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Presidential Documents

Title 3—

The President

Proclamation 10532 of March 20, 2023

National Agriculture Day, 2023

By the President of the United States of America

A Proclamation

American farms remind us of the beauty and generosity of our Nation. They feed the country and the world, and with each new planting season, they embody that most American of things—possibilities. On National Agriculture Day, we celebrate all the farmers, farmworkers, ranchers, fishers, foresters, and other agricultural workers who do so much to make our Nation strong, fuel our economy, and steward our lands. America owes them.

There is a common spirit across America's agricultural community: a respect for tradition, a drive to innovate, and a commitment to never giving up—even when the going gets tough. Small farmers, ranchers, and meat processors also face many challenges. Extreme weather, made worse by the climate crisis, is destroying crops and decimating herds. Markets for seeds, feed, and fertilizer are dominated by a few large companies, raising the cost of doing business. Corporate consolidation has reduced what small producers can get in exchange for their crops and livestock, lowering farmer incomes and workers' paychecks. Too many feel forced to give up farms that their families spent generations growing. A lack of competition has distorted the market.

I have often said that capitalism without competition is not capitalism—it is exploitation. My Administration is working to promote fair competition across our economy, including in agriculture. We are encouraging antitrust agencies to focus on anti-competitive practices in agricultural markets. We are working to secure the so-called ''right to repair'' so farmers can fix their own machinery and tractors, rather than being required to send them back to the manufacturer. We are making it easier for farmers to bring claims against exploitative poultry processors, and the American Rescue Plan has invested $1 billion to help smaller meat processors expand operations.

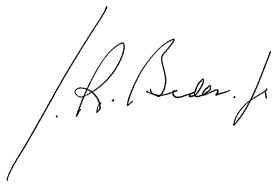
To ease rising costs, we are also investing $500 million in domestic independent fertilizer production and expanding crop insurance to support more farmers who are willing to risk double cropping. The Bipartisan Infrastructure Law is rebuilding roads, bridges, railways, and ports and is expanding broadband, particularly in rural areas, which will transform supply chains. The Inflation Reduction Act is investing a historic $40 billion in climate-smart agriculture and other programs that can help producers stay on their lands, including approximately $18 billion for conservation and easements and $3.1 billion in relief for distressed borrowers. The Act also dedicates resources to help address generations of systemic discrimination that have denied farmers of color equal access to opportunities and credit.

We will also keep fighting for the farm and food workers who form the backbone of our economy, working with unions to improve workforce training and workplace safety—whether on farms and ranches, at processing or packing plants, or in delivery and food preparation. Every worker is entitled to fair pay, safe conditions, and the free and fair choice to join a union. That includes the large portion of agricultural workers who are undocumented, many of whom have built lives and worked here for decades.

In return for all that they have done to keep America running, undocumented farmworkers should have a pathway to citizenship. Our economy needs them, and they deserve dignity and respect.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 21, 2023, as National Agriculture Day. I call upon all Americans to join me in recognizing and reaffirming our commitment to and appreciation for our country's farmers, farmworkers, ranchers, fishers, foresters, and all those who work in the agriculture sector across the Nation.

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



[FR Doc. 2023–06106
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AO49

Prevailing Rate Systems; Redefinition of Certain Appropriated Fund Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine the geographic boundaries of the following appropriated fund Federal Wage System (FWS) wage areas for pay-setting purposes: Hagerstown-Martinsburg-Chambersburg, MD; Richmond, VA; Roanoke, VA; and Washington, DC. The final rule will redefine the Shenandoah National Park portions of Albemarle, Augusta, Greene, Page, and Rockingham Counties, VA, to the Washington, DC, wage area. This change is based on a recent consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC).

DATES:

Effective date: This regulation is effective April 24, 2023.

Applicability date: This change applies on the first day of the first applicable pay period beginning on or after April 24, 2023.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On December 30, 2022, OPM issued a proposed rule (87 FR 80472) to redefine the geographic boundaries of the following appropriated fund FWS wage areas: Hagerstown-Martinsburg-Chambersburg, MD; Richmond, VA; Roanoke, VA; and Washington, DC.

FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus. The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix C to subpart B amend the table by revising the wage area listings for the District of Columbia and the States of Maryland and Virginia to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

District of Columbia

Washington, DC

Survey Area

District of Columbia:
  Washington, DC
Maryland:
  Charles
  Frederick
  Montgomery
  Prince George's
Virginia (cities):
  Alexandria
  Fairfax
  Falls Church
  Manassas
  Manassas Park
Virginia (counties):
  Arlington
  Fairfax
  Loudoun
  Prince William

Area of Application. Survey area plus:

Maryland:
  Calvert
  St. Mary's
Virginia (city):
  Fredericksburg
Virginia (counties):
  Albemarle (Only includes the Shenandoah National Park portion)
  Augusta (Only includes the Shenandoah National Park portion)
  Clarke
  Culpeper
  Fauquier
  Greene (Only includes the Shenandoah National Park portion)
  King George
  Madison
  Page (Only includes the Shenandoah National Park portion)
  Rappahannock
  Rockingham (Only includes the Shenandoah National Park portion)

Spotsylvania
Stafford
Warren
West Virginia:
Jefferson
* * * * *

Maryland

Baltimore

Survey Area

Maryland (city):
Baltimore
Maryland (counties):
Anne Arundel
Baltimore
Carroll
Harford
Howard

Area of Application. Survey area plus:

Maryland:
Queen Anne's

Hagerstown-Martinsburg-Chambersburg

Survey Area

Maryland:
Washington
Pennsylvania:
Franklin
West Virginia:
Berkeley

Area of Application. Survey area plus:

Maryland:
Allegany
Garrett
Pennsylvania:
Fulton
Virginia (cities):
Harrisonburg
Winchester
Virginia (counties):
Frederick
Page (Does not include the Shenandoah National Park portion)
Rockingham (Does not include the Shenandoah National Park portion)
Shenandoah
West Virginia:
Hampshire
Hardy
Mineral
Morgan
* * * * *

Virginia

Norfolk-Portsmouth-Newport News-Hampton

Survey Area

Virginia (cities):
Chesapeake
Hampton
Newport News
Norfolk
Poquoson
Portsmouth
Suffolk
Virginia Beach
Williamsburg
Virginia (counties):
Gloucester
James City
York
North Carolina:
Currituck

Area of Application. Survey area plus:

Virginia (city):
Franklin
Virginia (counties):
Accomack
Isle of Wight
Mathews
Northampton
Southampton
Surry
North Carolina:
Camden
Chowan
Gates
Pasquotank
Perquimans
Maryland:
Assateague Island part of Worcester

Richmond

Survey Area

Virginia (cities):
Colonial Heights
Hopewell
Petersburg
Richmond
Virginia (counties):
Charles City
Chesterfield
Dinwiddie
Goochland
Hanover
Henrico
New Kent
Powhatan
Prince George

Area of Application. Survey area plus:

Virginia (cities):
Charlottesville
Emporia
Virginia (counties):
Albemarle (Does not include the Shenandoah National Park portion)
Amelia
Brunswick
Buckingham
Caroline
Charlotte
Cumberland
Essex
Fluvanna
Greene (Does not include the Shenandoah National Park portion)
Greensville
King and Queen
King William
Lancaster
Louisa
Lunenberg
Mecklenburg
Middlesex
Nelson
Northumberland
Nottoway
Orange
Prince Edward
Richmond
Sussex
Westmoreland

Roanoke

Survey Area

Virginia (cities):
Radford
Roanoke
Salem
Virginia (counties):
Botetourt
Craig
Montgomery
Roanoke

Area of Application. Survey area plus:

Virginia (cities):
Bedford
Buena Vista
Clifton Forge
Covington
Danville
Galax
Lexington
Lynchburg
Martinsville
South Boston
Staunton
Waynesboro
Virginia (counties):
Alleghany
Amherst
Appomattox
Augusta (Does not include the Shenandoah National Park portion)
Bath
Bedford
Bland
Campbell
Carroll
Floyd
Franklin
Giles
Halifax
Henry
Highland
Patrick
Pittsylvania
Pulaski
Rockbridge
Wythe
* * * * *

[FR Doc. 2023–05816 Filed 3–22–23; 8:45 am]

BILLING CODE 6325–39–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Bulletin 2023–01: Unfair Billing and Collection Practices After Bankruptcy Discharges of Certain Student Loan Debts

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing this Compliance Bulletin and Policy Guidance (Bulletin) to address the treatment of certain private student

loans (student loans) following bankruptcy discharge. In order to secure a discharge of ''qualified education loans'' in bankruptcy, borrowers must demonstrate that the loans would impose an undue hardship if not discharged. Student loans that are not ''qualified education loans'' (non-qualified student loans), however, are discharged under standard bankruptcy discharge orders. In recent supervisory work, CFPB examiners identified servicers that did not determine whether education loans were qualified or non-qualified. As a result, servicers improperly returned non-qualified education loans to repayment after a bankruptcy concluded and continued to bill and collect payments on the loans, even though the borrowers' bankruptcy discharges released them from these debts. This conduct violated the Consumer Financial Protection Act's (CFPA's) prohibition on unfair, deceptive, or abusive acts or practices. CFPB examiners directed the servicers to cease collection of discharged loans and take remedial action, which includes conducting a multi-year lookback and issuing refunds to affected consumers. In its oversight, the CFPB will pay particular attention to servicers' practices in connection with student loans that are the subject of bankruptcy discharge orders, including whether discharged debts are being collected contrary to bankruptcy court orders.

DATES: This bulletin is applicable on March 23, 2023.

FOR FURTHER INFORMATION CONTACT: Miya Tandon, Counsel, Office of Supervision Policy, at 202–695–4901; Matt Liles, Senior Counsel, Office of Supervision Policy, at 202–701–3828. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

After a debtor files for bankruptcy, a judge issues an order of discharge that releases a debtor from personal liability for all debts unless they are exempted. Some types of student loans are not discharged by general orders of discharge and receive special treatment under section 523(a)(8) of the Bankruptcy Code. Borrowers with these obligations must prove the debt would impose an undue hardship if not discharged. The Bankruptcy Code identifies these debts as:

a. Loans that are made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution;

b. Loans that meet the definition of a ''qualified education loan,'' as defined in section 221(d)(1) of the Internal Revenue Code of 1986; [1] or

c. Obligations to repay funds received as an educational benefit, scholarship, or stipend.[2]

The Internal Revenue Code specifies that qualified education loans are those that are incurred:

1. Solely to pay for the cost of attendance less scholarships or certain other payments;

2. At institutions eligible to participate in Federal student aid programs under Title IV of the Higher Education Act of 1965; and

3. While attending at least half-time.[3]

In practice, the majority of student loans meet one of the criteria for special treatment under the Bankruptcy Code, and therefore, are not discharged by a general order of discharge.[4] Importantly, however, some loans for educational purposes that borrowers may think of as ''private student loans'' are not exempt from the general order of discharge,[5] including:

- Loans made to attend non-Title IV schools (that is, schools that are not permitted to process U.S. Federal student aid, such as unaccredited schools and foreign schools); [6]
- Loans made to cover fees and living expenses incurred while studying for the bar exam or other professional exams; [7]
- Loans made to cover fees, living expenses, and moving costs associated with medical or dental residency;
- Loans made in amounts in excess of the cost of attendance; [8]
- Loans to students attending school less than half-time; [9] and
- Other loans made for non-qualified higher education expenses.[10]

Any private loans in these categories are discharged by standard bankruptcy discharge orders, just like most other unsecured consumer debts.[11] In addition to not fitting the definition of ''qualified education loan,'' these loans are not made, insured, or guaranteed by a governmental unit, and are not educational benefits, scholarships, or stipends. The obligations at issue here are originated as loans requiring repayment; educational benefits, scholarships, and stipends, in contrast, are grants, where repayment is only triggered if the student fails to meet a condition of the grant. Indeed, the Second, Fifth, and Tenth Circuits—the only circuits to analyze the issue fully—have held that the educational benefit exclusion does not apply to student loans.[12]

II. Unfair Acts or Practices in Handling Student Loans Post-Bankruptcy

The CFPB has authority to conduct oversight of student loan servicing, including by citing servicers for unfair, deceptive, or abusive acts or practices.[13] Congress defined an unfair act or practice as one that:

(A) Causes or is likely to cause substantial injury to consumers which is not reasonably avoidable, and

(B) Such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[14]

Through its supervisory activities, CFPB examiners found that servicers of various types of student loans failed to maintain policies or procedures for distinguishing between loan types that are discharged in the regular course of a bankruptcy proceeding (generally, non-qualified education loans) and loan types that require consumers to initiate

[1] 11 U.S.C. 523(a)(8).

[2] 11 U.S.C. 523(a)(8)(A)(ii).

[3] 26 U.S.C. 221(d)(1).

[4] For example, the majority of student loans are Federal loans made or insured under title IV of the Higher Education Act. *See* Report of the CFPB Education Loan Ombudsman, *https://files.consumerfinance.gov/f/documents/cfpb_education-loan-ombudsman_report_2022-10.pdf* (Oct. 2022), pp. 7–8.

[5] *See, e.g., In re McDaniel,* 590 B.R. 537, 545 (Bankr. D. Colo. 2018) (noting that merely labeling a product a ''student loan'' does not subject it to the undue hardship standard); *Homaidan* v. *Sallie Mae, Inc.,* 3 F.4th 595, 605 (2d Cir. 2021); *In re McDaniel,* 973 F.3d 1083, 1092 (10th Cir. 2020); *In re Crocker,* 941 F.3d 206 (5th Cir. 2019), as revised (Oct. 22, 2019).

[6] *See Crocker,* 941 F.3d at 217–18 (noting that qualified educational expenses must be used to attend an ''eligible educational institution,'' which section 25A(f)(2) of the Internal Revenue Code defines as eligible to participate in Title IV programs).

[7] *Id.* (bar study loan subject to standard bankruptcy discharge); *see also In re Campbell,* 547 B.R. 49, 61 (Bankr. E.D.N.Y. 2016).

[8] 26 U.S.C. 221(d)(2) (limiting a qualified educational expense to ''the cost of attendance''); *see, e.g., Homaidan,* 3 F.4th at 599 (affirming discharge of loans made in excess of the cost of attendance).

[9] *See* 26 U.S.C. 221(d)(1)(C) (defining a ''qualified education loan'' as a loan made to an ''eligible student''); 20 U.S.C. 1091(b)(3) (defining ''eligible student'' as someone attending at least half-time).

[10] 26 U.S.C. 221(d)(1) (requiring a qualified education loan only be used to pay ''qualified higher education expenses'').

[11] *See, e.g., Homaidan,* 3 F.4th at 605; *McDaniel,* 973 F.3d at 1092; *Crocker,* 941 F.3d at 206.

[12] *See Homaidan,* 3 F.4th at 604–05; *McDaniel,* 973 F.3d at 1092; Crocker, 941 F.3d at 224.

[13] *See* title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (establishing the CFPB's authority). Under the Dodd-Frank Act, all covered persons or service providers are prohibited from committing unfair, deceptive, or abusive acts or practices in violation of the Act.

[14] 12 U.S.C. 5531(c)(1).

an adversarial proceeding and meet the ''undue hardship'' standard to receive bankruptcy relief. Some servicers relied entirely on loan holders to distinguish among the loans and did not determine whether holders had in fact done so. Nor did they take any other steps to evaluate whether or not the loans were qualified education loans. Consequently, examiners identified accounts where servicers, following a bankruptcy involving non-qualified education loans, resumed collecting on loans that had been discharged by bankruptcy courts.

CFPB examiners determined that student loan servicers engaged in an unfair act or practice, in violation of the Dodd-Frank Act, when they resumed collection of debts that were discharged by bankruptcy courts.[15] The conduct caused or was likely to cause substantial injury to consumers because the representations made to consumers in billing statements and other collection attempts were likely to result in consumers making payments they did not owe. In fact, CFPB examiners also observed that after exiting bankruptcy and being presented with bills from their student loan servicers, most borrowers made payments toward the debts, sometimes paying thousands of dollars on discharged debts. Since the consumers could not control the servicers' actions, consumers could not reasonably avoid the injury. Lastly, the substantial injury was not outweighed by countervailing benefits to consumers or competition, as there was no value to consumers or competition in servicers collecting debts that had already been discharged by operation of bankruptcy court orders.

In addition to directing the servicers to revise their policies and procedures to prevent the collection of discharged loans, CFPB examiners directed them to do a multi-year lookback resulting in refunds to affected borrowers.[16]

III. Supervision and Enforcement

The CFPB's supervisory observations and consumer complaints show that servicers continued to make collection attempts on student loans that were discharged through bankruptcy in many instances. This conduct violates Federal consumer financial law.[17] The CFPB expects servicers to proactively identify student loans that are discharged without an undue hardship showing and permanently cease collections following a standard bankruptcy discharge order. The CFPB is prioritizing student loan servicing oversight work in deploying its supervision and enforcement resources in the coming year, including a focus on evaluating whether lenders and servicers cease collection of student loans once they have been discharged.[18]

In its student loan servicing oversight work, the CFPB plans to pay particular attention to:

a. Whether student loan servicers continue to collect on loans that are discharged by a bankruptcy discharge order;

b. Whether servicers and loan holders have adequate policies and procedures to identify loans that are discharged by a bankruptcy discharge order and loans that require the borrower to go through an adversarial proceeding to demonstrate that they meet the undue hardship standard; and

c. Whether servicers provide accurate information to borrowers about the status of their loans and the protections that bankruptcy offers.[19]

In exercising its supervisory and enforcement discretion, the CFPB will consider the extent to which entities engage in proactive review and remediation. For example, where servicers or loan holders identify errors, they can expand their analysis to include a review of all accounts exiting bankruptcy going back to their earliest available data and provide full remediation where they wrongfully collected from any borrower. In addition, servicers can proactively categorize loans based on whether they can be discharged, so their policies and procedures do not require individual determinations at the time of bankruptcy. In future supervisory and enforcement work, the CFPB will assess servicers' processes and determine whether necessary remediation was adequate to compensate borrowers for the errors.

IV. Conclusion

The CFPB will continue to review closely the practices of student loan servicers for potential unfair, deceptive, or abusive acts or practices. Examiners will determine whether servicers of private student loans return loans to repayment status after a standard bankruptcy discharge has released the borrowers from these debts. The CFPB will use all appropriate tools, including its supervisory authority, enforcement authority, and referrals to State and other Federal authorities where appropriate to hold entities accountable if they engage in unfair, deceptive, or abusive acts or practices in connection with these bankruptcy-related practices.

V. Regulatory Requirements

This is a general statement of policy under the Administrative Procedure Act (APA). It is intended to provide information regarding the CFPB's general plans to exercise its supervisory and enforcement discretion for institutions under its jurisdiction and does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing the Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. The CFPB has also determined that the issuance of the Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–06002 Filed 3–22–23; 8:45 am]

BILLING CODE 4810–AM–P

[15] Depending on the facts and circumstances, returning consumers to repayment status on debts discharged in bankruptcy may also implicate deceptive or abusive acts or practices, or other unfair acts or practices under the CFPA, sections 1031, 1036; 12 U.S.C. 5531, 5536.

[16] In addition, CFPB examiners have separately cited student loan servicers for deceptive conduct that violates the CFPA when the servicers misrepresented to consumers that student loans are never dischargeable in bankruptcy or conveyed to consumers that their loans are not dischargeable because those consumers have completed bankruptcy. *Supervisory Highlights, Fall 2014,* section 2.5.5, *https://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf* and *Supervisory Highlights, Fall 2015,* section 2.5.3, *https://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.*

[17] Practices of this kind might also violate State laws, including State prohibitions on unfair or deceptive practices and State student loan servicing statutes.

[18] To the extent that continued attempts to collect result in improper accrual and collection of interest on discharged education loans, such practices may result in the provision of any report of examination or related information identifying possible tax law noncompliance to the Commissioner of Internal Revenue, per 12 U.S.C. 5514(b)(6).

[19] This list is not exhaustive. The CFPB may also scrutinize additional practices related to discharged student loans.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0999; Airspace Docket No. 22–AWA–2]

RIN 2120–AA66

Amendment of Class C Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Chicago, IL, Class C airspace area surrounding the Chicago Midway International Airport, IL (MDW), by extending the existing Class C airspace shelf within 10 nautical miles (NM) of MDW from the southeast counterclockwise to the northeast. The FAA is taking this action to reduce the risk of midair collisions and enhance the efficient management of air traffic operations in the MDW terminal area.

DATES: Effective date 0901 UTC, June 15, 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 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.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/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

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 the 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 modifies the Class C airspace surrounding MDW to reduce the potential for midair collisions and enhance the management of air traffic in the terminal area as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0999 in the **Federal Register** (87 FR 64737; October 26, 2022) proposing to modify the Class C airspace area surrounding MDW. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received.

