section III.A.5 of this preamble, the EPA is proposing to require that state plans include increments of progress if the plan requires final compliance with standards of performance later than 16 months after the plan submission deadline. The EPA expects the additional time of 4 months provided in the proposed amendments, compared to the requirement in subpart B, provides a reasonable time period for owners or operators of designated facilities to initiate actions associated with the increments of progress, thus ensuring a successful implementation of the increments of progress. Any specific requirements associated with increments of progress would be included in the EG, as these are dependent on the source type, pollutant, and control strategy addressed.

The EPA is also proposing amendments to subpart Ba to enhance requirements for reasonable notice and opportunity for public participation. In particular, the EPA is proposing to require that states, as part of the state plan development or revision process or if invoking RULOF provisions, undertake outreach and meaningful engagement with a broad range of pertinent stakeholders. Pertinent stakeholders include communities most affected by and vulnerable to the impacts of the plan or plan revision (see section III.C of this preamble).

Overall, the EPA expects these amendments will benefit the states in the development of approvable state plans. The EPA expects that the proposed requirements associated with meaningful engagement with pertinent stakeholders and RULOF would potentially increase the amount of information the states can use in designing standards, which may increase both the level of resources states will need to employ in the development of an approvable plan, as well as the resulting health and welfare benefits of the standards. At the same time, there are benefits of engaging with stakeholders and receiving pertinent information as a state plan is being developed. Such engagement may improve the record for the state's plan and reduce the amount of comments received when the state plan is proposed to the public, which would reduce the amount of effort employed after proposal to address issues raised by the public and stakeholders.

There is a lot of variation and uncertainty in determining the magnitude of impacts, both to states and the public, resulting from amendments associated with meaningful engagement in any particular EG. The impacts of conducting meaningful engagement will be highly dependent on the number and location of designated facilities addressed by an EG, as well as on the type of health or environmental impacts of the associated emissions. If stakeholder and public involvement required by the proposed amendments does not generate a large number of specific and unique comments, data, or other considerations, then the level of effort states will employ to review them will be lower in comparison to when meaningful engagement comments are voluminous. Also, to the extent that states already employ significant engagement with pertinent stakeholders, the proposed meaningful engagement amendments would not result in additional costs, while other states that do not have engagement procedures already in place may be required to increase their level of effort to engage with pertinent stakeholders. The burden and benefits of meaningful engagement for the pertinent stakeholders will also be highly dependent on the EG and associated variables such as, but not limited to, the geographical distribution of the facilities and communities impacted, available modes of participation for those areas, the pollutants addressed, and the range of options available to the state and facilities for meeting the EG standards. The burden and benefits to pertinent stakeholders may be difficult to quantify, but overall, their engagement will be voluntary and is anticipated to result in feedback that may improve the resulting health and welfare benefits of the standards as perceived and experienced, particularly by those in communities most affected by and vulnerable to the impacts of the plan.

The EPA is proposing revisions to the RULOF provision in subpart Ba. The amendments included in this proposed action are intended to provide clarity and consistency for states and the EPA in considering RULOF when applying standards of performance to individual sources, while still fulfilling the statutory purpose of CAA section 111(d) (see section III.E of this preamble).

The magnitude of impacts, both to states and the public, resulting from amendments associated with the

proposed RULOF amendments, will vary depending on the particular EG to which the proposed provisions would apply. If a state does not invoke RULOF in their state plan, then the proposed amendments will not result in additional costs. If a state does invoke RULOF in their state plan, then the proposed amendments could result in an increased level of effort to develop standards of performance for certain sources. As such, the EPA expects the RULOF proposed amendments will potentially increase the level of resources states will need to employ in the development of an approvable plan. However, because the proposed amendments clarify what the EPA considers to be a satisfactory plan, the amendments would reduce the uncertainty of states and designated facilities in the development of such standards. This in turn could result in a decrease in the amount of time that a state that wished to invoke RULOF would need, relative to a situation where the requirements were less defined, by avoiding significant back and forth with EPA and the sources in the state during state plan development. Overall, the EPA expects the RULOF amendments will benefit the states in the development of approvable state plans and in the resulting benefits to public health and welfare.

Finally, the EPA expects proposed amendments for electronic submittal and for the availability of optional regulatory mechanisms will improve flexibility and efficiency in the call for and submission, review, approval, and implementation of state plans, and thus will overall result in benefits to the states, EPA, designated facilities, and public health and welfare. In addition, the EPA expects the proposed amendments for electronic submittal will increase the ease and efficiency of data submittal and data accessibility and benefit the states and EPA. Electronic submittal will also improve the Agency's efficiency and effectiveness in the receipt and review of state plans.