Discussion of Comments

The first commenter, the Airline Pilots Association (ALPA), affirmed their support for the new MDW Class C airspace design. They also commented against any proposals the FAA may receive aiming to raise the proposed Class C airspace floor over Lake Michigan above 2,300 feet mean sea level (MSL). In their concern, they cited such a proposed action may result in increased Traffic Collision Avoidance System (TCAS) Resolution Advisory (RA) events, unstable and/or missed approaches, near midair collisions (NMAC), or midair collisions between commercial and general aviation aircraft.

The FAA appreciates ALPA's support for the new MDW Class C airspace design. To their comment associated with any proposals submitted to the FAA aiming to raise the Class C airspace floor over Lake Michigan, no comments or proposals addressing that concern were received. Further, the FAA is not considering any amendment to the Class C airspace design that was proposed in the NPRM published in the **Federal Register** of October 26, 2022.

The second commenter, the Aircraft Owners and Pilots Association (AOPA), was supportive of the proposed change. In addition, AOPA commented that changes were needed to the Letter of Agreement (LOA) between Chicago Terminal Radar Approach Control (TRACON) and Midway Airport Traffic Control Tower (ATCT) regarding visual approaches to Runway 22L. They referenced the FAA's response to a pre-NPRM Ad Hoc Committee recommendation which stated the aforementioned LOA currently required that IFR aircraft conducting visual approaches to Runway 22L must only maintain 2,500 feet MSL until contacting the MDW ATCT. AOPA's concern was that the altitude constraint could easily lead to IFR aircraft crossing the Chicago lakefront VFR flyway only 200 feet above the proposed 2,300-foot Class C floor and result in possible wake turbulence issues, loss of separation, or more frequent TCAS RAs. AOPA acknowledged Runway 22L visual approaches are rarely used but believed the FAA should alter the LOA to require IFR aircraft conducting Runway 22L visual approaches to remain at or above 3,000 feet AGL until reaching the Chicago lakefront (or until reaching the DXXON waypoint).

The FAA appreciates AOPA's support and offers the following to their comment. In response to AOPA's comment with respect to requiring IFR aircraft conducting Runway 22L visual approaches to remain at or above 3,000 feet MSL until reaching the Chicago lakefront or the DXXON waypoint, the FAA revisited the Ad Hoc Committee's recommendation on the same requirement for aircraft flying visual approaches to Runway 22L from the east. The FAA reconsidered the Ad Hoc Committee's recommendation and AOPA's request for IFR aircraft conducting Runway 22L visual approaches to remain at or above 3,000 feet MSL until the Chicago lakefront or DXXON waypoint. After reconsideration of the recommendation and the request, the FAA agrees and will support the requested altitude requirement, to the maximum extent possible, for visual approaches flown to Runway 22L from the east.

The transfer of communications and control point from the Chicago TRACON to the MDW ATCT for IFR aircraft inbound to MDW Runway 22L from the east, whether on an instrument or visual approach, is over land beyond the Chicago lakefront VFR flyway and the DXXON waypoint. As such, IFR aircraft inbound to MDW Runway 22L remain under Chicago TRACON's control until after they pass the Chicago lakefront VFR flyway or DXXON waypoint. As an alternative to AOPA's request to update the LOA between Chicago TRACON and MDW ATCT, the

FAA determined that documenting the operational guidance for keeping IFR aircraft flying visual approaches to MDW Runway 22L from the east at or above 3,000 feet MSL would be better located in Chicago TRACON's operating procedures. Therefore, the existing LOA between Chicago TRACON and MDW ATCT will not be amended as requested.

Additionally, visual approaches are never advertised as the approach in use at MDW and all IFR aircraft arriving from the east are sequenced on the final approach course for the Area Navigation (RNAV) approaches when Runway 22L is the active runway. Should an IFR pilot established on the Runway 22L final approach course from the east report visual contact with MDW and request a visual approach, Chicago TRACON controllers would issue an altitude restriction of 3,000 feet MSL until reaching the DXXON waypoint, then clear the aircraft for the visual approach as a routine practice. However, in the event of emergency situations or safety of flight requirements, the Chicago TRACON may require IFR aircraft to operate at other Class C airspace altitudes as the situation requires.

Incorporation by Reference

Class C airspace designations are published in paragraph 4000 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, 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. This amendment will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by modifying the Chicago, IL, Class C airspace surrounding MDW by extending the airspace shelf further around the airport on the east side to end northeast of the airport. This amendment enhances flight safety in the MDW terminal area (see the attached chart).

The current Chicago, IL, Class C airspace consists of two concentric circles, a surface area and an airspace shelf, centered on the MDW airport reference point: (1) that airspace extending upward from the surface to 3,600 feet MSL within a 5 NM radius of the airport; and (2) that airspace extending upward from 1,900 feet MSL to 3,600 feet MSL between 5 NM and 10 NM from 2-miles northeast of and parallel to the MDW RWY 31C localizer course southeast of the airport, clockwise to the Chicago O'Hare Class B airspace area northwest of the airport. The Class C airspace area excludes the airspace within the adjacent Chicago, IL, Class B airspace area.

This action modifies the Chicago, IL, Class C airspace area by extending the existing airspace shelf between 5 NM and 10 NM further around MDW on the east side from the existing boundary located 2 NM northeast of and parallel to the MDW RWY 31C localizer course to a new boundary defined by the 090° bearing of the intersection of the 10-mile radius around the Chicago O'Hare International Airport and the 5-mile radius around MDW. The new Class C airspace shelf extends from the Chicago Class B airspace located northwest of MDW counterclockwise around MDW to a boundary slightly south of Interstate 290 located northeast of MDW and includes the airspace over Chicago and Lake Michigan between 5 NM and 10 NM of MDW. The portion of the Class C airspace shelf over land retains the existing airspace shelf altitudes extending upward from 1,900 feet MSL to 3,600 feet MSL and the portion of the Class C airspace shelf over Lake Michigan extends upward from 2,300 feet MSL to 3,600 feet MSL. The exclusion of the airspace within the Chicago, IL, Class B airspace area is retained.

This modified Class C airspace shelf enhances flight safety in the MDW terminal area by encompassing the MDW RNAV RWY 22L approaches for IFR aircraft, retaining the VFR flyway along the Lake Michigan shoreline outside Class C airspace for VFR pilots that elect not to communicate with ATC and fly within the Class C airspace, and preserving the VFR sightseeing operations north of Interstate 290 without impact.

Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). The current threshold after adjustment for inflation is $165,000,000, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA determined that this final rule: will result in minimal cost; is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses are summarized below.

As discussed above, the FAA determined that changes put forth in this rule will increase airspace safety with minimal cost impact. The final rule extends the Class C airspace area surrounding MDW Airport to reduce the risk of midair collisions and enhance the efficient management of air traffic operations in the MDW terminal area. The costs of the rule are the value of resources needed to comply with the airspace changes. In this case, VFR pilots desiring to fly at their current altitudes within the proposed Class C airspace are required to establish two-way communications with ATC. VFR pilots flying in the vicinity of MDW are likely equipped for this communication and as such this change would involve only minimal time for awareness and planning. The FAA also does not anticipate increased staffing needs. Therefore, costs are likely minimal.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that

agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The final rule amends 14 CFR part 71 by modifying the Chicago, IL, Class C airspace area to extend the airspace shelf around MDW further around the airport on the east side to end northeast of the airport. The FAA is taking this action to reduce the risk of midair collisions and enhance the efficient management of air traffic operations in the MDW terminal area. The rule will affect VFR pilots desiring to fly at their current altitudes within the proposed Class C airspace. These pilots will need to establish two-way communications with ATC; however, they are likely equipped for this communication and as such this change would involve only minimal time for awareness and planning. The final rule results in a minimal economic impact on small entities. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking does not result in a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it should improve safety and is consistent with the Trade Agreements Act.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the proposed rule will not result in the expenditure of $165,000,000 or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA determined that there is no new information collection requirement associated with this proposed rule.

Environmental Review

The FAA determined that this action of amending the Chicago, IL, Class C airspace area by extending the airspace shelf between 5 NM and 10 NM further around MDW on the east side from the existing boundary located southeast of MDW to a new boundary slightly south of Interstate 290 located northeast of MDW qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

AGL IL C Chicago, IL [Amended]

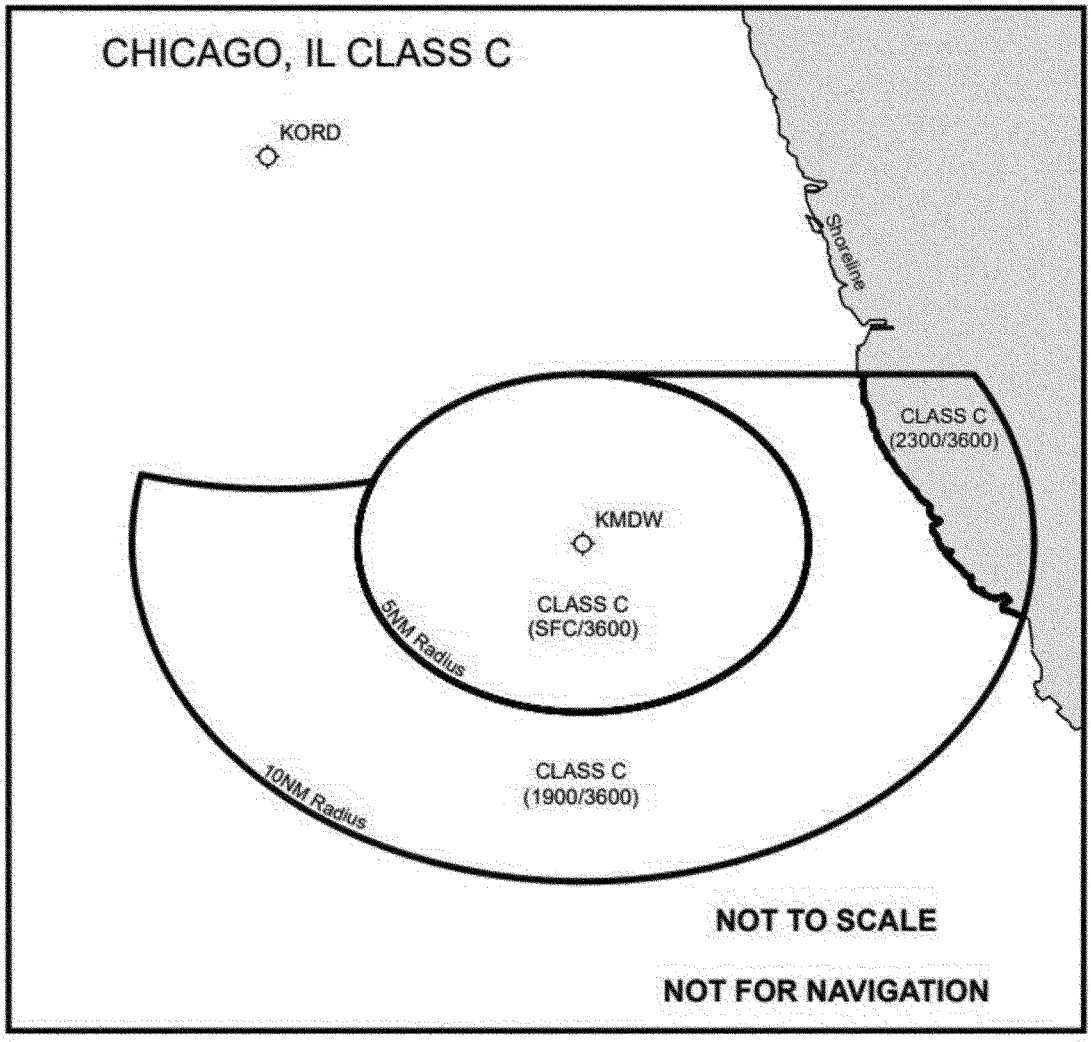
Chicago Midway International Airport, IL
(Lat. 41°47′10″ N, long. 087°45′09″ W)

That airspace extending upward from the surface to 3,600 feet MSL within a 5-mile radius of the Chicago Midway International Airport; that airspace extending upward from 1,900 feet MSL to 3,600 feet MSL within an area beginning at a point north of Chicago Midway International Airport at the intersection of the 10-mile radius around a point centered at lat. 41°59′16″ N, long. 087°54′17″ W and the 5-mile radius of the Chicago Midway International Airport, thence extending on a 090° bearing to the Lake Michigan shoreline at lat. 41°52′09″ N, long. 087°36′59″ W, thence southward following the shoreline to the 10-mile radius of the Chicago Midway International Airport at lat. 41°44′59″ N, long. 087°32′06″ W, thence clockwise along that 10-mile radius to the intersection with the 10.5-mile radius around a point centered at lat. 41°59′16″ N,

long. 087°54′17″ W, thence counterclockwise along that 10.5-mile radius to the intersection with the 5-mile radius of the Chicago Midway International Airport, thence counterclockwise along that 5-mile radius to the intersection with the 10-mile radius around a point centered at lat. 41°59′16″ N, long. 087°54′17″ W; and that airspace extending upward from 2,300 feet MSL to 3,600 feet MSL within an area beginning at a point on the Lake Michigan shoreline at lat. 41°52′09″ N, long. 087°36′59″ W, thence extending on a 090° bearing to the 10-mile radius of the Chicago Midway International Airport, thence clockwise along that 10-mile radius to the Lake Michigan shoreline at lat. 41°44′59″ N, long. 087°32′06″ W, thence northward following the shoreline to lat. 41°52′09″ N, long. 087°36′59″ W. This Class C airspace area excludes the airspace within the Chicago, IL, Class B airspace area.

* * * * *

MODIFICATION OF THE CHICAGO MIDWAY INTERNATIONAL AIRPORT CLASS C AIRSPACE AREA (Docket Number 22–AWA–2)



Issued in Washington, DC, on March 15, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–05632 Filed 3–22–23; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

RIN 3046–AB17

2023 Adjustment of the Penalty for Violation of Notice Posting Requirements

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule adjusts for inflation the civil monetary penalty for violation of the notice-posting requirements in Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Genetic Information Non-Discrimination Act.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, (202) 921–2665 or *kathleen.oram@eeoc.gov,* or Savannah Marion Felton, Senior Attorney, (202) 921–2671 or *savannah.felton@eeoc.gov,* Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M St. NE, Washington, DC 20507.

Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 921–3191 (voice) or 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL video phone).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 711 of the Civil Rights Act of 1964 (Title VII), which is adopted by reference in section 105 of the Americans with Disabilities Act (ADA) and section 207(a)(1) of the Genetic Information Non-Discrimination Act (GINA), and implemented by the Equal Employment Opportunity Commission (EEOC) in 29 CFR 1601.30(a), every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program covered by Title VII, ADA, or GINA, must post notices describing the pertinent provisions of these laws. Covered entities must post such notices in prominent and accessible places where they customarily maintain notices to employees, applicants, and members. 29 CFR 1601.30(a). Failure to comply with this posting requirement is subject to a monetary penalty. 29 CFR 1601.30(b).

Section 5(b) of The Federal Civil Penalties Inflation Adjustment Act of 2015 (2015 Act),[1] which amended the Federal Civil Penalties Inflation Adjustment Act of 1990, requires the EEOC to annually adjust the amount of the penalty for non-compliance. Under the 2015 Act, the EEOC has no discretion over whether or how to calculate this inflationary adjustment. In accordance with section 6 of the 2015 Act, the EEOC will apply the adjusted penalty only to those assessed after the effective date of the adjustment.

II. Calculation

The adjustment set forth in this final rule was calculated by comparing the Consumer Price Index for all Urban Consumers (CPI–U) for October 2021 with the CPI–U for October 2022, resulting in an inflation adjustment factor of 1.07745. The inflation adjustment factor (1.07745) is multiplied by the most recent civil penalty amount ($612) to calculate the inflation-adjusted penalty level ($659.3994), which is then rounded to the nearest dollar ($659). Accordingly, the Commission is now adjusting the maximum penalty per violation specified in 29 CFR 1601.30(a) from $612 to $659.

[1] Public Law 114–74, Sec. 701(b), 129 Stat. 599.

III. Regulatory Procedures

Administrative Procedure Act

The Administrative Procedure Act (APA) provides an exception to the notice and comment procedures where an agency finds good cause for dispensing with such procedures, on the basis that they are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). The Commission finds that this rule meets the exception because the 2015 Act requires an inflationary adjustment to the civil monetary penalty, it prescribes the formula for calculating the adjustment to the penalty, and it provides the Commission with no discretion in determining the amount of the published adjustment. Accordingly, the Commission is issuing this revised regulation as a final rule without notice and comment.

Executive Order 12866

This rule is not a significant regulatory action as that term is defined in Executive Order 12866.

Paperwork Reduction Act

This final rule contains no new information collection requirements, and therefore, will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) only requires a regulatory flexibility analysis when the APA requires notice and comment procedures or the agency otherwise issues such a notice. As stated above, notice and comment is neither required nor being used for this rule. Accordingly, the Regulatory Flexibility Act does not apply.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

This regulation is a rule subject to the Congressional Review Act (CRA), but not a ''major'' rule that cannot take effect until 60 days after it is published in the **Federal Register**. Therefore, the EEOC will submit this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the effective date of the rule.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure.

For the Commission,

Charlotte A. Burrows,

Chair, Equal Employment Opportunity Commission.

Accordingly, the Equal Employment Opportunity Commission amends 29 CFR part 1601 as follows:

PART 1601—PROCEDURAL REGULATIONS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11; 28 U.S.C. 2461 note, as amended; Pub. L. 104–134, Sec. 31001(s)(1), 110 Stat. 1373.

■ 2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

§ 1601.30 Notices to be posted.

* * * * *

(b) Section 711(b) of Title VII and the Federal Civil Penalties Inflation Adjustment Act, as amended, make failure to comply with this section punishable by a fine of not more than $659 for each separate offense.

[FR Doc. 2023–05896 Filed 3–22–23; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0230]

Special Local Regulations; Windermere Cup, Montlake Cut, Union Bay Reach, Seattle, Washington

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Windermere Cup on May 6, 2023, from 7 a.m. to 1 p.m. to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Thirteenth Coast Guard District identifies the regulated area for this event on the Montlake Cut

and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, WA. The regulation prohibits persons and vessels from being in the regulated areas unless authorized by the Captain of the Port Puget Sound or a designated representative.

DATES: The regulations in 33 CFR 100.1311 will be enforced Saturday, May 6, 2023, from 7 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Peter J. McAndrew, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6045, email *SectorPugetSound@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.1311 for the Windermere Cup on May 6, 2023, from 7 a.m. to 1 p.m. This action is necessary to provide for the safety of life on navigable waterways during this one-day event. Our regulation for marine events within the Thirteenth Coast Guard District, § 100.1311(a), specifies the location of the regulated area for the Windermere Cup which encompasses waters from Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, WA. All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port or their designated representative.

The Captain of the Port may be assisted by other federal, state, and local law enforcement agencies in enforcing this regulation.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he will issue a Broadcast Notice to Mariners to terminate this notice of enforcement.

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

Dated: March 16, 2023.

P.M. Hilbert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2023–05954 Filed 3–22–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0870; FRL–9148–02–R3]

Air Plan Approval; Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standards Second Maintenance Plan for the Richmond-Petersburg Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the Commonwealth's plan, submitted by the Virginia Department of Environmental Quality (VADEQ), for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Richmond, Virginia Area (Richmond-Petersburg Area). EPA is approving this revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on April 24, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2022–0870. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2053. Ms. Nichols can also be reached via electronic mail at *Nichols.Serena@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 12, 2023 (88 FR 2050), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's plan for maintaining the 1997 ozone NAAQS in the Richmond-Petersburg Area through December 31, 2028, in accordance with CAA section 175A. The formal SIP revision was submitted by Virginia on September 21, 2021.

II. Summary of SIP Revision and EPA Analysis

On June 1st, 2007 (72 FR 30485), EPA approved a redesignation request (and maintenance plan) from VADEQ for the Richmond-Petersburg Area for the 1997 ozone NAAQS. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District* v. *EPA,*[1] the District of Columbia (D.C.) Circuit held that this requirement cannot be waived for areas, like the Richmond-Petersburg Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.[2] VADEQ's September 21, 2021 submittal fulfills Virginia's obligation to submit a second maintenance plan and addresses each of the five necessary elements, as explained in the NPRM.

As discussed in the January 12, 2023, NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by showing

[1] 882 F.3d 1138 (D.C. Cir. 2018).