While specific analysis of cost and benefit impacts will be addressed through individual EGs and associated notice and comment rulemaking, we request comments throughout this preamble more generally on the potential impacts associated with the amendments to subpart Ba being proposed in this action.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the Paperwork Reduction Act. The requirements in subpart Ba do not themselves require any reporting and recordkeeping activities, and no Information Collection Request (ICR) was submitted in connection with the original promulgation of the Ba subpart or the amendments we are proposing at this time. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the Ba in the individual Emission Guidelines, which have their own ICRs.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Specifically, this action addresses processes related to state plans for implementation of EGs established under CAA section 111(d).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposed action does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate or the private sector in any 1 year.

This proposed action is also not subject to the requirements of section 203 of UMRA because, as described in 2 U.S.C. 1531–38, it contains no regulatory requirements that might significantly or uniquely affect small governments. This action imposes no enforceable duty on any local, or tribal governments or the private sector. However, this action imposes enforceable duties on states. This action does not meaningfully require additional mandates on states beyond what is already required of them and will not impose a burden in excess of $100 million.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The EPA believes, however, that this action may be of significant interest to state governments.

Subpart Ba requirements apply to states in the development and submittal of state plans pursuant to emission guidelines promulgated under CAA section 111(d) after July 8, 2019, to the extent that an EG does not supersede the requirements of subpart Ba. This action proposes amendments to certain requirements for development, submission, and approval processes of state plans under CAA section 111(d). In particular, the proposed amendments associated to state plan submission deadlines, RULOF provisions, meaningful engagement, and regulatory mechanisms may be of significant interest to state governments. In section IV.A. of this preamble, the EPA describes the potential impacts of the implementation of the amendments to subpart Ba being proposed in this action. Overall, the EPA expects these amendments will benefit the states in the development of approvable state plans.

The EPA notes that notice and comment procedures required for the promulgation of individual EGs will provide opportunity for states to address issues related to federalism based on specific application of subpart Ba requirements to that particular EG.

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

This action does not have tribal implications as specified in Executive Order 13175. It would not impose substantial direct compliance costs on tribal governments that have designated facilities located in their area of Indian country. Tribes are not required to develop plans to implement the guidelines under CAA section 111(d) for designated facilities. This action also will not have substantial direct costs or impacts 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it will not have a significant adverse effect on the supply, distribution or use of energy. Specifically, this action addresses the submission and adoption of state plans for implementation of EGs established under CAA section 111(d).

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA believes that this action will advance protection for these communities by specifying requirements for balanced stakeholder outreach and meaningful public engagement as described in section III.C and section III.E.8 of this action.

K. Determination Under Section CAA 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of CAA section 307(d). Section 307(d)(1)(V) of the CAA provides that the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine.''

Michael S. Regan,

Administrator.

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Data Mapping to Save Moms' Lives Act (Dec. 20, 2022; 136 Stat. 2347)

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Protecting Firefighters from Adverse Substances Act (Dec. 20, 2022; 136 Stat. 2348)

S. 1617/P.L. 117–249
Disaster Assistance for Rural Communities Act (Dec. 20, 2022; 136 Stat. 2350)

S. 2796/P.L. 117–250
Rural Opioid Abuse Prevention Act (Dec. 20, 2022; 136 Stat. 2352)

S. 3092/P.L. 117–251
FEMA Improvement, Reform, and Efficiency Act of 2022 (Dec. 20, 2022; 136 Stat. 2354)

S. 3115/P.L. 117–252
Pro bono Work to Empower and Represent Act of 2021 (Dec. 20, 2022; 136 Stat. 2359)

S. 3499/P.L. 117–253
To amend the Post-Katrina Emergency Management Reform Act of 2006 to repeal certain obsolete requirements, and for other purposes. (Dec. 20, 2022; 136 Stat. 2360)

S. 3662/P.L. 117–254
Preventing PFAS Runoff at Airports Act (Dec. 20, 2022; 136 Stat. 2361)

S. 3875/P.L. 117–255
Community Disaster Resilience Zones Act of 2022 (Dec. 20, 2022; 136 Stat. 2363)

H.R. 310/P.L. 117–256
To posthumously award the Congressional Gold Medal, collectively, to Glen Doherty, Tyrone Woods, J. Christopher Stevens, and Sean Smith, in recognition of their contributions to the Nation. (Dec. 21, 2022; 136 Stat. 2368)

H.R. 2220/P.L. 117–257
To amend title 40, United States Code, to modify the treatment of certain bargain-price options to purchase at less than fair market value, and for other purposes. (Dec. 21, 2022; 136 Stat. 2371)

H.R. 2930/P.L. 117–258
Safeguard Tribal Objects of Patrimony Act of 2021 (Dec. 21, 2022; 136 Stat. 2372)

H.R. 3462/P.L. 117–259
SBA Cyber Awareness Act (Dec. 21, 2022; 136 Stat. 2387)

H.R. 7535/P.L. 117–260
Quantum Computing Cybersecurity Preparedness Act (Dec. 21, 2022; 136 Stat. 2389)

S. 314/P.L. 117–261

Klamath Tribe Judgment Fund Repeal Act (Dec. 21, 2022; 136 Stat. 2393)

S. 4834/P.L. 117–262

Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2022 (Dec. 21, 2022; 136 Stat. 2394)

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