[2] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

that the area's design value [3] is well below the NAAQS and that the historical stability of the area's air quality levels indicates that the area is unlikely to violate the NAAQS in the future. EPA evaluated VADEQ's September 21, 2021 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Richmond-Petersburg Area as a revision to the Virginia SIP.

Other specific requirements of Virginia's September 21, 2021 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving VADEQ's second maintenance plan for the Richmond-Petersburg Area for the 1997 ozone NAAQS as a revision to the Virginia SIP.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.11198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.11199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area

[3] 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. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area. *www.epa.gov/air-trends/air-quality-design-values.*

where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 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, approving VADEQ's second maintenance plan for the Richmond-Petersburg Area for the 1997 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e)(1) is amended by adding the entry ''Second Maintenance Plan for the Richmond-Petersburg 1997 8-Hour Ozone Nonattainment Area'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
Second Maintenance Plan for the Richmond-Petersburg 1997 8-Hour Ozone Nonattainment Area.	Richmond-Petersburg Area.	09/21/21	3/23/23, [INSERT **Federal Register** CITATION].	The Richmond-Petersburg area consists of the counties of Charles City, Chesterfield, Hanover, Henrico, and Prince George, and the cities of Colonial Heights, Hopewell, Richmond, and Petersburg.

* * * * *

[FR Doc. 2023–05463 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0976; FRL–10788–03–R5]

Air Plan Approval; Michigan; Interim Final Determination To Stay and Defer Sanctions in the Detroit Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: In the Proposed Rules section of this **Federal Register**, EPA is proposing conditional approval of Michigan's State Implementation Plan (SIP), as revised on December 20, 2022, for attaining the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). Based on that proposed conditional approval, EPA is making an interim final determination (IFD) by this action. Although this action is effective upon publication, EPA will take comment on this interim final determination.

DATES: This interim final determination is effective on March 23, 2023. However, comments will be accepted until April 24, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0976 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.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*. For either manner of submission, 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, 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://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR 18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7314, *teener.abigail@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION:

I. Background

On March 19, 2021, EPA partially approved and partially disapproved Michigan's SO_2 plan for the Detroit area as submitted in 2016 (86 FR 14827). EPA approved the base-year emissions inventory and affirmed that the new source review (NSR) requirements for the area had previously been met on December 16, 2013 (78 FR 76064). EPA also approved the enforceable control measures for two facilities as SIP strengthening. EPA disapproved the attainment demonstration, as well as the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACM/RACT), and contingency measures. Additionally, EPA disapproved the plan's control measures for two facilities as not demonstrating attainment. EPA's March 19, 2021, rulemaking triggered the sanctions clock as outlined in section 179 of the Clean Air Act (CAA) and 40 CFR 52.31(d). The two-to-one new source offset sanction took effect on October 19, 2022 (18 months following the effective date of March 19, 2021 rulemaking that triggered the sanctions clock), and the highway funding sanction was scheduled to take effect on April 19, 2023 (6 months after the date of the offset sanctions), in the Detroit nonattainment area as the result of the March 19, 2021, partial disapproval.

On October 12, 2022, EPA promulgated a Federal Implementation Plan (FIP) for the Detroit SO_2 nonattainment area (87 FR 61514), which satisfied EPA's duty to promulgate a FIP for the area under CAA section 110(c) that resulted from the previous finding of failure to submit. However, it did not affect the sanctions clock started under CAA section 179 resulting from EPA's partial disapproval of the prior SIP, which would be permanently stopped only by meeting the conditions of EPA's regulations at 40 CFR 52.31(d)(5). On December 20, 2022, Michigan submitted a revised attainment plan for the Detroit SO_2 nonattainment area mirroring EPA's FIP in order to remedy Michigan's 2016 plan deficiencies, as specified in EPA's March 19, 2021 rulemaking. Michigan's December 20, 2022, plan depends, in part, on permits that have not yet been issued but will include SO_2 limits and associated requirements for the U.S. Steel and Dearborn Industrial Generation (DIG) facilities that are no less stringent than those set forth in EPA's FIP for the Detroit nonattainment area.

Under section 110(k)(4) of the CAA, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within one year from the date of approval, accompanied by a schedule for adoption of those measures. EPA's October 28, 1992, memorandum, entitled ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' states that such commitments should include a formal request that EPA approve the commitment, be subject to public hearing pursuant of 40 CFR 51.102, and include a schedule for the adoption of the required measures. Therefore, Michigan included in its December 20, 2022, submittal, which was subject to public hearing, a request that EPA conditionally approve its revised plan for the Detroit area, conditional upon the issuance and submission for incorporation into the SIP of the NSR permits for the U.S. Steel and DIG facilities, as well as a commitment to submit the permits to EPA within one year of a conditional approval. On February 21, 2023, Michigan submitted a letter clarifying the schedule for the conditional approval, including Michigan's commitment to submit the necessary permits by April 30, 2024, and the schedule Michigan expects to follow to meet that commitment. Michigan's expected schedule includes ensuring all necessary permit applications are submitted by March 31, 2023, beginning the 240-day permit review process by April 1, 2023, issuing permits by December 1, 2023, and submitting permits to EPA by December 31, 2023. Michigan's expected date of submittal provides some additional time to accommodate unexpected delays to ensure the State is able to meet its commitment to submit the permits by April 30, 2024, and EPA finds that Michigan's schedule is reasonable.

In the Proposed Rules section of this **Federal Register**, EPA has proposed to conditionally approve Michigan's December 20, 2022, plan, pending the timely submittal of the specified permits by April 30, 2024. Regardless, the limits and associated requirements needed to provide for attainment of the SO_2 NAAQS in the Detroit area are federally enforceable via EPA's FIP, codified at 40 CFR 52.1189.

II. What action is EPA taking?

Under 40 CFR 52.31(d)(2)(ii), if the State has submitted a revised plan to correct the deficiency, and EPA proposes to conditionally approve the plan and issues an IFD that the revised plan corrects the deficiency, application of the new source offset sanction shall be stayed and application of the highway sanction shall be deferred. In the Detroit area, the offset sanction was imposed on October 19, 2022, and the highway sanction, if not deferred, would be imposed on April 19, 2022.

Based on the proposed conditional approval of Michigan's SO_2 plan for the Detroit nonattainment area set forth in this **Federal Register**, EPA believes that it is more likely than not that Michigan has met the requirement to submit a plan that provides for attainment of the 1-hour SO_2 NAAQS for the Detroit SO_2 nonattainment area under sections 110, 172, 191, and 192 of the CAA. Therefore, EPA is making this IFD finding that the State has corrected the deficiency of failing to submit a plan that provides for attainment of the SO_2 NAAQS in the Detroit nonattainment area, contingent on the adoption and timely submittal of permits containing SO_2 limits and associated requirements for the U.S. Steel and DIG units in the area that are no less stringent than those limits and requirements set forth in EPA's FIP for the Detroit area, codified at 40 CFR 52.1189. These limits and requirements will remain federally enforceable via EPA's FIP, codified at 40 CFR 52.1189, unless EPA fully approves Michigan's plan and incorporates the appropriate permits into Michigan's SIP and takes further action to rescind the FIP.

EPA also believes that this approach is consistent with the requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)).[1] Generally, under the APA, agency rulemaking affecting the rights of individuals must comply with certain minimum procedural requirements, including publishing a notice of proposed rulemaking in the **Federal**

[1] *See also* further analyses described in EPA's August 4, 1994 rulemaking on the Selection of Sequence of Mandatory Sanctions(59 FR 39832, 39849–53), available at *https://archives.federalregister.gov/issue_slice/1994/8/4/39826-39866.pdf#page=7.*

Register and providing an opportunity for the public to submit written comments on the proposal, before the rulemaking can have final effect. EPA will not be providing an opportunity for public comment before those deferrals or stays are effective. Consequently, EPA's approach may appear to conflict with the requirements of the APA. However, EPA will provide an opportunity to comment on the proposed conditional approval that was the basis for the interim final determination and will provide an opportunity, after the fact, for the public to comment on the interim final determination. Thus, an opportunity for comment will be provided before any sanctions clock is permanently stopped or any already applied sanctions are permanently lifted. In the context of the conditional approval, and with respect to the interim final rule, the public would have an opportunity to comment on the appropriateness of EPA's interim determination that the State had corrected the deficiency and on whether the State should remain subject to sanctions, even though the deferral or stay is already effective.

The basis for allowing such an interim final action stems from section 553(b)(B) of the APA which provides that the notice and opportunity for comment requirements do not apply when the Agency finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' In the case of sanctions, EPA believes it would be both impracticable and contrary to the public interest to have to propose and provide an opportunity to comment before any relief is provided from the effect of sanctions. EPA believes it would be unfair to the State and its citizens, and thus not in the public interest, for sanctions to remain in effect following the proposed conditional approval, since EPA has completed a thorough evaluation of the State's SIP revision and publicly stated its belief that the submittal is approvable, conditional upon the submittal of the appropriate permits, and that the State has corrected the deficiency, but due to the State permitting procedural requirements the State has not yet been able to adopt the necessary permits. While EPA cannot incorporate permits containing emission limits and associated requirements for the U.S. Steel and DIG limits into Michigan's SIP at this time, these limits and associated requirements were previously established in EPA's FIP and will continue to remain federally enforceable as part of the regulatory text of EPA's FIP, codified at 40 CFR 52.1189. EPA believes sanctions coming into effect following the proposed conditional approval would unnecessarily risk potential dislocation in government programs and the marketplace. EPA also believes that the risk of an inappropriate deferral or stay would be comparatively small, given the limited scope and duration deferrals and stays would have and given the rule's mechanism for making sanctions effective upon reversal of its initial determination that the State had corrected the deficiency. Consequently, EPA believes that the ''good cause'' exception under the APA allows the Agency to dispense with notice and comment procedures before deferrals and stays of sanctions become effective.

In accordance with 5 U.S.C. 553(d) of the APA, EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Because this rule relieves a restriction, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

Under 40 CFR 52.31(d)(2)(ii), if the State does not meet its commitment and the plan is disapproved, the new source offset sanction shall reapply and the highway sanction shall apply on the date of proposed or final disapproval.

III. Statutory and Executive Order Reviews

This action stays and defers Federal sanctions and imposes no additional requirements.

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This action 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.*).

This action 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).

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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule does not have tribal implications, as specified in Executive Order 13175 because it will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

This action is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons thereof, and established an

effective date of March 23, 2023. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 16, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–05820 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17–310; FCC No. 23–6; FR ID 129969]

Promoting Telehealth in Rural America

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks to support rural health care providers through the Rural Health Care (RHC) Program, with the costs of broadband and other communications services for patients in rural areas that may have limited resources, fewer doctors, and higher rates than urban areas.

DATES: Effective April 24, 2023, except for §§ 54.604 (amendatory instruction 2), 54.605 (amendatory instruction 3), and 54.627 (amendatory instruction 8), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those rule sections.

FOR FURTHER INFORMATION CONTACT: Bryan P. Boyle *Bryan.Boyle@fcc.gov,* Wireline Competition Bureau, 202–418–7400 or TTY: 202–418–0484. Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration, Second Report and Order, and Order (Order) in WC Docket No. 17–310; FCC No. 23–6, adopted on January 26, 2023 and released on January 27, 2023. The full text of this document is available for public inspection during regular business hours at Commission's headquarters 45 L Street NE, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-23-6A1.pdf.* The Second Further Notice of Proposed Rulemaking (Second FNPRM) that was adopted concurrently with the Order on Reconsideration, Second Report and Order and Order is to be published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. In this document, the Commission continues its efforts to improve the Rural Health Care (RHC) Program. The RHC Program supports rural health care providers with the costs of broadband and other communications services so that they can serve patients in rural areas that may have limited resources, fewer doctors, and higher rates for broadband and communications services than urban areas. Telehealth and telemedicine services, which expanded considerably during the COVID–19 pandemic, have also become essential tools for the delivery of health care to millions of rural Americans. These services bridge the vast geographic distances that separate health care facilities, enabling patients to receive high-quality medical care without sometimes lengthy or burdensome travel. The RHC Program promotes telehealth by providing financial support to eligible health care providers for broadband and telecommunications services.

2. In the Order on Reconsideration section, the Commission addresses petitions for reconsideration of the 2019 *Promoting Telehealth Report and Order,* FCC 19–78 rel. August 20, 2019 (84 FR 54952, October 11, 2019) (*2019 R&O*). The Commission grants petitions challenging the database of urban and rural rates (Rates Database) for the Telecommunications Program (Telecom Program) established in the *2019 R&O,* return the Telecom Program to the rate determination rules in place before the adoption of the Rates Database, and deny petitions for reconsideration of other issues from the *2019 R&O.* In the Second Report and Order section, the Commission adopts proposals from the 2022 *Further Notice of Proposed Rulemaking,* FCC 22–15 rel. February 22, 2022 (87 FR 14421, March 15, 2022) (*2022 FNPRM*) to amend RHC Program invoicing processes and the internal cap application and prioritization rules to promote efficiency, reduce delays in funding commitments, and prioritize support for the current funding year. In the Order section, the Commission dismisses as moot Applications for Review of the Commission's guidance to the Universal Service Administrative Company (the Administrator) regarding the Rates Database.

II. Order on Reconsideration

3. In the Order on Reconsideration, the Commission restores the mechanisms for calculating rural and urban rates that existed before adoption of the *2019 R&O.* The Commission upholds the *2019 R&O*'s rule changes regarding what services are similar to one another. The Commission maintains the rurality tiers adopted in the *2019 R&O,* which, due to the elimination of the Rates Database, now apply only to the prioritization of funding requests. The Commission also keeps the internal cap and funding prioritization systems and invoice certifications requirements from the *2019 R&O.*

4. *Rate Determination.* As an initial matter, the Commission grants in part petitions seeking reconsideration of the rules the Commission adopted in the *2019 R&O* to implement the Rates Database and restore the three methods for calculating rural rates in the Telecom Program. The Commission denies petitions for reconsideration seeking review of clarifications and rules adopted in the *2019 R&O* regarding similar services and site and service substitution rules and dismiss as moot all remaining petitions related to the rules governing the Rates Database.

5. *Urban and Rural Rates Determination Mechanism.* The Commission grants in part petitions seeking reconsideration of the adoption of the Rates Database in the *2019 R&O.* The Commission amends the current §§ 54.504 and 54.505 of its rules to eliminate the use of the Rates Database to determine urban and rural rates and rescind the Commission's direction to the Administrator in the *2019 R&O* to create the Rates Database. Based on the record, the Commission finds that reinstating the Commission's previous rules for calculating urban and rural

rates, effective for RHC Program funding year 2024, is the best option for ensuring sufficient, reasonable rural and urban rates.

6. Section 254(h)(1)(A) of the Communications Act (Act) requires that Telecom Program support must be based on the difference between the urban rate, which must be ''reasonably comparable to the rates charged for similar services in urban areas in that State,'' and ''rates for similar services provided to other customers in comparable rural areas,'' *i.e.,* the rural rate. Because the Rates Database was deficient in its ability to set adequate rates, the Commission finds that restoration of the previous rural rate determination rules, which health care providers have continued to use to determine rural rates in recent funding years under the applicable Rates Database waivers, is the best available option pending further examination in the Second FNPRM published elsewhere in this issue of the **Federal Register**, to ensure that healthcare providers have adequate, predictable support.

7. *Rural rates.* The Commission first finds that the rural rates generated by the Rates Database could result in inadequate or inconsistent Telecom Program support for rural health care providers that undermines the goals of the Telecom Program. The Commission agrees with the Schools, Health and Libraries Broadband Coalition (SHLB) and the State of Alaska's general arguments that the Rates Database would not accurately reflect the costs of delivering telecommunications services and would not provide sufficient funding for most rural health care providers because the Rates Database's geographic rurality tiers were too broad and did not accurately represent the cost of serving dissimilar communities. The Commission created the rurality tiers to prevent median rates for more rural areas of a state from being unfairly reduced due to the inclusion of rates for similar services in less rural areas. The approach to rate determination was based on ''the reasonable assumption that the cost to provide telecommunications services increases as the density of an area decreases, as rates are generally a function of population density.'' However, the Commission finds that in light of the significant anomalies in the Rates Database uncovered by the Wireline Competition Bureau (Bureau), including many situations where support amounts for more rural areas were less than those for less rural areas, the petitioners are correct that the geographic tiers used in the Rates Database do not result in rates that accurately reflect the cost of delivering telecommunications services for many rural health care providers.

8. Under the rules, healthcare providers may use one of three methods for calculating the rural rates in the Telecom Program, depending on the circumstances: (1) the average of rates that the carrier actually charges to other non-health care provider commercial customers for the same or similar services provided in the rural area where the health care provider is located (Method 1); (2) if the carrier does not have any commercial customers in the health care provider's rural area, the average of tariffed and other publicly available rates charged by other service providers for the same or similar services provided over the same distance in the rural health care provider's area (Method 2); or (3) if there are no such rates or the carrier reasonably determines that those rates would be unfair, a cost-based rate that is approved by the Commission for interstate services (or the relevant state commission for intrastate services) (Method 3). A carrier seeking approval of a rural rate under Method 3 will be required to provide ''a justification of the proposed rural rate that includes an itemization of the costs of providing the requested service.''

9. The Commission reiterates the requirements previously associated with this methodology. Methods 1, 2, and 3 must be applied sequentially. Method 1 must be used to determine a rural rate unless the service provider selected is not actually charging non-health care provider customers rates for same or similar services in the rural area where the eligible health care provider is located. In that case, health care providers and service providers must attempt to calculate a rural rate using Method 2. If it is not possible to determine a rural rate because there are no tariffed or publicly available rates charged by other service providers for same or similar services in the rural area where the eligible health care provider is located, or if the service provider reasonably determines that the rural rate calculated using Method 2 is unfair, then health care providers and service providers may calculate a rural rate using Method 3.

10. Reinstating these rules promotes administrative efficiency and protects the Fund while the Commission considers long-term solutions. The Commission clarifies that a rural rate approval for a service will be required only in the first year of an evergreen contract or another form of a multi-year contract unless the rural rates in the contract increase or other substantive terms of the contract change. The rural rate approval for the initial year of the multi-year contract will constitute approval for all subsequent years of the contract, including voluntary extensions so long as the duration of the contract does not exceed five years. Given that service providers may not be expected to submit additional bids for the selected service within the duration of the multi-year contract, the Commission believes that it is reasonable to eliminate rural rate approvals during that period as well. Therefore, previously approved rates for preexisting multi-year contracts do not need to be resubmitted for approval under the rate setting mechanisms.

11. The Commission declines to adopt other options proposed by stakeholders or the Commission because they could lead to Program waste or pose implementation challenges. Alaska Communications and SHLB's suggestion to rely on competitive bidding alone to determine fair market rural rates could result in inflated rural rates. As the Commission previously explained in the *2019 R&O,* only a small percentage of Telecom Program funding requests receive competing bids from multiple service providers, and in the few instances where carriers do compete, they are most likely to compete on non-price characteristics of service. Therefore, the Commission finds that relying on competitive bidding without any other checks on rural rates would give service providers unfettered discretion to set their rates. Additionally, the Commission finds that the implementation challenges associated with the options raised in the *2022 FNPRM,* such as a regression model or a discount tier mechanism prevent us at this time from adopting these mechanisms.

12. *Rural rates waiver.* The Commission finds that Bureau's temporary measure of permitting the use of previously-approved rural rates and urban rates for funding year 2023 is appropriate given that competitive bidding for funding year 2023 has already started. To further alleviate burdens on RHC Program participants as they prepare for funding years 2024 and 2025, the Commission's rules are waived to permit the use of previously-approved rates for any funding year 2024 or 2025 rural rates that would otherwise require approval under Method 3.

13. Generally, the Commission's rules may be waived or suspended for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public

interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest. As noted by several commenters, potentially having three different sets of rules for determining cost-based rural rates within three or four funding years could present unnecessary administrative burdens. Continuing to permit the use of previously-approved rural rates for Method 3, the most complex rural rates verification process, would significantly curtail those burdens. Furthermore, according to commenters, market conditions appear to indicate that it is unlikely that pricing for Telecom Program funded services will significantly decrease over funding years 2024 or 2025, so utilizing rural rates approved for funding year 2023 in funding years 2024 and 2025 is unlikely to cause wasteful expenditures.

14. A waiver permitting the use of previously-approved rates for funding years 2024 and 2025 Method 3 cost-based rural rates would also serve the public interest. Although there are significant program integrity benefits to rural rates reviews, the Commission finds that two years of such benefits is outweighed for funding years 2024 and 2025 by the administrative burdens on both program applicants and the Commission to prepare and approve cost studies. In addition, the Commission finds that it is not in the public interest to require service providers to absorb these burdens for funding years 2024 and 2025 given that the Commission is considering additional changes to its rural rate rules for future funding years in the Second FNPRM published elsewhere in this issue of the **Federal Register**.

15. In addition, the Commission finds that the public interest would not be served by extending this waiver to Method 1 and 2 rural rate or urban rate approvals because the administrative burden and time required for these justifications are considerably less than for Method 3 justifications. Therefore the Commission finds that for Method 1 and 2 and urban rate justifications, the program integrity benefits to requiring rate justifications outweigh any administrative burdens associated with complying with these rules for funding years 2024 and 2025. Furthermore, the Commission finds that a waiver under Methods 1 or 2 is not necessary because, when a service provider cannot find justifying rates under Methods 1 or 2, as some parties contend is common, the service provider has the option to rely on a previously approved Method 3 rate pursuant to the waiver the Commission issues herein.

16. When the Method 3 waiver applies, a service provider may use a previously-approved rural rate from the most recent funding commitment for the facility/service combination at issue provided that funding commitment was issued in funding years 2021, 2022, or 2023. If there is no approved rate for a particular facility/service combination, the health care provider and its carrier may use a rural rate for the most recent funding commitment for the same or similar services to the facility with the same or similar geographic characteristics provided the funding commitment was issued in funding years 2021, 2022, or 2023. If no such comparable rates are available, the waiver is not applicable and the rural rate must be established using a Method 3 cost study pursuant to § 54.605(b) of the Commission's rules.

17. For these reasons, the Commission finds that restoring the previous rate methodology rules while considering long-term solutions would best serve Program participants. Program participants are already familiar with the requirements of these methods, which will ease administrative burdens on the Commission, Administrator, and Program participants.

18. Although the rules that the Commission reinstates do not rely on a median approach to determine rural rates, as a general matter, the Commission disagrees with petitioners' concerns with using a median-based approach to determine rural rates. The Rates Database's use of medians was a reasonable application of section 254(h)(1)(A) of the Act to prevent outlier prices from skewing support. Alaska Communications argued that, by basing support on a median rate rather than the actual rate charged, the Rates Database would not fulfill the requirements of section 254(h)(1)(A) of the Act that telecommunications carriers receive the difference between the urban rate paid by the healthcare provider and the rate ''similar services provided to other customers in comparable rural areas.'' Similarly, USTelecom raised several concerns about the sufficiency of the median rate approach. Although the Commission agrees with petitioners that the Rates Database and geographic tiers established in the *2019 R&O* did not accurately reflect the cost of delivering telecommunications services, the Commission finds that a median approach to calculate rural rates can satisfy the requirements of section 254(h)(1)(A) of the Act because a median can approximate the rates charged in ''comparable rural areas in the state.'' The fact that section 254(h)(1)(A) of the Act describes the services provider's obligation to charge ''rates'' reasonably comparable to urban rates rather than a more restrictive standard such as ''the rate charged to an urban health care provider'' suggests the Commission could meet the requirements of section 254(h)(1)(A) of the Act as long as the level of support in the aggregate would make up the urban-rural differential.

19. *Urban rates.* The Commission also grants petitions seeking rescission of the rules implementing the Rates Database to determine urban rates. Petitioners seeking reconsideration of the *2019 R&O* raised concerns about the Administrator's ability to determine urban rates using the Rates Database. Furthermore, after the Rates Database launched, specific concerns about the urban rates it generated arose. In the *Nationwide Rates Database Waiver Order,* DA 21–394 rel. April 8, 2021, the Bureau acknowledged urban rate anomalies in the Rates Database in some states, including instances where urban rates for lower bandwidths exceeded urban rates for higher bandwidths for the same service, and examples of urban rates exceeding rural rates in a state. The Bureau concluded that these examples did not amount to convincing evidence of ''pervasive nationwide anomalies with urban rates'' but did ''merit further inquiry and investigation'' and therefore waived use of the Rates Database of determining urban rates. In comments in response to the *2022 FNPRM,* SHLB reiterated that the Rates Database had significant urban rate anomalies, including instances in many states in which the median urban rate for a service exceeded at least one rural rate. ADS encouraged the Commission to reinstate a ''safe harbor'' approach for urban rates.

20. The Commission concludes that reinstating the previous urban rate determination rules is the best way to ensure consistency and predictability in the rate determination process while considering alternative options for an urban rates determination mechanism going forward. None of the petitions for reconsideration suggested a mechanism for determining urban rates to be used if the Commission was to eliminate the Rates Database, and none opposed returning to the pre-*2019 R&O* method for determining urban rates. As with rural rates, health care providers and service providers are already familiar with the pre-*2019 R&O* rules for

determining urban rates, and introducing a completely new set of rules while the Commission considers additional changes could lead to confusion and cause an undue administrative burden. Therefore, going forward, the urban rate for an eligible service submitted by the healthcare provider on FCC Form 466 should be ''no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in [a] state.'' Healthcare providers must document the urban rate with ''tariff pages, contracts, a letter on company letterhead from the urban service provider, rate pricing information printed from the urban service provider's website or similar documentation showing how the urban rate was obtained.'' The Commission believes reinstatement of the prior urban rate setting methodology is the best available solution while seeking comment on potential revisions to the urban rate determination rules in the Second FNPRM published elsewhere in this issue of the **Federal Register**. As with rural rates, the Commission also affirms the Bureau's decision to permit the use of previously-approved urban rates for funding year 2023.

21. In adopting the Rates Database, the Commission identified several concerns with the rate-setting rules in place at the time, including potential issues with transparency, administrative efficiency, and program integrity. While the Rates Database proved to be an inadequate solution for provisioning sufficient support to RHC Program participants, the Commission remains cognizant of those concerns, and therefore continues the work to improve the Telecom Program rate determination methodology as discussed in the Second FNPRM published elsewhere in this issue of the **Federal Register**.

22. *Similar Services.* Though RHC Program applicants and participating service providers will no longer use the Rates Database to calculate rural and urban rates, they will continue to need to identify rates for the same or similar services to support rural and urban rates submitted to the Administrator. The Commission therefore addresses petitions for reconsideration of its conclusions regarding similar services in the *2019 R&O.* The Commission properly determined that similar services can include non-telecommunications services that deliver the same or similar functionality as the requested service and can include services with advertised speeds 30% above or below the speed of the requested service. The Commission instructs the Administrator to apply these requirements to its review of Method 1 and Method 2 submissions and urban rates going forward.

23. *Non-telecommunications services.* The Commission affirms the its finding, to calculate the most accurate rates, the pool of rates taken into consideration should include rates for services that deliver the functionality sought by the applicant. The Commission therefore denies USTelecom's request to reverse the decision that non-telecommunications services that are functionally similar to eligible telecommunications services be considered similar services for purposes of calculating rates. The Commission reaffirms the Commission's conclusion in the *2019 R&O* that similarity of services is a ''technology-agnostic inquiry'' that should be viewed from the perspective of the end user experience as opposed to regulatory classification.

24. The Telecom Program provides support in accordance with section 254(h)(1)(A) of the Act based on the difference between the urban rate, which must be ''reasonably comparable to the rates charged for *similar services* in urban areas in that State,'' and ''rates for *similar services* provided to other customers in comparable rural areas,'' *i.e.,* the rural rate. Congress did not define the term ''similar services.'' In 2003, the Commission interpreted similar services to mean services that are functionally similar from the perspective of the end user. This interpretation deviated from the Commission's previous policy of calculating support based on the difference between the urban and rural rates for ''technically'' similar services. Without any discussion as to why non-telecommunications services were not considered ''functionally similar,'' the Commission stated that ''[e]ligible health care providers must purchase telecommunications services and compare their service to a functionally equivalent telecommunications service in order to receive this discount'' and created a voluntary ''safe harbor'' for categories of services based on transmission speed that would be considered by the Commission functionally similar for purposes of calculating urban and rural rates.

25. In the *2017 Notice of Proposed Rulemaking,* FCC 17–164 rel. December 18, 2017 (83 FR 303, January 3, 2018) (*2017 NPRM*), the Commission sought comment on changes to the interpretation of similar services. The Commission specifically proposed to ''retain the concept of '*functionally* similar as viewed from the perspective of the end user' '' and additionally proposed to ''require healthcare providers to analyze similarity under specific criteria.'' In the *2019 R&O,* the Commission ultimately retained the ''functionally similar'' standard for defining similar services and, after acknowledging the prior interpretation in 2003, made clear that because the functionally similar standard is technology agnostic and does not turn on regulatory classification, both telecommunications and non-telecommunications services must be considered when identifying similar services for calculating urban and rural rates.

26. USTelecom argues that the Commission did not provide an opportunity for notice and comment, as required by the Administrative Procedure Act (APA), before expanding the inquiry of functionally similar services to include non-telecommunications services. On the contrary, the Commission did provide notice in the *2017 NPRM* of its intent to consider changes to the statutory interpretation of similar services. And as explained in the *2019 R&O,* revisiting the decision would inevitably involve a consideration of the types of services that would fall within the scope of this statutory term. The Commission therefore disagrees with USTelecom that the Commission violated the APA when it clarified the scope of similar services to include not only telecommunications but also non-telecommunications services.

27. The Commission's decision to expand the inquiry of functionally similar services in urban and rural rate determinations was not arbitrary and capricious, as USTelecom separately contends. The Commission also disagrees with USTelecom that the fact that the Telecom Program does not fund information and private carriage services precludes consideration of rates for those services in the rate determination process. As to both arguments, the Commission fully considered these issues in the *2019 R&O* and explained that the end-user experience, not regulatory classification, guides the analysis of whether services are functionally equivalent. The Commission further explained that including information services, which may be less expensive, with functionally similar telecommunications services is consistent with the statutory requirement that the Commission ensure access to telecommunications services for health care providers at rates that are ''reasonably comparable'' to those charged for ''similar services in

urban areas'' because including rates for such functionally similar information services would more accurately reflect the prices available in urban areas for services that deliver the same functionality to end users regardless of classification, and place rural health care providers on equal footing with their urban counterparts.

28. *30 percent threshold.* The Commission also denies SHLB's request that the Commission reconsiders the Commission's determination that services with advertised speeds 30% above or below the speed of the requested service be considered functionally similar to the requested service. SHLB argues that the approach is overbroad and will include services that are dissimilar in function and cost. SHLB, however, does not offer any examples. Comments filed after the Rates Database launched addressing the 30% threshold in response to the *2022 FNPRM* were mixed. Alaska Communications described the 30% bandwidth range as ''not unreasonable,'' but cautioned that there is too little rural rate data in Alaska to ''make this the basis for a complete rural rate methodology.'' NTCA—The Rural Broadband Association (NTCA) argues that the 30% threshold is too broad and urges the Commission to implement a smaller margin based on health care provider use cases, but also does not offer examples of overly broad results.

29. Taking these arguments into account, the Commission decides not to deviate from the Commission's prior conclusion in the *2019 R&O* that the 30% range allows for rate predictability while accounting for the rising demand for faster connectivity. Having a standard for determining similar services based on a range is preferable to having speed tiers, which would need to be frequently refreshed so they would not become out of date, as was the case with the speed tiers that existed before the *2019 R&O.* Moreover, based on the record previously developed, a range of 30% provides a sufficiently large number of inputs for determining rates under Methods 1 and 2. Reducing the range as NTCA requests would likely mean that few services with even slight variations in bandwidth would be similar to one another. Additionally, maintaining the current threshold for similar services of advertised speeds being 30% above or below the speed of the requested service will ease program administration because health care providers are already familiar with this standard.

30. The Commission also disagrees with SHLB's assertion that the *2019 R&O* fails to account for price variations based on contract term or volume discounts, which SHLB maintains will distort rural rate determinations. The *2019 R&O* did account for these price variations when explaining that section 254(h)(1)(A) of the Act requires service providers to provide telecommunications services to eligible providers at ''rates that are reasonably comparable to *rates charged* for similar services in urban areas.''

31. Finally, as requested by General Communication, Inc. (GCI), the Commission clarifies that, in the event there is no comparable rural rate within 30% of the speed of the requested service, the Commission will allow service providers to justify the requested rural rate using the rate for a service that is otherwise similar to the requested service if the requested service has a higher bandwidth than that service. Similarly, as requested by SHLB, the Commission clarifies that if there is no comparable urban rate within the 30% range available, the Commission will allow service providers to use the rate for a higher bandwidth service that falls outside the 30% range but is otherwise similar to the requested service. The Commission finds that providing this flexibility will ease administrative burdens without additional cost to the Universal Service Fund.

32. *Site and Service Substitution.* The Commission denies Alaska Communications' petition for reconsideration to the extent it seeks clarification that ''the Commission intended to include service delivery dates'' in the adopted site and service substitution rule. Alaska Communications explains that service date or evergreen contract date changes are some of the most common changes requested in the RHC Program. Alaska Communications further explains that applicants are required to submit a funding request and include anticipated service dates at the time the request is submitted to the Administrator, but there may be delays for a planned transition or deployment of upgraded services and the anticipated service start or termination dates may change. In response, the Commission clarifies that under § 54.624(a) of the Commission's rules, RHC Program applicants may be able to substitute the requested service when there is a delay in the deployment of the original service and that the funding request could be modified to reflect the substituted service when such a delay may occur. Section 54.624(a) of the Commission's rules is intended to allow applicants flexibility to substitute requested services and to receive RHC Program support for substituted services when the requirements are met.

33. However, the Commission denies Alaska Communications' request to clarify that § 54.624(a) of the Commission's rules allows changes to service dates and evergreen contract dates as ''service substitution'' changes because § 54.624(a) of the Commission's rules does not address service dates or evergreen contract dates. With respect to service date changes, Program participants are already permitted to change the dates for which services are provided. RHC Program participants are required to provide dates of service and contract dates on the Request for Funding (FCC Form 466 or FCC Form 462) for the requested services. If there are changes to the dates for which services were provided or evergreen contract dates, RHC Program participants already modify service dates through other means unrelated to the service substitution process. Therefore, there is already a mechanism for all RHC Program participants to substitute a service if there is a delay in implementing the new service and modify the service dates for the substituted service. Contrary to Alaska Communications' assertion that the process creates additional administrative burdens due to the potential for an appeal, the process is no more administratively burdensome than the service substitution request process. Under both processes, if the Administrator denies a request, the health care provider could file an appeal. With respect to evergreen contract dates, although § 54.624 of the Commission's rules cannot reasonably be interpreted as addressing modifications to evergreen contract dates, the Commission seeks comment in the Second FNPRM published elsewhere in this issue of the **Federal Register** about whether a mechanism to modify evergreen contract dates is appropriate and what such a mechanism might be. Accordingly, the Commission denies the request to modify § 54.624 of the Commission's rules to add modification of service dates and evergreen contract dates as an allowable service substitution.

34. Alaska Communications further requests that when the Administrator contacts a health care provider with questions or requests for additional information regarding urban or rural rates or the terms of the service, the Administrator also be required to communicate the question or information request with the relevant service provider. Health care providers are encouraged to work with their service providers to respond to

information requests from the Administrator regarding, for example, additional information on urban and rural rates and terms of service. Thus, service providers are allowed to provide the requested information needed during the funding application review process. The Commission declines, however, to require the Administrator to issue information requests to the relevant service providers. The Commission concludes that it would be administratively burdensome and a poor use of limited administrative resources to require the Administrator to send these requests to service providers. Applicants that would like assistance from service providers should reach out to providers to pose questions related to the Administrator's review of health care providers' funding applications.

35. *Remaining Requests for Reconsideration of the Rates Database.* The Commission dismisses as moot all other challenges to the Rates Database raised in the petitions for reconsideration that are not applicable to rural rate determinations under Method 1, Method 2, or Method 3 or urban rate determinations. The Commission's decision to eliminate the use of the Rates Database to calculate urban and rural rates renders these challenges moot.

36. *Rurality.* Next, the Commission denies requests to reconsider aspects of the geographically-based rurality tiers adopted in the *2019 R&O.* Though the termination of the Rates Database moots the use of rurality tiers for purposes of rates determination, rurality tiers are also used to prioritize support in the event that demand exceeds available support, a mechanism that is unchanged.

37. In the *2019 R&O,* the Commission established three tiers of rurality to determine comparable rural areas in a state or territory for purposes of the Rates Database: (1) Extremely Rural (areas entirely outside of a Core Based Statistical Area); (2) Rural (areas within a Core Based Statistical Area that does not have an Urban Area with a population of 25,000 or greater); and (3) Less Rural (areas in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but are within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000). For health care providers in Alaska, the Commission bifurcated the Extremely Rural tier to include a Frontier tier for areas not accessible by road.

38. Arguments against the rurality tiers adopted by the Commission in the *2019 R&O* focused on their impact on rates determinations in the Rates Database. With the elimination of the Rates Database, the only remaining relevance of rurality tiers is for purposes of prioritizing support in the event that demand ever exceeds available funding. The Commission finds that the rurality tiers as adopted in the *2019 R&O* are appropriate for purposes of prioritization of support and deny petitions for reconsideration to the extent they request that the Commission eliminate rurality tiers from the rules for all purposes. The rurality tiers will properly target RHC Program funding to less populous areas in the event that prioritization of funds is needed, and the record contains no alternative mechanism for better parsing rurality for this limited purpose.

39. The North Carolina Telehealth Network Association and the Southern Ohio Health Care Network (NCTNA/SOHCN) suggest that switching to a method based on metropolitan and micropolitan designations would ''allow [the Administrator] to pre-qualify sites and to demonstrate rurality and to determine the funding priority each site will receive'' and that switching from designations based on census blocks instead of census tracts would be more precise. However, the Administrator has already created a tool that allows health care providers to determine their priority tier based on the current rurality designations, so a change is not necessary to provide this administrative convenience. While the Commission recognizes the benefit of precision in parsing rurality, the Commission finds that the potential confusion and administrative burdens to all Program participants that would result from abandoning the use of the current rurality tiers, which are consistent with the Commission's long-held definition of ''rural,'' outweighs the impact this change would have on the limited number of health care providers whose rural status would change.

40. Given the Commission's decision on reconsideration to eliminate the rules establishing the Rates Database, the Commission makes two ministerial changes to the rules to reflect the limited use of rurality tiers for prioritization purposes. First, the Commission eliminates the concept of Frontier Areas from the rules because it does not apply to prioritizing support. A ''Frontier Area'' is an area in Alaska outside of a Core Based Statistical Area that is inaccessible by road. The Commission adopted the concept for purposes of the Rates Database only. Second, the Commission amends the codified rules so that rurality tiers are addressed only in rules related to prioritization. The rurality tiers currently appear in two separate sections of the Commission's rules: § 54.605(a), which addresses rural rates, and § 54.621(b), which addresses prioritization of support. The Commission deletes references to the rurality tiers from § 54.605(a) but retain them in § 54.621(b). The Commission also makes minor changes to the text of § 54.621(b) so that it more closely reflects the text of § 54.605(a).

41. *Funding Prioritization—Internal Cap on Multi-Year Commitments and Upfront Payments.* The Commission denies NCTNA/SOHCN's petition for reconsideration requesting an increase to the internal cap on funding available to Healthcare Connect Fund (HCF) applicants seeking support for upfront payments and multi-year commitments. This internal cap limits funding for multi-year commitments and upfront payment to an amount adjusted annually for inflation, which is calculated at $161 million for funding year 2022. The Commission retained the internal cap in the *2019 R&O* after determining that the cap protected against possible underfunding of single-year funding requests and that an increase in the dollar amount of the internal cap may adversely affect single-year requests. The Commission did, however, adopt a rule adjusting the cap annually for inflation as a hedge against loss of purchasing power in the event of price inflation. NCTNA/SOHCN maintain that the decision to not further increase the internal cap is ''based on an incorrect reading of the purpose of [the] cap''—namely, that the principal purpose of establishing the cap was to guard against fluctuations in demands from potentially large upfront infrastructure projects. NCTNA/SOHCN also argue that the Commission should reconsider the cap ''in light of its original purpose and data accumulated since 2013 when it was first implemented'' and therefore should remove multi-year funding commitments from being subject to the cap.

42. The Commission denies NCTNA/SOHCN's request. The internal cap on multi-year commitments and upfront payments in its current form is serving its stated purpose: to limit major fluctuations in demand so as to protect single-year funding requests. In the *2019 R&O,* the Commission noted that the internal cap was first exceeded in funding year 2018 and, but for the cap, all funding requests for that year would have been prorated to bring the total demand for RHC Program support below the Program's overall funding cap. The Commission also finds that the record

does not support removing multi-year commitments from the internal cap. NCTNA/SOHCN point to efficiencies that are inherent to some multi-year funding commitments. However, Universal Service Administrative Company (USAC) data indicates that demand for multi-year commitments accounted for a significant portion of the total demand for multi-year commitments and upfront payments from funding year 2016 to funding year 2021. As demonstrated by demand in recent funding years, removing multi-year commitments from being subject to the internal cap could result in costly multi-year commitment requests usurping funding from single-year requests. The Commission affirms the earlier decision to retain the internal cap on multi-year commitments and upfront payments and, accordingly, deny that portion of the NCTNA/SOHCN petition. In the Second Report and Order section, the Commission amends the rules so that the internal cap applies only when demand exceeds available funding, and when the internal cap does apply, upfront costs and the first year of a multi-year commitment request are prioritized over the second and third year of a multi-year commitment request.

43. *Prioritization System*. Next, the Commission denies SHLB's request that the Commission reconsider the prioritization system adopted by the Commission in the *2019 R&O.* RHC Program prioritization rules require that, in funding years when demand exceeds the funding cap, funding be prioritized based on rurality tiers and whether the area is a Medically Underserved Area/Population. SHLB first argues that the prioritization rules will result in HCF consortia, which include non-rural health care providers that are prioritized last when demand exceeds available funding, bearing the entire burden of RHC Program funding shortfalls initially. SHLB further argues that this impact will erode the consortia model and reduce the benefits of consortia for rural health care providers. The Commission disagrees and finds that, to further the goals of section 254(h) of the Act, it should prioritize funding based on the rurality of the health care provider's location, as well as on the level of medical care need in that location. This prioritization scheme targets support to rural areas that are less likely to have access to telecommunications and advanced services while still providing support for health care consortia that include non-rural health care providers. Thus, while SHLB is correct in noting the benefits that rural health care providers receive as members of consortia, the Commission is not persuaded that these consortia warrant higher funding priority over the most rural and medically underserved health care providers. When the Commission adopted the rules permitting HCF consortia, it limited program participation in a ''fiscally responsible'' manner so as not to jeopardize funding for rural healthcare providers. The prioritization system adopted in the *2019 R&O* aligns with this fiscally responsible approach and the Commission declines to reconsider it here.

44. *Medically Underserved Area and Populations.* The Commission declines to revise our use of the Medically Underserved Areas and Populations (MUA/P) designation to determine funding prioritization based on medical need. The U.S. Department of Health and Human Services Health Resources and Services Administration (HRSA) designates an area as MUA/P when the area lacks sufficient primary care services. SHLB requests that the Commission revises HRSA's data by clarifying that all areas in counties with a population density below twenty persons per square mile will be considered to be MUA/P, arguing that many such sparsely populated areas have never sought MUA/P designation but are nonetheless underserved. The Commission declines to adopt SHLB's requested modification. As the Commission explained in the *2019 R&O,* the MUA/P designation is well-suited for determining prioritization in the Telecom Program because it is objective data from another Federal agency that shows the areas that currently lack health care services and therefore would most benefit from the availability of telehealth services. In addition, relying on HRSA's determination is straight-forward and easy to administer. SHLB did not provide any data that would enable the Commission to verify its claim that many sparsely populated areas have declined to seek a MUA/P designation from HRSA. Furthermore, the Commission declines to add administrative complexity to this paradigm by adding population density into the determination.

45. Certifications. The Commission denies USTelecom's request to reconsider the requirement adopted in the *2019 R&O* that service providers certify on invoices submitted to the Administrator that consultants or third parties hired by a service provider do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider or, in the alternative, that the Commission clarifies that the certification applies only on a forward-looking basis. In response to the request, the Bureau clarified that the prohibition on third party commission arrangements does not apply to competitive bidding processes completed before funding year 2020.

46. The Commission declines, however, to eliminate the certification and now address the arguments that USTelecom raised in its petition for reconsideration. The Commission disagrees with USTelecom's argument that the Commission did not provide adequate notice for the new requirement. The Commission sought comment in the *2017 NPRM* on ''whether to require healthcare providers and service providers to certify that the consultants and outside experts they hire do not have an ownership interest, sales commission arrangement, or other financial stake in the vendor chosen to provide the requested service.'' USTelecom's argument ignores that the certification language adopted in the *2019 R&O* stems directly from the language used in the *2017 NPRM.*

47. Second, while USTelecom acknowledges that the use of consultants that have financial relationships with vendors raises conflict of interest concerns for RHC Program applicants, the Commission disagrees with USTelecom that there are no such concerns for commissioned consultants working for service providers. Similar concerns are applicable to service providers who have commissioned sales agreements with other third parties based on contracts awarded through the Program. For example, there have been previous instances where a service provider's sales agent apparently shared other carriers' confidential pricing information to provide an unfair competitive advantage to that service provider when it responded to a health care provider's request for services. In addition, commissioned consultants or sales agents who simultaneously represent multiple service providers could direct business toward the service provider that pays the highest commission or has the highest bid to maximize their earnings. Such conflicts of interest and anti-competitive conduct violate the Program's longstanding fair and open competitive bidding requirement, which the Commission codified in the *2019 R&O.* The Commission therefore clarifies that agents compensated solely by commission, and not just those that are

compensated partly by commission are covered by the Commission's rules. Finally, the Commission notes that USTelecom argues that because the E-Rate Program does not prohibit the use of commissioned consultants or sales agents by service providers and that the Commission has sought to harmonize the E-Rate and RHC Programs, the RHC Program should not prohibit their use. The Commission disagrees. While USTelecom is generally correct that the Commission has sought to harmonize requirements between RHC and E-Rate, the greater likelihood of RHC consultant misconduct justifies a different requirement in the RHC Program at this time. As such, the Commission affirms the certification rule and deny USTelecom's request to strike this requirement, which applies to competitive bidding practices from funding year 2020 forward.

48. Additionally, the Commission denies USTelecom's request to clarify that a service provider certification addressing ''eligible services'' does not include an attestation that the services for which the disbursement is sought are eligible for Program support. In the *2019 R&O,* the Commission adopted a requirement that service providers certify they have ''charged the health care provider for only eligible services prior to submitting the invoice form and accompanying documentation.'' USTelecom argues that the certification should be interpreted not to apply to the eligibility of the services, arguing that service providers are not responsible for determining the eligibility of services, and that requiring service providers to make such a certification will preclude them from including both eligible services and services not supported by the Program on the same bill submitted to the applicant. On the contrary, the new certification, one of several added to invoicing forms to improve the invoicing process and ensure compliance with Commission rules, does not create a new burden because service providers are already required to abide by Program service eligibility rules. While service providers may include ineligible services and eligible services on the invoices they submit to health care providers, it is critical that service providers engage in due diligence to ensure that they seek reimbursement from the Administrator for eligible services only. Service providers are in the best position to evaluate whether the services they provide are eligible for RHC Program support because they understand the technical details of the services they provide. The Commission therefore confirms that service providers are certifying to the eligibility of the services provided when they certify that they ''charged the health care provider for only eligible services prior to submitting the invoice form and accompanying documentation.'' The Commission clarifies that with respect to billing, service providers may include both eligible and ineligible services on a single bill to the health care provider but RHC Program reimbursement may only be sought for eligible services.

49. Finally, the Commission makes one minor change to the Telecom Program certifications and issues an additional clarification as sought by USTelecom. First, in order to eliminate the potential for confusion, the Commission grants USTelecom's request to update Telecom Program certifications to add the word ''form'' after ''invoice'' to bring the certification in line with the HCF Program certifications. Second, the Commission clarifies, as USTelecom requests, that a service provider need not ensure that a health care provider is current on its payments before certifying that the health care provider has ''paid the appropriate urban rate.'' Having outstanding balances on payments owed to a service provider does not necessarily mean that the health care provider did not pay the appropriate urban rate.

III. Second Report and Order

50. In the Second Report and Order, the Commission amends the Telecom Program invoicing process to harmonize the RHC invoicing process across the Telecom Program and the HCF Program. The Commission also amends the funding cap and prioritization rules to limit the application of the internal cap and prioritize health care providers' current year financial need over their future year need when the internal cap is exceeded. Additionally, the Commission makes minor changes to the text of the RHC Program rules regarding the number of health care provider types that are eligible in the RHC Program. These actions will promote efficiency, reduce delays in funding commitments, and minimize the possibility that some health care providers may not receive their current year's support in the event of prioritization to upfront payment and multi-year commitment requests, while strengthening protections against waste, fraud, and abuse.

51. *Invoicing.* To closer harmonize the invoicing process across the Telecom Program and the HCF Program, the Commission eliminates the use of Health Care Provider Support Schedules (HSSs) in the Telecom Program and requires the participating service provider and health care provider to submit an invoice for service to the Administrator after services are provided consistent with the HCF Program effective for funding year 2024. In the *2022 FNPRM,* the Commission proposed to fully harmonize the invoicing process between the Telecom Program and the HCF Program by having participants in both programs invoice the Administrator for services actually provided using the FCC Form 463 (Invoice and Request for Disbursement Form). Additionally, the Commission proposed to retire the FCC Form 467 (Connection Certification), which is currently used for invoicing in the Telecom Program.

52. The Commission adopts the proposal to eliminate HSSs in the Telecom Program and retire the FCC Form 467. Eliminating the use of HSSs in the Telecom Program will stop payments being disbursed automatically with minimal action from the health care provider or service provider. Because the FCC Form 467 is the form filed before a health care provider can receive an HSS, it will no longer be necessary and will be eliminated. However, rather than adopt the FCC Form 463 for the Telecom Program as proposed, the Commission instead directs the Administrator, upon approval from the Bureau, to adopt a new invoice form for the Telecom Program that will be filed after services have been provided, and will allow participants to indicate when services have started, and will more clearly identify what services RHC Program applicants receive during the funding year while maintaining separation between the HCF Program and Telecom Program invoicing processes.

53. Creating a new Telecom Program invoicing form, which is distinct from, but functionally similar to, the FCC Form 463 will ensure that invoicing in the Telecom Program occurs after services have actually started, that service providers are reimbursed for actual costs rather than predetermined amounts established by the HSS, and that participants need not take action to change an HSS if the services are terminated or never begin. Having distinct forms for each program will account for the fact that there are consortium applications in the HCF Program but not in the Telecom Program. Additionally, the Commission finds that adopting the process for invoicing in the Telecom Program will further alleviate inefficiencies and protect against waste, fraud, and abuse in the RHC Program. The new process

for invoicing will eliminate the need for health care providers to file, and subsequently amend, an FCC Form 467. It will also reduce the likelihood of improper disbursements because disbursements will be based on charges for services that were actually provided rather than expected charges for services *anticipated* to be provided.

54. Service providers will initiate the invoicing process by preparing the new Telecom invoicing form and service providers and health care providers will continue to make the same certifications on the new form that they have previously made on Telecom invoicing forms. As with HCF Program invoices, invoices in the Telecom Program can be submitted any time after services have been provided and the service provider sends an invoice to the health care provider. A service provider can submit an invoice form to the Administrator after each month of service or, if it elects to, may alternatively wait until the end of the funding year to submit a single invoice for all services provided during the funding year. All invoices for services actually incurred must be submitted before the invoice filing deadline, consistent with Commission rules.

55. Some commenters raised concerns that adopting a system in which disbursements are made based on invoices filed after services are provided, rather than a predetermined HSS for the Telecom Program, would increase administrative burdens, and these burdens could be exacerbated by the fact that invoices in the Telecom Program can be submitted only on an individual basis, rather than on a consortium basis. Other commenters supported harmonizing the invoicing processes so long as there are mechanisms to reduce increased administrative burdens. The Commission recognizes that adopting an invoicing system based upon actual expenses incurred will likely require more invoice-related filings from program participants, but the history of improper disbursements from the use of the HSS justifies any potential added burden. To mitigate any administrative burdens, the Commission directs the Bureau to work with the Administrator to develop a mechanism for filing this new form and to provide service providers the functionality to file invoices for multiple funding requests for multiple health care providers in a single filing.

56. *Internal Cap Application and Prioritization.* The Commission adopts the changes to the RHC Program internal cap application and prioritization proposed in the *2022 FNPRM* effective funding year 2023. The Commission amends RHC Program rules to limit the application of the internal cap on multi-year commitments and upfront payments to funding years for which the total demand exceeds the remaining support available. The Commission also prioritizes upfront payments and the first year of multi-year commitments, and then funds the second and third years of multi-year commitments with any remaining funding in a given funding year. Although demand has been fully satisfied in every funding year since the adoption of the *2019 R&O,* these changes will ensure a smoother, fairer process in the event that prioritization is ever necessary.

57. First, the Commission amends the funding cap rules to limit the application of the internal cap to those application filing window periods during which total demand exceeds total remaining support available for the funding year. All commenters who discussed the proposal supported it. If total demand during a filing window period does not exceed total remaining support available for the funding year, the internal cap will not apply. The total remaining support available for the first filing window period of a funding year is the sum of the inflation-adjusted RHC Program aggregate cap in § 54.619(a) of the Commission's rules and the proportion of unused funding determined for use in the RHC Program pursuant to § 54.619(a)(5) of the Commission's rules.

58. The approach will preserve the internal cap's intended purpose of preventing multi-year and upfront payment requests from encroaching on the funding available for single-year requests, because the internal cap would only apply when the total demand exceeds the total remaining support available. No requests will be reduced, even if the internal cap is exceeded, as long as there is sufficient total funding to meet total demand. The approach will also ensure funding for single-year requests in the next funding year. Allowing upfront payment and multi-year commitment requests to be fully funded if funding is available for all demand in the current funding year will also alleviate demand in the next funding year given that funding multi-year commitment requests in the current funding year eliminates demand for those services under the next funding year's cap.

59. Second, the Commission amends the rules to prioritize support for current-year funding requests over future-year funding requests when the internal cap is exceeded. Specifically, the Commission amends § 54.621 of the rules to fund eligible upfront payment requests and the first-year of all multi-year requests before funding the second or third year of any multi-year requests when the internal cap applies and is exceeded. Additionally, the Commission amends the rules to allow the underlying contracts associated with those multi-year commitment requests that are not fully funded to be designated as ''evergreen.''

60. The amendment to the prioritization process adopted increases the chance that health care providers who requested support for upfront payments and multi-year commitments will have their current year's financial need satisfied in the event that prioritization is necessary. The previous prioritization process would have resulted in some health care providers, likely those in the lower prioritization categories, losing all or a portion of their requested support for the current funding year while other health care providers receive commitments for the second and third years of multi-year commitments, even though they could request funding for these services in subsequent funding years. The change mitigates such adverse impact to those health care providers. By prioritizing support for upfront payment requests and the first year of multi-year commitment requests when the internal cap applies and is exceeded, health care providers in the lower prioritization categories will more likely receive the current year's requested support. Additionally, the action the Commission takes will further promote broadband network development led by HCF consortia that include non-rural members by lessening the impact of prioritization to those non-rural health care providers and by giving preference to upfront costs such as network construction. The Commission recognizes that the amendment will inconvenience some health care providers in the higher prioritization categories that may have to file applications in future funding years for services that otherwise would fall under the second and third year of a multi-year commitment. The Commission concludes, however, that such concerns are outweighed by the benefit to health care providers who, without this rule change, could have their current year funding requests denied or prorated.

61. To mitigate any potential adverse impact to health care providers whose multi-year commitment requests are affected, the Commission also amends the rules to allow the underlying contracts associated with those multi-year commitment requests that are not fully funded to be designated as

''evergreen,'' provided that the contracts satisfy the criteria set forth in § 54.622(i)(3)(ii) of the Commission's rules. The evergreen designation will exempt applicants from having to complete the competitive bidding process for multi-year contracts that are not initially fully funded due to the new internal cap rules when the applicant subsequently files requests for support pursuant to these contracts. As a result, applicants can request single or multi-year commitments pursuant to these contracts in the next funding year without going through the competitive bidding process.

62. The Commission agrees with Alaska Communications, GCI, and Western New York (WNY) that the internal cap prevents multi-year commitment requests from usurping funding available for single-year requests, and rejects requests by some commenters to eliminate the internal cap or to remove multi-year commitments from the internal cap. This latter group of commenters claims that eliminating the internal cap or removing multi-year commitments from the internal cap would encourage more multi-year commitments, which these commenters claim are more efficient for both the RHC program and individual HCPs. The Commission finds that retaining the current internal cap with the limitations instituted is more fiscally responsible than eliminating the internal cap or removing multi-year commitments from the internal cap. Eliminating the cap or removing multi-year commitments from the internal cap will result in less funding being made available for single year commitments. Multi-year requests tend to be more expensive and without any constraints, those requests will make it more likely that the overall cap is exceeded. In any event, the changes the Commission adopts for the internal cap will likely result in making more funding available for multi-year commitments because, going forward, the internal cap will only apply when total demand exceeds total support available and thus will not apply at all in funding years when total support available can satisfy total demand, leaving open the possibility for additional funding for multi-year commitments beyond the internal cap.

63. The Commission also rejects some commenters' requests to suspend the funding prioritization system until the Commission addresses the allocation of shared network costs for consortia program participants. As an initial matter, the Commission did not seek comment in the *2022 FNPRM* on suspending the funding prioritization scheme. The Commission finds, however, that a rule change is not necessary for the Commission to ensure that consortium members can allocate shared network costs when some members do not receive funding due to prioritization. In any event, as discussed in the Order on Reconsideration section, the Commission's funding prioritization approach remains necessary as it will target support where it is most needed (*i.e.,* those more rural areas with greater medical shortages) in cases where available program funding is exceeded in a given funding year. The Commission therefore rejects the requests to suspend the funding prioritization system.

64. Some commenters argued that an increase to the overall RHC Program cap is appropriate. The Commission finds that the current annually inflation-adjusted overall cap combined with the process to carry-forward unused funding strikes the necessary balance between providing sufficient funding to health care providers and minimizing increased burden on Universal Service Fund (USF) contributors. With the availability of carryover funding, demand has been fully satisfied since funding year 2019. While continuing to monitor overall Program demand, the Commission declines to increase the overall RHC Program cap at this time.

65. *Technical Changes to Previously Codified RHC Rules.* The Commission also takes this opportunity to make two minor corrections to the text of the RHC Program rules. First, the Commission amends the text of § 54.622(e)(1)(i) of the rules to reflect the correct number of health care provider types that are eligible. The Rural Healthcare Connectivity Act of 2016 amended the Communications Act of 1934 to add skilled nursing facilities to the list of health care provider types eligible to receive RHC Program support. In response to the new law, in 2017, the Commission amended § 54.600(a) of the rules to reflect that skilled nursing facilities are eligible for RHC support, which increased the number of eligible health care provider types from seven to eight. In enacting the change, the Commission did not amend a different rule addressing certifications on a Request for Services that refers to ''one of the *seven* categories set forth in the definition of health care provider.'' The Commission now corrects that omission by striking the word ''seven'' from § 54.622(e)(1)(i) of the rules. Striking the word ''seven'' rather than replacing it with ''eight'' is appropriate because quantifying the number of eligible health care provider types in § 54.622(e)(1)(i) of the Commission's rules adds no substantive benefit to RHC Program participants but could potentially lead to confusion if there are future amendments to the health care provider types eligible for the RHC Program. Second, the Commission corrects the cross-reference in § 54.622(a) rules so that it properly references § 54.622(i). The Commission finds that there is good cause to make these changes without notice and comment because seeking comment on these technical amendments, which only serve to conform these references to the current requirements of the rules would be unnecessary.

IV. Order

66. By the Order, the Commission dismisses the Applications for Review of the Bureau's guidance to the Administrator on implementation of the Rates Database submitted by Alaska Communications and GCI. The Commission's decision to eliminate the use of the Rates Database to calculate urban and rural rates renders these Applications for Review moot.

V. Procedural Matters

A. Paperwork Reduction Act

67. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this proceeding. In addition, it is noted that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how might to further reduce the information collection burden for small business concerns with fewer than 25 employees.

68. In this present document, the Commission has assessed the effects of restoring the use of Methods 1 through 3 for rural rates calculations, eliminating the use of the HSS, and reducing the instances in which the internal cap applies. The Commission finds that restoring the use of Methods 1 through 3 for rural rates calculations might impose information collection burdens on small business, but that this rule change is necessary to protect the integrity of the Universal Service Fund, eliminating the use of the HSS will reduce information collection burdens and reducing the instance in which the internal cap applies will not impact information collection burdens.

B. Congressional Review Act

69. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that the rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order on Reconsideration and Second Report and Order, Order, and Second Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

VI. Final Regulatory Flexibility Act

70. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning rule and policy changes in the Order on Reconsideration and Second Report and Order. In the *2022 FNPRM,* the Commission included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *2022 FNPRM.* The Commission sought written public comment on the proposals in the *2022 FNPRM* including comment on the IRFA. The Commission did not receive any relevant comments in response to the IRFA. This FRFA conforms to the RFA.

A. Need for, and Objectives of, the Second Report and Order

71. Through the Order on Reconsideration and Second Report and Order, the Commission seeks to further improve the Rural Health Care (RHC) Program's capacity to distribute telecommunications and broadband support to health care providers—especially small, rural healthcare providers (HCPs)—in the most equitable and efficient manner as possible. Over the years, telehealth has become an increasingly vital component of healthcare delivery to rural Americans. Rural healthcare facilities are typically limited by the equipment and supplies they have and the scope of services they can offer which ultimately can have an impact on the availability of high-quality health care. Therefore, the RHC Program plays a critical role in overcoming some of the obstacles healthcare providers face in healthcare delivery in rural communities. Considering the significance of RHC Program support, the Commission implements several measures to most effectively meet HCPs' needs while responsibly distributing the RHC Program's limited funds.

72. In the Second Report and Order section, the Commission adopts proposals from the *2022 FNPRM* to amend RHC Program administrative processes and internal cap application and prioritization rules to promote efficiency, reduce delays in funding commitments, and prioritize support for the current funding year as well as make a minor technical change to the text of the Commission's rules.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

73. There were no comments filed that specifically address the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

74. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rule(s) in the proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

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

76. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 31.7 million businesses.

77. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

78. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicates that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 39, 931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments (independent school districts) with populations of less than 50,000. Based on the 2017 U.S. Census Bureau data, the Commission estimates that at least 48, 971 entities fall in the category of ''small governmental jurisdictions.''

79. Small entities potentially affected by the action include eligible rural non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, internet Service Providers (ISPs), and vendors of the services and equipment used for dedicated broadband networks.

1. Healthcare Providers

80. *Offices of Physicians (except Mental Health Specialists).* This U.S. industry comprises establishments of

health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or health maintenance organization (HMO) medical centers. The SBA has created a size standard for this industry, which is annual receipts of $12 million or less. According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry. Of that number, 147,718 had annual receipts of less than $10 million, while 3,108 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms operating in this industry are small under the applicable size standard.

81. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry. The SBA has established a size standard for that industry of annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year. Of that number 114,417 had annual receipts of less than $5 million, while 651 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of business in the dental industry are small under the applicable standard.

82. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of DC (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census statistics show that in 2012, 33,940 firms operated throughout the entire year. Of that number 33,910 operated with annual receipts of less than $5 million per year, while 26 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of chiropractors are small.

83. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses. The SBA has established a size standard for businesses operating in this industry, which is annual receipts of $8 million or less. The 2012 Economic Census indicates that 18,050 firms operated the entire year. Of that number, 17,951 had annual receipts of less than $5 million, while 70 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of optometrists in this industry are small.

84. *Offices of Mental Health Practitioners (except Physicians).* This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year. Of that number, 15,894 firms received annual receipts of less than $5 million, while 111 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of mental health practitioners who do not employ physicians are small.

85. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year. Of this number, 20,047 had annual receipts of less than $5 million, while 270 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of businesses in this industry are small.

86. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year. Of that number, 7,545 firms had annual receipts of less than $5 million, while 22 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a

majority of firms in this industry are small.

87. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year. Of that number, 11,374 firms had annual receipts of less than $5 million, while 48 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes the majority of firms in this industry are small.

88. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy. The SBA has established a size standard for this industry, which is annual receipts of $12 million or less. The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year. Of that number 1,237 had annual receipts of less than $10 million, while 36 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that the majority of firms in this industry is small.

89. *Outpatient Mental Health and Substance Abuse Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary. The SBA has established a size standard for this industry, which is $16.5 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year. Of that number, 4,069 had annual receipts of less than $10 million while 286 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

90. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies. The SBA has established a size standard for this industry, which is $35 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year. Of that number, 5 firms had annual receipts of less than $25 million, while 1 firm had annual receipts between $25 million and $99,999,999. Based on the data, the Commission concludes that approximately one-third of the firms in this industry are small.

91. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (*e.g.,* orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (*e.g.,* setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year. Of that number, 3,222 firms had annual receipts of less than $10 million, while 289 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

92. *All Other Outpatient Care Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (*i.e.,* Doctor of Medicine and Doctor of Dental Medicine) are included in this industry. The SBA has established a size standard for this industry, which is annual receipts of $22 million or less. The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year. Of this number, 4,269 firms had annual receipts of less than $10 million, while 389 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

93. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs. The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year. Of that number, 235 operated with annual receipts of less than $25 million, while 41 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that approximately three-quarters of firms that operate in this industry are small.

94. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks). The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year. Of that number, 2,318 had annual receipts of less than $10 million, while 56 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of the firms in this industry is small.

95. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily

engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner. The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year. Of this number, 2,465 had annual receipts of less than $25 million, while 60 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that a majority of firms that operate in this industry are small.

96. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner. The SBA has established size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 4,209 firms operated in this industry throughout the entire year. Of that number, 3,876 firms had annual receipts of less than $10 million, while 228 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms that operate in this industry are small.

97. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year. Of that number, 16,822 had annual receipts of less than $10 million, while 590 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms that operate in this industry are small.

98. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year. Of that number, 2,926 had annual receipts of less than $15 million, while 133 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms in this industry is small.

99. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services. The SBA has established assize standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year. Of that number, 379 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

100. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year. Of that number, 877 has annual receipts of less than $25 million, while 400 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that approximately one-quarter of firms in this industry are small.

101. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year. Of that number, 185 had annual receipts of less than $25 million, while 107 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that more than one-half of the firms in this industry are small.

102. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services. The SBA has established a size standard for this industry, which is annual

receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year. Of that number, 146 firms had annual receipts of less than $25 million, while 79 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that more than one-half of the firms in this industry are small.

103. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (*e.g.,* wars). The SBA has established a size standard for this industry which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year. Of that number, 509 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

2. Providers of Telecommunications and Other Services

104. *Telecommunications Service Providers—Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable North American Industry Classification System (NAICS) Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

105. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

106. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers and under the size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most competitive access providers are small businesses that may be affected by our actions. According to Commission data the *2010 Trends in Telephone Report, rel.* September 2010, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or few employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

107. *Wireline Providers, Wireless Carriers and Service Providers, and internet Service Providers.* The small entities that may be affected by the reforms include eligible nonprofit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, internet Service Providers, and service providers of the services and equipment used for dedicated broadband networks.

108. *Vendors and Equipment Manufactures—Vendors of Infrastructure Development or* ''*Network Buildout.*'' The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are ''Radio and Television Broadcasting and Wireless Communications Equipment'' with a size standard of 1,250 employees or less and ''Other Communications Equipment Manufacturing'' with a size standard of 750 employees or less.'' U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year. Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012, show that 383 establishments operated for the year. Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on the data, the Commission concludes that the majority of Vendors of Infrastructure Development or ''Network Buildout'' are small.

109. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), private branch exchange (PBX) equipment, telephone answering machines, local area network (LAN) modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

110. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are:

transmitting and receiving antennas, cable television equipment, global positioning system (GPS) equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on the data, the Commission concludes that a majority of manufacturers in this industry are small.

111. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (*e.g.,* highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on the data, the Commission concludes that the majority of Other Communications Equipment Manufacturers are small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

112. The rules adopted in the Second Report and Order will not result in modified reporting, recordkeeping, or other compliance requirements for small or large entities.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

114. In the Second Report and Order section, the Commission takes steps to minimize the economic impact on small entities with the rule changes that are adopted. The Commission amends the invoicing process to harmonize the process across the Telecom Program and the HCF Program. The Commission minimizes the impact of this change on small entities by ensuring that there is a mechanism to allow multiple invoices to be filed in a single submission. The Commission also amends the funding cap and prioritization rules to limit the application of the internal cap and prioritize health care providers' current year financial need over their future year need when the internal cap is exceeded. This change will help small entities by reducing the instances in which the internal cap applies and prioritizing funding for the current funding year when it does. These actions will promote efficiency, reduce delays in funding commitments, and minimize the possibility that some health care providers may not receive their current year's support in the event of prioritization to upfront payment and multi-year commitment requests, while strengthening protections against waste, fraud and abuse.

G. Report to Congress

115. The Commission will send a copy of the Order on Reconsideration and Second Report and Order, including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Second Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

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

VII. Ordering Clauses

117. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 4(j), 214, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(j), 214, 254, and 405 and §§ 1.115 and 1.429 of the Commission's rules, 47 CFR 1.115, 1.429, that the Order on Reconsideration, Second Report and Order, and Order *is adopted.*

118. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by Alaska Communications on November 12, 2019, is *granted in part, denied in part,* and *dismissed in part* to the extent described herein.

119. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by the Schools, Health & Libraries Broadband Coalition on November 12,

2019, is *granted in part, denied in part,* and *dismissed in part* to the extent described herein.

120. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by State of Alaska, Office of the Governor on November 12, 2019, is *granted in part, denied in part* and *dismissed in part* to the extent described herein.

121. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by North Carolina Telehealth Network Association/Southern Ohio Health Care Network on November 12, 2019, is *denied* to the extent described herein.

122. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by USTelecom—The Broadband Association on November 12, 2019, is *granted in part, denied in part,* and *dismissed in part* to the extent described herein.

123. *It is further ordered* that pursuant to the authority in sections 1 through 4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, that § 54.605(b) of the Commission's rules as amended herein, 47 CFR 54.605(b) *is waived* to the extent provided herein.

124. *It is further ordered*, that pursuant to § 1.103 of the Commission's rules, the provisions of the Order on Reconsideration, Second Report and Order, and Order *will become effective* April 24, 2023, unless indicated otherwise herein.

125. *It is further ordered,* that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, part 54 of the Commission's rules, 47 CFR part 54, is AMENDED, and such rule amendments in the Order on Reconsideration and Second Report and Order *shall be effective* April 24, 2023, except for §§ 54.604, 54.605, and 54.627, which are subject to the Paperwork Reduction Act. The Commission will publish a document in the **Federal Register** announcing the effective date for those rule sections after approved by the Office of Management and Budget as required by the Paperwork Reduction Act.

126. *It is further ordered* that, pursuant to § 1.115 of the Commission's rules, 47 CFR 1.115, the Application for Review filed by GCI Communications Corp. on July 30, 2020, is DISMISSED as moot.

127. *It is further ordered* that, pursuant to § 1.115 of the Commission's rules, 47 CFR 1.1115, the Application for Review filed by Alaska Communications on July 30, 2020, is *dismissed* as moot.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Internet, Reporting and recordkeeping requirements, and Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Delayed indefinitely, § 54.604 is revised to read as follows:

§ 54.604 Determining the urban rate.

(a) Effective funding year 2024, if a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program that is to be provided over a distance that is less than or equal to the ''standard urban distance,'' as defined in paragraph (c) of this section, for the state in which it is located, the ''urban rate'' for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

(b) If a rural health care provider requests an eligible service to be provided over a distance that is greater than the ''standard urban distance,'' as defined in paragraph (c) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service provided over the standard urban distance in any city with a population of 50,000 or more in that state, calculated as if the service were provided between two points within the city.

(c) The ''standard urban distance'' for a state is the average of the longest diameters of all cities with a population of 50,000 or more within the state.

(d) The Administrator shall calculate the ''standard urban distance'' and shall post the ''standard urban distance'' and the maximum supported distance for each state on its website.

■ 3. Delayed indefinitely, § 54.605 is revised to read as follows:

§ 54.605 Determining the rural rate.

(a) Effective funding year 2024, the rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located. The rates included in this average shall be for services provided over the same distance as the eligible service. The rates averaged to calculate the rural rate must not include any rates reduced by universal service support mechanisms. The ''rural rate'' shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.

(b) If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers. If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission's approval, for intrastate rates, or for the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.

(1) The carrier must provide, to the state commission, for intrastate rates, or to the Commission, for interstate rates, a justification of the proposed rural rate, including an itemization of the costs of providing the requested service.

(2) The carrier must provide such information periodically thereafter as required, by the state commission for intrastate rates or the Commission for

interstate rates. In doing so, the carrier much take into account anticipated and actual demand for telecommunications services by all customers who will use the facilities over which services are being provided to eligible health care providers.

■ 4. Amend § 54.619 by revising paragraph (a) to read as follows:

§ 54.619 Cap.

(a) *Amount of the annual cap.* The aggregate annual cap on Federal universal service support for health care providers shall be $571 million per funding year. When total demand during a filing window period exceeds the total remaining support available for the funding year, an internal cap of $150 million per funding year for upfront payments and multi-year commitments under the Healthcare Connect Fund Program shall apply.

* * * * *

■ 5. Amend § 54.621 by revising paragraph (b) to read as follows:

§ 54.621 Filing window for requests and prioritization of support.

* * * * *

(b) *Prioritization of support.* The Administrator shall act in accordance with this section when a filing window period for the Telecommunications Program and the Healthcare Connect Fund Program, as described in paragraph (a) of this section, is in effect. When a filing period described in paragraph (a) of this section closes, the Administrator shall calculate the total demand for Telecommunications Program and Healthcare Connect Fund Program support submitted by all applicants during the filing window period.

(1) *Circumstances in which prioritization applies.* If the total demand during the filing window period exceeds the total remaining support available for the funding year, prioritization will apply in the following circumstances:

(i) *Internal cap.* If the internal cap is exceeded, the Administrator shall determine whether demand for upfront payments and the first year of multi-year commitments exceeds the internal cap. If such demand exceeds the internal cap, the Administrator shall not fund the second and third year of multi-year commitment requests and then apply the prioritization schedule in paragraph (b)(2) of this section to all eligible requests for upfront payments and the first-year of multi-year commitments to limit the demand for upfront payments and the first year of multi-year commitments within the internal cap. If demand for upfront payments and the first year of multi-year commitments does not exceed the internal cap, the Administrator shall apply the prioritization schedule in paragraph (b)(2) of this section to the second and third year of all eligible requests for multi-year commitments until the internal cap is reached, to ensure that the internal cap is not exceeded.

(ii) *Overall cap.* If the internal cap is not exceeded or if, after demand for upfront payments and multi-year commitments is limited within the internal cap in paragraph (b)(1)(i) of this section, the total remaining demand still exceeds the total remaining support available for the funding year, the Administrator shall apply the prioritization schedule in paragraph (b)(2) of this section to all remaining eligible funding requests.

(2) *Application of prioritization schedule.* When prioritization is necessary under paragraph (b)(1) of this section, the Administrator shall fully fund all applicable eligible requests falling under the first prioritization category of table 1 to this paragraph (b)(2) before funding requests in the next lower prioritization category. The Administrator shall continue to process all applicable requests by prioritization category until there are no applicable funds remaining. If there is insufficient funding to fully fund all requests in a particular prioritization category, then the Administrator will pro-rate the applicable remaining funding among all applicable eligible requests in that prioritization category only pursuant to the proration process described in paragraph (b)(3) of this section.

TABLE 1 TO PARAGRAPH (b)(2)—PRIORITIZATION SCHEDULE

Health care provider site is located in:	In a medically underserved area/ population (MUA/P)	Not in MUA/P
Extremely Rural Tier (areas entirely outside of a Core Based Statistical Area)	*Priority 1*	*Priority 4.*
Rural Tier (areas within a Core Based Statistical Area that does not have an urban area or urban cluster with a population equal to or greater than 25,000).	*Priority 2*	*Priority 5.*
Less Rural Tier (areas within a Core Based Statistical Area with an urban area or urban cluster with a population equal to or greater than 25,000, but where the census tract does not contain any part of an urban area or urban cluster with population equal to or greater than 25,000).	*Priority 3*	*Priority 6.*
Non-Rural Tier (all other non-rural areas)	*Priority 7*	*Priority 8.*

(3) *Pro-rata reductions.* When proration is necessary under paragraph (b)(2) of this section, the Administrator shall take the following steps:

(i) The Administrator shall divide the total applicable remaining funds available for the funding year by the applicable demand within the specific prioritization category to produce a pro-rata factor; and

(ii) The Administrator shall multiply the pro-rata factor by the dollar amount of each applicable funding request in the prioritization category to obtain prorated support for each funding request.

(4) *Evergreen designations.* The Administrator shall designate the underlying contracts associated with any multi-year commitment requests that are not fully funded as a result of the prioritization process in this section as ''evergreen'' provided that those contracts meet the requirements under § 54.622(i)(3)(ii).

■ 6. Amend § 54.622 by revising paragraph (a) and (e)(1)(i) to read as follows:

§ 54.622 Competitive bidding requirements and exemptions.

(a) *Competitive bidding requirement.* All applicants are required to engage in a competitive bidding process for supported services, facilities, or equipment, as applicable, consistent with the requirements set forth in this section and any additional applicable state, Tribal, local, or other procurement requirements, unless they qualify for an exemption listed in paragraph (i) in this section. In addition, applicants may engage in competitive bidding even if

they qualify for an exemption. Applicants who utilize a competitive bidding exemption may proceed directly to filing a funding request as described in § 54.623.

* * * * *

(e) * * *

(1) * * *

(i) The health care provider seeking supported services is a public or nonprofit entity that falls within one of the categories set forth in the definition of health care provider, listed in § 54.600;

* * * * *

§ 54.627 [Amended]

■ 7. Amend § 54.627 by:

■ a. Removing paragraphs (c)(1) and (2);

■ b. Redesignating paragraph (c)(3) as paragraph (c)(1); and

■ c. Adding reserved paragraph (c)(2).

■ 8. Delayed indefinitely, further amend § 54.627 by revising newly redesignated paragraph (c)(1)(i)(D) to read as follows:

§ 54.627 Invoicing process and certifications.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) It has examined the invoice form and supporting documentation and that to the best of its knowledge, information and belief, all statements of fact contained in the invoice form and supporting documentation are true;

* * * * *

[FR Doc. 2023–04991 Filed 3–22–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230316–0077]

RIN 0648–BL90

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; 2023–2025 Atlantic Herring Fishery Specifications

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

ACTION: Interim final rule.

SUMMARY: This interim rule implements 2023–2025 Atlantic herring fishery specifications, subject to public comment. This action also removes possession limits in Herring Management Area 1B and Area 3, adjusts 2023 fishery specifications to account either for Management Area catch limit overages or carryover of unharvested catch from 2021, updates the target rebuilding date for herring, removes the inshore midwater trawl restricted area regulations, corrects typographical errors in several existing regulations, and restores regulatory requirements that were unintentionally removed from the Code of Federal Regulations. This action is necessary to respond to updated scientific information from a 2022 management track assessment and to achieve the goals and objectives of the Atlantic Herring Fishery Management Plan. The approved measures are intended to help prevent overfishing, rebuild the overfished herring stock, achieve optimum yield on a continuing basis, and ensure that management measures are based on the best scientific information available.

DATES: Effective March 23, 2023. Public comments must be received by April 24, 2023.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2023–0015, by the following method:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0015 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 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, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the 2023–2025 herring specifications action, including the Supplemental Information Report (SIR) and the Regulatory Impact Review (RIR) prepared by the New England Fishery Management Council in support of this action, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also accessible via the internet at *https://www.nefmc.org/management-plans/herring* or *http://www.regulations.gov.* Copies of the small entity compliance guide are available from on the internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, (978) 281–9196, *Maria.Fenton@noaa.gov.*

SUPPLEMENTARY INFORMATION:

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1. Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) appear at 50 CFR part 648, subpart K. The regulations at § 648.200 require the New England Fishery Management Council to recommend herring specifications for NMFS' review and publication in the **Federal Register**, including: The overfishing limit (OFL); acceptable biological catch (ABC); annual catch limit (ACL); optimum yield (OY); management uncertainty; domestic annual harvest (DAH); domestic annual processing (DAP); U.S. at-sea processing (USAP); border transfer; the sub-ACL for each management area, including seasonal periods as specified by § 648.201(d) and modifications to sub-ACLs as specified by § 648.201(f); and the amount to be set aside for the research set-aside (RSA) (0–3 percent of the sub-ACL from any management area) for a period of 3 years. These regulations also provide the Council with the discretion to modify accountability measures, possession limits, river herring monitoring/avoidance areas, and river herring and shad catch caps through the specifications process.

Consistent with the opportunity for public comment provided by the regulations, NMFS is implementing these specifications as recommended by the Council, subject to further consideration of additional public comments in response to this rule. Immediate implementation pending consideration of public comment allows herring fishery participants increased fishing opportunities consistent with the higher catch limits in this action. The specifications implemented in this action are consistent with the ABC

control rule put in place by Amendment 8 to the Atlantic Herring FMP and are responsive to updated assessment data, both of which have been subject to robust public comment during the development of Amendment 8 and these specifications. The specifications are formulaic and dependent on applying updated data to the ABC control rule, a rule that was developed using a comprehensive management strategy evaluation process. The resulting recommendations were closely analyzed and commented on during their development. Further opportunity for public comment after implementing these measures will help ensure there have been no significant omissions or errors, or other information that might warrant changes. NMFS will publish a subsequent final rule if NMFS receives any significant comments.

The Northeast Fisheries Science Center completed the most recent herring management track assessment in June 2022. The results of the 2022 assessment indicated that the stock is overfished but overfishing is not occurring, which is unchanged from the 2020 assessment. The 2022 assessment updated fishery catch data, survey indices, life history parameters, biological reference points, and several assumptions in the model used to generate short-term biomass projections. The Council's Scientific and Statistical Committee (SSC) met on August 4, 2022, to review the results of the 2022 assessment and make OFL and ABC recommendations for 2023–2025. The Herring Plan Development Team (PDT) recommended that the SSC base its OFL and ABC recommendations on the ABC control rule, which is consistent with the herring rebuilding plan that was implemented in August 2022. The SSC considered the PDT's recommendation; however, due to the amount of scientific uncertainty in the stock assessment and concerns over the magnitude of the increase in projected 2024–2025 OFLs and ABCs, the SSC also considered holding the 2023 OFL and ABC values constant during 2023–2025. Because the ABC control rule was developed using a rigorous management strategy evaluation, use of the ABC control rule is consistent with the herring rebuilding plan, and the PDT's recommended specifications incorporate updated assessment information, the SSC ultimately decided to recommend the PDT's recommended OFLs and ABCs. The Council finalized its 2023–2025 herring fishery specification recommendations during its September 2022 meeting. The Council's recommendations are consistent with the advice of the SSC and the PDT.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) permits NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS intended to propose the Council's recommended specifications prior to implementing them. However, in order to ensure that revised 2023 herring fishery specifications are implemented as soon after the start of the fishing year (January 1, 2023) as possible, NMFS is implementing 2023–2025 herring fishery specifications and other management measures through this interim final rule, subject to further consideration of public comments. If implementation of revised 2023 specifications is delayed, the herring fleet may miss out on the economic opportunities associated with these specifications.

2. Summary of Approved Measures

This action implements the Council's recommended 2023–2025 herring fishery specifications pursuant to the administrative authority granted to NMFS under the Magnuson-Stevens Conservation and Management Act at section 305(d). The specifications include OFL, ABC, ACL, OY, management uncertainty, DAH, DAP, USAP, border transfer, management area sub-ACLs, RSA, and river herring/shad catch caps for each year during 2023–2025.

This action also implements a number of other measures that are not part of the 2023–2025 herring fishery specifications action, pursuant to the administrative authority granted to NMFS under the Magnuson-Stevens Act at section 305(d). NMFS is implementing these measures in conjunction with the 2023–2025 herring fishery specifications action for expediency purposes, and because some of these measures are related to the specifications being implemented through this action. The additional measures being implemented through this action are listed below:

- *Removal of 2,000-lb (907.2-kg) Possession Limits from Area 1B and Area 3*—this action removes 2,000-lb (907.2-kg) possession limits for herring in Area 1B and Area 3 that were implemented in January 2023;
- *Adjustments to 2023 herring fishery specifications*—this action announces adjustments to the 2023 herring fishery specifications in order to account for catch overages and carryover of unharvested catch from 2021;
- *Revision to the herring rebuilding plan*—this action revises the target rebuilding date for herring;
- *Removal of inshore midwater trawl restricted area regulations*—this action removes the inshore midwater trawl restricted area; and
- *Other administrative revisions and corrections*—this action corrects a typographical error in the coordinates for the Western Gulf of Maine Habitat Management Area, revises an incorrect regulatory citation in the herring regulations pertaining to measures to address slippage on vessels issued a Category A or B herring permit, and restores general recordkeeping and reporting requirements that were unintentionally removed from the Code of Federal Regulations.

3. 2023–2025 Herring Fishery Specifications

This action implements the Council's recommended 2023–2025 herring fishery specifications. In 2021, the interim final rule implementing Framework Adjustment 8 to the Atlantic Herring FMP set herring fishery specifications for 2021–2023 based on the results of a 2020 management track assessment (86 FR 17081, April 1, 2021). This action replaces the default 2023 specifications that were implemented through Framework 8 (Table 1).

TABLE 1—SUMMARY OF DEFAULT AND REVISED 2023–2025 HERRING FISHERY SPECIFICATIONS

[mt]

Specification	Default values (Framework 8)	Revised values		
	2023	2023	2024	2025
OFL	44,600	29,138	32,233	40,727
ABC	8,767	16,649	23,409	28,181

TABLE 1—SUMMARY OF DEFAULT AND REVISED 2023–2025 HERRING FISHERY SPECIFICATIONS—Continued

[mt]

Specification	Default values (Framework 8)	Revised values		
	2023	2023	2024	2025
Management Uncertainty *	4,669	4,220	4,220	4,220
OY/ACL	4,098	*12,429	*19,189	*23,961
DAH	4,098	12,429	19,189	23,961
Border Transfer	0	0	0	0
DAP	4,098	12,429	19,189	23,961
USAP	0	0	0	0
Area 1A sub-ACL (28.9%)	1,184	*3,592	*5,546	*6,925
Area 1B sub-ACL (4.3%)	176	534	825	1,030
Area 2 sub-ACL (27.8%)	1,139	3,455	5,335	6,661
Area 3 sub-ACL (39%)	1,598	4,847	7,484	9,345
Fixed Gear Set-Aside	30	30	30	30
RSA as % of sub-ACL	0%	0%	0%	0%

* If New Brunswick weir landings are less than 2,722 mt through October 1, then 1,000 mt will be subtracted from the management uncertainty buffer and reallocated to the Area 1A sub-ACL and the ACL.

OFL

This action decreases the 2023 OFL by 35 percent relative to the default 2023 OFL that was implemented through Framework 8. The difference between the default and revised 2023 OFLs is due to the data updates and changes that were made in the model assumptions during the 2022 assessment. The 2023 OFL decreased for two reasons: Fishing mortality at maximum sustainable yield (F_{MSY}) was lower in the 2022 assessment than it was in the 2020 assessment (0.50 and 0.54, respectively); and projected 2023 biomass was much lower in the 2022 assessment than it was in the 2020 assessment (79,231 mt and 130,616 mt, respectively).

ABC

This action increases the 2023 ABC by 90 percent relative to the default 2023 ABC that was implemented through Framework 8. The difference between the default and revised 2023 ABCs are due to the data updates and changes that were made in the model assumptions during the 2022 assessment. Under the ABC control rule, the target F that defines the ABC depends on the ratio of spawning stock biomass (SSB) to SSB_{MSY}. The larger the ratio, the bigger the target F and ABC, and vice-versa. MSY reference points were revised during the 2022 management track assessment and, as a result, SSB_{MSY} decreased relative to the 2020 assessment. This caused the ratio of SSB to SSB_{MSY} to increase relative to the 2020 assessment, resulting in a higher 2023 ABC.

Management Uncertainty

The herring ACL is reduced from the ABC in order to account for management uncertainty. The Atlantic Herring FMP states that sources of management uncertainty can include, but are not limited to, uncertainty surrounding catch in the New Brunswick weir fishery and herring discard estimates in Federal and state waters. Currently, the only source of management uncertainty that is applied to the 2023–2025 ABCs is catch in the New Brunswick weir fishery. Since Framework Adjustment 6 to the Atlantic Herring FMP was implemented in 2020 (85 FR 26874, May 6, 2020), management uncertainty has been calculated as the average annual landings in the New Brunswick weir fishery over the most recent 10-year period. Landings in the weir fishery are highly variable, fluctuating with herring availability and fishing effort. Using landings data from a 10-year period captures this variability. This action maintains the same approach for calculating management uncertainty. The resulting management uncertainty buffer (4,220 mt) is based on New Brunswick weir fishery landings during 2012–2021.

New Brunswick Weir Adjustment

This rule modifies the New Brunswick weir adjustment regulations at § 648.201(h) to state that if NMFS determines that the weir fishery landed less than 2,722 mt of herring through October 1, NMFS will subtract 1,000 mt from the management uncertainty buffer and reallocate that 1,000 mt to the Area 1A sub-ACL and the ACL. Currently, § 648.201(h) states that this transfer will be completed if NMFS determines that the New Brunswick weir fishery landed less than 3,012 mt of herring through October 1. Since 2016, the transfer trigger has been calculated based on a proportion (64.5 percent) of the management uncertainty buffer. This action maintains the same approach for calculating the transfer trigger, which in this instance results in 2,722 mt.

Other Specifications Components

The Council recommended keeping the remainder of the 2023–2025 herring specifications status quo and/or using status quo methodology to calculate them. This action also maintains status quo river herring and shad catch caps for 2023–2025 (Table 2).

TABLE 2—2023–2025 RIVER HERRING AND SHAD CATCH CAPS

[mt]

Catch cap	Default values	Revised values
	2023	2023–2025
Midwater Trawl Gulf of Maine	76.7	76.7
Midwater Trawl Cape Cod	32.4	32.4
Midwater Trawl Southern New England and Mid-Atlantic	129.6	129.6

TABLE 2—2023–2025 RIVER HERRING AND SHAD CATCH CAPS—Continued

[mt]

Catch cap	Default values	Revised values
	2023	2023–2025
Bottom Trawl Southern New England and Mid-Atlantic	122.3	122.3

4. Removal of 2,000-lb (907.2-kg) Possession Limits From Area 1B and Area 3

Herring regulations at § 648.201(a)(1)(i)(A) require NMFS to implement a 2,000-lb (907.2-kg) herring possession limit for Area 1B beginning on the date that catch is projected to reach 92 percent of the sub-ACL for that area. Herring regulations at § 648.201(a)(1)(i)(B)(*2*) require NMFS to implement a 2,000-lb (907.2-kg) herring possession limit for Area 3 beginning on the date that catch is projected to reach 98 percent of the sub-ACL for that area. In 2021, the interim final rule implementing Framework 8 set herring fishery specifications for 2021–2023. By regulation, these specifications remain in place until they are replaced by new specifications. The updated 2023 herring fishery specifications being implemented through this action replace the default 2023 specifications that were previously implemented through Framework 8. However, until this action becomes effective, the herring fishery will continue to operate under the default 2023 specifications. The fishery has been operating under the default 2023 specifications since January 1, 2023.

Based on dealer reports, state data, and other available information, NMFS estimated that the herring fleet had harvested 92 percent of the default 2023 Area 1B sub-ACL by January 6, 2023, and 98 percent of the default 2023 Area 3 sub-ACL by January 10, 2023. Therefore, in January 2023, NMFS implemented 2,000-lb (907.2-kg) possession limits in Area 1B and Area 3 (88 FR 2271, January 13, 2023; and 88 FR 2859, January 18, 2023, respectively). The updated 2023 Area 1B and Area 3 sub-ACLs implemented through this action are higher than the default 2023 Area 1B and Area 3 sub-ACLs that were implemented through Framework 8. Because these sub-ACLs are increased through this action, the amount of herring that has been caught in Area 1B in 2023 does not exceed 92 percent of the updated 2023 Area 1B sub-ACL, and the amount of herring that has been caught in Area 3 in 2023 does not exceed 98 percent of the updated 2023 Area 3 sub-ACL. Therefore, this action removes the 2,000-lb (907.2-kg) possession limits that were previously implemented in Area 1B and Area 3.

If/when NMFS projects that herring catch will exceed 92 percent of the updated Area 1B sub-ACL, NMFS will implement a 2,000-lb (907.2-kg) possession limit in Area 1B in accordance with the regulations at § 648.201(a)(1)(i)(A). If/when NMFS projects that herring catch will exceed 90 percent of the updated Area 3 sub-ACL, NMFS will implement a 40,000-lb (18,143.7-kg) possession limit in Area 3 in accordance with the regulations at § 648.201(a)(1)(i)(B)(*1*). If/when NMFS projects that herring catch will exceed 98 percent of the updated Area 3 sub-ACL, NMFS will implement a 2,000-lb (907.2-kg) possession limit in Area 3 in accordance with the regulations at § 648.201(a)(1)(i)(B)(*2*).

5. Adjustments to 2023 Herring Fishery Specifications

Herring regulations require that unharvested catch (equaling up to 10 percent of the initial sub-ACL) from a herring management area in a given fishing year shall be carried over and added to the sub-ACL for that management area in the fishing year following total catch determination. Carryover gets added to the applicable management area sub-ACL, but it does not get added to the ACL. Herring regulations also require that if NMFS determines that total catch exceeded a management area sub-ACL by any amount and the ACL was also exceeded in a given fishing year, then NMFS shall subtract the full amount of the sub-ACL overage from the applicable sub-ACL and the full amount of the ACL overage from the ACL in the fishing year following total catch determination. This action announces adjustments to the 2023 herring specifications to account for carryover of unharvested catch and catch overages from 2021 (Table 3).

TABLE 3—SUMMARY OF 2021 CATCH AND ADJUSTED 2023 HERRING FISHERY SPECIFICATIONS

[mt]

Specification	2021 Limits (adjusted)	2021 Final catch	2021 Catch (percent of limits)	2021 Underages (+) and overages (−)	Carryover for 2023 *	Overage deductions for 2023	2023 Initial values	2023 Adjusted values
Area 1A Sub-ACL	2,609	2,856	109	−247	0	247	3,592	3,345
Area 1B Sub-ACL	239	0	0	239	21	0	534	555
Area 2 Sub-ACL	652	191	29	461	134	0	3,455	3,589
Area 3 Sub-ACL	2,181	2,222	102	−41	0	41	4,847	4,806
ACL	5,128	5,268	103	−140	0	140	12,429	12,287

* Up to 10 percent of the initial 2021 sub-ACL can be carried over to 2023.

6. Revision to the Herring Rebuilding Plan

The final rule implementing Framework Adjustment 9 to the Atlantic Herring FMP established a rebuilding plan for herring that became effective in August 2022 (87 FR 42962; July 19, 2022). Analyses conducted during the development of Framework 9 indicated that under this rebuilding plan, the herring stock could rebuild in 5 years (by 2026) assuming long-term average recruitment. New projections that were generated for this action using updated data indicate that the herring stock is no longer likely to rebuild by 2026, but it could rebuild by 2028. This action revises the target rebuilding date for herring to 2028 in order to reflect the results of these updated analyses. This still falls within the 10-year rebuilding

period required under the Magnuson-Stevens Act.

7. Removal of Inshore Midwater Trawl Restricted Area Regulations

In 2021, Amendment 8 to the Atlantic Herring FMP prohibited the use of midwater trawl gear inshore of 12 nautical miles (22 km) from the U.S./Canada border to the Rhode Island/Connecticut border and inshore of 20 nautical miles (37 km) off the east coast of Cape Cod with the intent of addressing issues of localized depletion and user group conflict (86 FR 1810, January 11, 2021). However, as a result of litigation by midwater trawl industry members, a Court ruled that this measure was arbitrary and capricious and violated the Administrative Procedure Act based on a conclusion that the available scientific information did not sufficiently support that localized depletion was occurring. The Court further ruled that implementation of the inshore midwater trawl restricted area failed to comply with National Standard 4 to the Magnuson-Stevens Act because the rule did not sufficiently demonstrate that the measure was reasonably calculated to promote conservation. As a result, the inshore midwater trawl restricted area measures were vacated. Accordingly, this action removes the regulatory text that implemented the inshore midwater trawl restricted area from the prohibitions at § 648.14, and the herring regulations at § 648.202.

8. Other Administrative Revisions and Corrections

In 2016, Volume 3 of the Final Environmental Impact Statement (FEIS) prepared for the Omnibus Essential Fish Habitat Amendment 2 contained coordinates for the Western Gulf of Maine Habitat Management Area (HMA). In the FEIS, the longitude for one of the points defining the Western Gulf of Maine HMA (WGMH4) was erroneously listed as 70°15′ W. The correct longitude for this point is 70°00′ W. This typographical error was repeated in the final rule (83 FR 15240) implementing the Omnibus Essential Fish Habitat Amendment 2. This action corrects the coordinates for the Western Gulf of Maine HMA (Table 4) at § 648.370(f)(1).

TABLE 4—CORRECTED COORDINATES FOR THE WESTERN GULF OF MAINE HMA

Point	N Latitude	W Longitude
WGMH1	43°15′ N	70°15′ W
WGMH2	42°15′ N	70°15′ W
WGMH3	42°15′ N	70°00′ W
WGMH4	43°15′ N	70°00′ W
WGMH1	43°15′ N	70°15′ W

Herring regulations at § 648.202(b)(4)(iv) reference regulations containing measures to address slippage on vessels issued a Category A or B herring permit at § 648.11(m)(4)(iv) and (v). However, the regulations containing measures to address slippage on vessels issued a Category A or B herring permit are located at § 648.11(m)(7)(iv) through (vi). This action corrects this regulatory citation.

On January 1, 2023, regulatory text pertaining to general recordkeeping and reporting requirements at § 648.7(b)(1) was unintentionally removed from the Code of Federal Regulations. This action restores the regulatory text that was previously found at § 648.7(b)(1).

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) is promulgating final regulations that have been determined to be consistent with the Atlantic Herring FMP, provisions of the Magnuson-Stevens Act, and other applicable law.

The AA finds good cause under 5 U.S.C. 553(b)(3)(B) that prior notice and the opportunity for public comment on this interim final rule would be contrary to the public interest because it would undermine the benefits conferred by the measures in this action. The public is anticipating the implementation of these measures, since the Council voted on recommended specifications during a public meeting. Additionally, the specifications implemented in this action are formulaic and calculated by applying the ABC control rule to updated assessment data. Both the ABC control rule and the updated fishery data were closely analyzed and subject to public comment during the development of Amendment 8 and these specifications. Further, the final specifications being implemented through this action need to be in place as soon as possible after the start of the herring fishing year on January 1, 2023. If implementation of this action is delayed, updated 2023 herring fishery specifications may not be in effect before the conclusion of the winter fishery in Areas 1B and 3. If this occurs, the herring fleet may miss out on the economic opportunities associated with the updated specification. The Council submitted the final SIR to NMFS on January 10, 2023. NMFS has worked as quickly as possible to implement this interim final rule while ensuring that the rulemaking process is consistent with the herring specifications requirements at § 648.200. Last, NMFS is accepting public comment on this interim final rule, which will help ensure there have been no significant omissions or errors, or other information that might warrant changes. NMFS will publish a subsequent final rule if NMFS receives any significant comments. If information submitted during the public comment period resulted in NMFS approving and implementing reduced fishery specifications, any overages of those specifications that occurred before NMFS implemented a final rule may need to be deducted from the applicable sub-ACLs and/or the ACL in a future fishing year. Therefore, a potential final rule would need to be implemented as soon as possible.

For these same reasons, the AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this interim final rule. No additional time is required for any regulated party to come into compliance with the measures in this interim final rule. In order to comply with this final rule, herring vessels will simply need to adhere to the new 2023 herring fishery specifications.

The Office of Management and Budget has determined that this final rule is not significant pursuant to Executive Order (E.O.) 12866.

This interim final rule does not contain policies with federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This final rule does not contain any new information collection requirements, including reporting or recordkeeping requirements, for the purposes of the Paperwork Reduction Act.

This final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not required to be issued with an opportunity for prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 16, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.7, add paragraph (b)(1) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) *Fishing Vessel Trip Reports.* The owner or operator of any vessel issued a valid permit, or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, and accurate fishing log report for each fishing trip, regardless of species fished for or taken, by electronic means. This report must be entered into and submitted through a software application approved by NMFS.

(i) *Vessel owners or operators.* With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information as applicable and any other information required by the Regional Administrator must be provided:

(A) Vessel name;

(B) USCG documentation number (or state registration number, if undocumented);

(C) Permit number;

(D) Date/time sailed;

(E) Date/time landed;

(F) Trip type;

(G) Number of crew;

(H) Number of anglers (if a charter or party boat);

(I) Gear fished;

(J) Quantity and size of gear;

(K) Mesh/ring size;

(L) Chart area fished;

(M) Average depth;

(N) Latitude/longitude;

(O) Total hauls per area fished;

(P) Average tow time duration;

(Q) Hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (*i.e.,* less than 23 inches (58.42 cm), total length) or ''large'' (*i.e.,* 23 inches (58.42 cm) or greater, total length) skates;

(R) Dealer permit number;

(S) Dealer name;

(T) Date sold, port and state landed; and

(U) Vessel operator's name, signature, and operator's permit number (if applicable).

(ii) *Atlantic mackerel owners or operators.* The owner or operator of a vessel issued a limited access Atlantic mackerel permit must report catch (retained and discarded) of Atlantic mackerel daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month, day, and year Atlantic mackerel was caught; total pounds of Atlantic mackerel retained and total pounds of all fish retained. Daily Atlantic mackerel VMS catch reports must be submitted in 24–hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if Atlantic mackerel caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(iii) Surfclam and Ocean Quahog owners or operators. The owner or operator of any vessel conducting any surfclam and ocean quahog fishing operations must provide at least the following information and any other information required by the Regional Administrator:

(A) Name and permit number of the vessel;

(B) Total amount in bushels of each species taken;

(C) Date(s) caught;

(D) Time at sea;

(E) Duration of fishing time;

(F) Locality fished;

(G) Crew size;

(H) Crew share by percentage;

(I) Landing port;

(J) Date sold;

(K) Price per bushel;

(L) Buyer;

(M) Tag numbers from cages used;

(N) Quantity of surfclams and ocean quahogs discarded; and

(O) Allocation permit number.

(iv) Private tilefish recreational vessel owners and operators. The owner or operator of any fishing vessel that holds a Federal private recreational tilefish permit, must report for each recreational trip fishing for or retaining blueline or golden tilefish in the Tilefish Management Unit. The required Vessel Trip Report must be submitted by electronic means. This report must be submitted through a NMFS-approved electronic reporting system within 24 hours of the trip returning to port. The vessel operator may keep paper records while onboard and upload the data after landing. The report must contain the following information:

(A) Vessel name;

(B) USCG documentation number (or state registration number, if undocumented);

(C) Permit number;

(D) Date/time sailed;

(E) Date/time landed;

(F) Trip type;

(G) Number of anglers;

(H) Species;

(I) Gear fished;

(J) Quantity and size of gear;

(K) Soak time;

(L) Depth;

(M) Chart Area;

(N) Latitude/longitude where fishing occurred;

(O) Count of individual golden and blueline tilefish landed or discarded; and

(P) Port and state landed.

* * * * *

■ 3. In § 648.14, remove paragraphs (r)(1)(vi)(H) and (I).

■ 4. In § 648.201, revise paragraph (h) to read as follows:

§ 648.201 AMs and harvest controls.

* * * * *

(h) If NMFS determines that the New Brunswick weir fishery landed less than 2,722 mt of herring through October 1, NMFS will subtract 1,000 mt from management uncertainty and reallocate that 1,000 mt to the ACL and Area 1A sub-ACL. NMFS will notify the Council of this adjustment and publish the adjustment in the **Federal Register**.

■ 5. In § 648.202:

■ a. Remove and reserve paragraph (a)(2); and

■ b. Revise paragraph (b)(4)(iv).

The revision reads as follows:

§ 648.202 Season and area restrictions.

* * * * *

(b)

(4) * * *

(iv) Comply with the measures to address slippage specified in § 648.11(m)(7)(iv) through (vi) if the vessel was issued a Category A or B Herring Permit.

■ 6. In § 648.370, revise the Western Gulf of Maine HMA table in paragraph (f)(1) to read as follows:

§ 648.370 Habitat Management Areas.

* * * * *

(f) * * *

(1) * * *

TABLE 6 TO PARAGRAPH (f)(1)—WESTERN GULF OF MAINE HMA

Point	N latitude	W longitude
WGMH1	43°15′ N	70°15′ W
WGMH2	42°15′ N	70°15′ W
WGMH3	42°15′ N	70°00′ W
WGMH4	43°15′ N	70°00′ W
WGMH1	43°15′ N	70°15′ W

* * * * *

[FR Doc. 2023–05797 Filed 3–22–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224–0053; RTID 0648–XC726]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2023 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 20, 2023, through 1200 hours, A.l.t., May 31, 2023.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2023 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 58,039 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2023 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 57,839 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of pollock in Statistical Area 620 in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 19, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: March 20, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–05998 Filed 3–20–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XC857]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of the Aleut Corporation's and the Community Development Quota (CDQ) pollock directed fishing allowance (DFA) from the Aleutian Islands subarea to the Bering Sea subarea. This action is necessary to provide the opportunity for the harvest of the 2023 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 23, 2023, through 2400 hours, A.l.t., December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7228.

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

In the Aleutian Islands subarea, the portion of the 2023 pollock total allowable catch (TAC) allocated to the Aleut Corporation and CDQ DFA is 14,600 mt and 1,900 mt, respectively, as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023).

As of March 17, 2023, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 12,600 mt of the Aleut Corporation's DFA and 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 12,600 mt of the Aleut Corporation's DFA and 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the Bering Sea subarea allocations. The 1,900 mt of pollock CDQ DFA is added to the 2023 Bering Sea CDQ DFA. The 12,600 mt of pollock Aleut Corporation's DFA is apportioned to the American Fisheries Act (AFA) Inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2023 Bering Sea subarea pollock incidental catch

allowance (ICA) remains at 50,000 mt. As a result, the 2023 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023) are revised as follows: 0 mt to CDQ DFA and 2,000 mt to the Aleut Corporation's DFA. Furthermore, pursuant to § 679.20(a)(5), Table 4 is revised to make 2023 pollock allocations consistent with this reallocation. This reallocation results in an adjustment to the 2023 CDQ pollock allocation established at § 679.20(a)(5).

TABLE 4—FINAL 2023 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2023 Allocations	2023 A season [1]		2023 B season [1]
		A season DFA	Steller sea lion conservation area (SCA) harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,314,500	n/a	n/a	n/a
CDQ DFA	131,900	59,355	36,932	72,545
ICA [1]	50,000	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,132,600	509,670	317,128	622,930
AFA Inshore	566,300	254,835	158,564	311,465
AFA Catcher/Processors: [3]	453,040	203,868	126,851	249,172
Catch by catchers/processors (CPs)	414,532	186,539	n/a	227,992
Catch by catcher vessels (CVs) [3]	38,508	17,329	n/a	21,180
Unlisted CP Limit [4]	2,265	1,019	n/a	1,246
AFA Motherships	113,260	50,967	31,713	62,293
Excessive Harvesting Limit [5]	198,205	n/a	n/a	n/a
Excessive Processing Limit [6]	339,780	n/a	n/a	n/a
Aleutian Islands subarea acceptable biological catch (ABC)	43,413	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA	.....	.....	n/a	.....
ICA	2,500	1,250	n/a	1,250
Aleut Corporation	2,000	2,100	n/a	(100)
Area harvest limit: [7]	n/a	n/a	n/a	n/a
541	13,024	n/a	n/a	n/a
542	6,512	n/a	n/a	n/a
543	2,171	n/a	n/a	n/a
Bogoslof District ICA [8]	300	n/a	n/a	n/a

Note: Seasonal or sector apportionments may not total precisely due to rounding.

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (50,000 mt, 4.27 percent), is allocated as a DFA as follows: inshore sector—50 percent, CP sector—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFAs are allocated to the A season (January 20–June 10) and 55 percent of the DFAs are allocated to the B season (June 10–November 1). When the AI pollock ABC equals or exceeds 19,000 mt, the annual TAC is equal to 19,000 mt (§ 679.20(a)(5)(iii)(B)(*1*)). Pursuant to § 679.20(a)(5)(iii)(B)(*2*), the Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,500 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated no more than 40 percent of the Aleutian Islands pollock ABC.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before 12 p.m. (noon), April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the allocation to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(*)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the reallocation of Aleutian Islands pollock. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 14, 2023.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: March 20, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–06021 Filed 3–22–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 56
Thursday, March 23, 2023

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

[FNS–2022–0044]

RIN 0584–AE93

Child Nutrition Programs: Community Eligibility Provision—Increasing Options for Schools

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule; request for comments.

SUMMARY: This rulemaking proposes to expand access to the Community Eligibility Provision by lowering the minimum identified student percentage participation threshold from 40 percent to 25 percent, which would give States and schools greater flexibility to choose to invest non-Federal funds to offer no-cost meals to all enrolled students. As a result, more students, families, and schools would have an opportunity to experience the benefits of the Community Eligibility Provision, including access to meals at no cost, eliminating unpaid meal charges, minimizing stigma, reducing paperwork for school nutrition staff and families, and streamlining meal service operations. When all students have access to healthy school meals, meal participation tends to increase, and more children can experience nutritional benefits that fuel their learning, growth, and development. This proposed rule would also support State and local choices to expand the availability of free school meals for all through programs supported by State or local funding. Lowering the eligibility threshold would allow States and local educational agencies to optimize use of the Community Eligibility Provision, helping them to support school meals in a more streamlined manner.

DATES: Written comments on this proposed rule should be received on or before May 8, 2023 to receive consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to School Meals Policy Division, Food and Nutrition Service, P.O. Box 9233, Reston, VA 20195. All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michelle Frey, Branch Chief, Policy Design Branch, School Meals Policy Division—4th Floor, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, telephone: 703–305–2590.

SUPPLEMENTARY INFORMATION:

Background

The Community Eligibility Provision (CEP) is an option for eligible schools to offer no-cost meals to all enrolled students without collecting household applications. Authorized by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), CEP is a reimbursement alternative for eligible local educational agencies (LEAs) and schools participating in both the National School Lunch Program (NSLP) and School Breakfast Program (SBP). CEP aims to combat child hunger in high poverty areas, while reducing administrative burden and increasing program efficiency by using current, readily available data to offer school meals to all students at no cost. CEP eliminates the need for schools to collect household income applications by sharing eligibility data between specific Federal assistance programs; thus, reducing administrative burden for schools and families while intending to ensure that hunger is not a barrier to students' academic success.

Eligibility for CEP

To be eligible for CEP, an individual school, group of schools, or school district must meet or exceed the established identified student percentage (ISP) threshold in the school year prior to implementing CEP. The ISP is the percentage of enrolled students who are certified for free school meals without submitting a household application, such as those directly certified through Federal benefits programs like the Supplemental Nutrition Assistance Program (SNAP). For CEP, students who are certified for free meals without a household application are ''identified students'' (42 U.S.C. 1759a(a)(1)(F)(i); 7 CFR 245.9(f)(1)(ii)).[1] The ISP is calculated by dividing the total number of identified students by the total number of enrolled students:

$$\text{Identified Student Percentage} = \frac{\text{\# Identified Students}}{\text{\# Enrolled Students}}$$

[1] Identified students include students living in households participating in SNAP, Temporary Assistance for Needy Families, and Food Distribution Program on Indian Reservations. Identified students also include those who are homeless, migrant, runaway, in foster care, or enrolled in Head Start. In some States, students are directly certified through Medicaid direct certification demonstration projects. Students in States participating in the Medicaid direct certification demonstration projects are only included in the ISP if they are certified for free meals (not reduced price meals).

Under current regulations, the minimum ISP is 40 percent; therefore, to be eligible for CEP, an individual school, group of schools, or school district must have an ISP greater than, or equal to, 40 percent (ISP ≥40 percent) as of April 1 of the school year prior to implementing CEP (7 CFR 245.9(f)(3)(i)).

Current Requirements

The ISP determines eligibility to participate in CEP and is also the basis of Federal reimbursements for meals served to students in CEP schools. A 1.6 ''multiplier'' is established by statute. The ISP is multiplied by 1.6 to calculate the percentage of meals reimbursed at the Federal free rate (7 CFR 245.9(f)(4)(vi)). Any remaining meals, up to 100 percent, are reimbursed at the Federal paid rate.[2]

% Meals reimbursed at Federal free rate = ISP × 1.6

% Meals reimbursed at Federal paid rate = 100—% meals reimbursed at Federal free rate CEP requires that LEAs must pay, with non-Federal funds, any costs of offering free meals to all students that exceed the Federal assistance provided. Examples of non-Federal funding sources include, but are not limited to, funds provided by the State agency that exceed revenue matching requirements outlined in section 7 of the National School Lunch Act (NSLA) and at 7 CFR 210.17, profits from à la carte sales, and cash donations. If all operating costs are covered by the Federal assistance provided, then LEAs are not required to contribute non-Federal funds (7 CFR 245.9(f)(4)(vii)).

Statutory Requirements Regarding the ISP Threshold and CEP Multiplier

Pursuant to 42 U.S.C. 1759a(a)(1)(F)(ix), the U.S. Department of Agriculture (USDA) gradually phased in CEP from school year (SY) 2011–2012 to SY 2013–2014, before it was nationally implemented in SY 2014–2015. During this phase-in period, USDA was required by statute to set the CEP multiplier at 1.6 (42 U.S.C. 1759a(a)(1)(F)(vii)(I)) and the ISP threshold for eligibility at 40 percent (42 U.S.C. 1759a(a)(1)(F)(viii)(I)). Starting July 1, 2014, when CEP was fully implemented, Congress gave the Secretary discretion to use a multiplier between 1.3 and 1.6 (42 U.S.C. 1759a(a)(1)(F)(vii)(II)) and an ISP threshold that is less than 40 percent (42 U.S.C. 1759a(a)(1)(F)(viii)(II)).

Regulatory History & National Implementation

On November 4, 2013, USDA published a proposed rule in the **Federal Register** seeking to add CEP to regulations governing the determination of eligibility for free and reduced price meals and free milk in schools, consistent with amendments made to the NSLA by the HHFKA (78 FR 65890). USDA drew on a range of information to develop the proposed rule, including the statutory language in the NSLA and knowledge gained through the phased-in implementation of CEP in SYs 2011–2012 through 2013–2014.

Beginning July 1, 2014, pursuant to 42 U.S.C. 1759a(a)(1)(F)(x)(I), CEP became available nationwide to all eligible schools at the discretion of their LEAs. Many State and local officials throughout the country enthusiastically embraced the new provision, resulting in significant CEP expansion. In SY 2014–2015, almost 14,000 schools in 2,190 LEAs elected CEP, resulting in about 6.4 million students with access to free meals each school day.[3] About two-thirds of the 75 largest highly eligible school districts identified by USDA elected CEP for at least some of their schools in SY 2014–2015, while about half of electing LEAs had enrollments of 500 or fewer students.[4] Significantly, these data indicated that a broad range of LEAs chose to elect CEP. During this time, USDA continued to provide extensive guidance and technical assistance through conference calls, public speaking engagements, webinars, guidance publications, in-person visits, collaboration with partner organizations, and focused contact with States and LEAs.

On July 29, 2016, USDA published the final rule, *National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010* [81 FR 50194, July 29, 2016], which codified CEP requirements that were implemented through statute and policy guidance, at 7 CFR 245.6 and 245.9(f). The final rule codified CEP requirements in Federal regulation, including the following:

- Eliminated the collection of school meal applications in CEP schools;
- Allowed eligible LEAs/schools to offer all students no-cost lunches and breakfasts for four successive school years;
- Limited CEP participation to LEAs and schools that have an ISP of at least 40 percent;
- Established 1.6 as the multiplier to be used to determine CEP claiming percentages for an entire 4-year CEP cycle;
- Required LEAs to pay, with non-Federal funds, the difference (if any) between the cost of serving meals at no cost to all students and the Federal assistance provided; and,
- Established procedures to determine the percentage of meals to be claimed at the Federal free and paid rates at CEP schools.

By codifying the CEP eligibility threshold and multiplier in the final rule, USDA committed to pursue any subsequent changes to the eligibility threshold or multiplier through the Federal regulatory process, including an opportunity for public comment. This gives stakeholders, including school districts and schools, an opportunity to consider changes and related impacts to the costs and benefits of electing CEP.

Benefits of CEP

Since its inception, CEP has been a consistent tool to address childhood hunger. Requiring schools to offer both breakfast and lunch to participate in CEP has increased the number of LEAs implementing or expanding the SBP, thereby giving children greater access to breakfast.[5] Studies have also shown that CEP schools experienced significant student participation growth in their school meal programs. USDA published a CEP Characteristics Study in March 2022, which highlighted, in depth, the benefits of CEP.[6] This first comprehensive study since CEP became available nationwide compared the impact of CEP participation in school districts that elected CEP to similar non-participating school districts. Overall, the study found that CEP participation resulted in sustained increases in student participation in both the NSLP and SBP.[7] Notably, the study indicated

[2] CEP schools only claim meals at the free and paid reimbursement rates. CEP schools do not claim reduced price meals.

[3] Center on Budget and Policy Priorities. (2015). Take Up of Community Eligibility This School Year. Available at *https://www.cbpp.org/research/take-up-of-community-eligibility-this-school-year.*

[4] Ibid. The term ''highly eligible'' refers to schools and districts with an ISP greater than or equal to 60 percent.

[5] Among the 347 participating LEAs that responded to the CEP Evaluation Implementation Web Survey, 9 percent reported implementing or expanding their school breakfast program due to CEP. U.S. Department of Agriculture. (2014). Community Eligibility Provision Evaluation Final Report. Available at: *http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf* (p. 112).

[6] U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at *https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17.*

[7] Among the Year 2 sample, the impact on the NSLP participation rates was statistically significant

Continued

that student participation in NSLP is about 7 percent higher in CEP school districts compared to similar, eligible LEAs that chose not to adopt CEP. It also found that student participation in SBP is about 12 percent higher in LEAs that participate in CEP.

While these participation increases are important because they show more children took advantage of SBP's and NSLP's nutritional benefits, increases in student participation also confer several other benefits. USDA's CEP Characteristics Study found that increases in student participation positively impacted LEAs' finances. Student participation increases contributed to CEP schools being significantly more likely to report that it was easier to balance nonprofit school nutrition financial accounts (*i.e.,* break even), compared to respondents from non-participating schools. As a result of higher participation, schools may also take advantage of economies of scale both in administrative costs and in meal production, reducing the cost per meal. Increases in student participation were also associated with increased non-Federal revenues among study respondents: almost two-thirds of participating LEAs said that CEP was a factor in the increase in non-Federal revenues because State subsidies tied to meal counts also increased, providing LEAs with more non-Federal funds that can be used to support CEP.[8]

A systematic review of research around free school meals for all students also found that free school meals, paired with strong nutrition standards (especially standards that promote vegetables, fruits, and whole grains), are positively associated with students' diet quality and academic performance, such as standardized math test scores.[9] Furthermore, the review suggested that free school meals for all may resolve the issues of social stigma, a lack of information (*e.g.,* households not knowing they need to apply or re-apply each year), challenges with applying (*e.g.,* language or literacy barriers), or food insecurity of students who are not eligible for free or reduced price meals.[10] Participation increases in CEP schools result in more students receiving the nutrition necessary to support learning.

Participation in CEP is also associated with a positive impact on household finances. A study conducted by the National Bureau of Economic Research indicated households with children receiving free school meals through CEP saved between 5 percent and 19 percent on their monthly grocery bills.[11] Researchers also observed that CEP exposure is associated with an almost 5 percent decline in households classified as food insecure.[12]

Another benefit of CEP is reduced administrative burden and increased program efficiency. CEP schools eliminate costs associated with school meal applications, including staff time and other resources dedicated to printing, distributing, collecting, processing, and verifying school meal applications. USDA's initial CEP study of the phase-in States demonstrated that CEP consistently saved time for LEA food service administrative staff, school nutrition professionals, and school administrators.[13] The 2022 CEP Characteristics Study resulted in similar findings: 74 percent of participating LEAs reported a decreased burden on families, and 65 percent reported decreased LEA administrative burden.[14] Of those reporting a decreased administrative burden, food service staff spent more time conducting other administrative tasks (73 percent), overseeing food program operations (69 percent), and planning meal services (56 percent).[15]

CEP also eliminates the problem of unpaid meal debt—debt that accumulates when students who pay for school meals, at either full or reduced price, do not have money to pay at the point of sale. In their School Nutrition Trends Summary Report (2019), the School Nutrition Association found that approximately 75% of school districts have outstanding school meal debt.[16] USDA's Child Nutrition Programs Operations Study found that the median school food authority was owed approximately $1,500 total in unpaid meal charges.[17] The 2022 CEP Characteristics Study showed that about 70 percent of LEAs reported the elimination of unpaid meal charges as a benefit of CEP.[18]

Another related benefit is that CEP has been found to improve program integrity by simplifying Program administration.[19] Program integrity is essential to the effectiveness of school nutrition programs, and responsible stewardship of Federal taxpayer dollars. Schools that participate in CEP do not rely on annual household applications that are typically used to determine students' eligibility for free and reduced price meals. Instead, schools directly certify students through electronic data matching at the State or local level to establish ISPs. USDA's third Access, Participation, Eligibility, and Certification Study found that LEAs had a much lower error rate in directly certifying students—such as the ''identified students'' in CEP schools—than in certifying students by applications.[20] Since the nationwide expansion of CEP in SY 2014–2015, many States have enhanced their data

at five percentage points in the first year of CEP and six percentage points in the second year of CEP. This suggests that the impact of CEP lasted beyond the first year of implementation and actually grew by one percentage point from the first to second year of implementation. USDA Community Eligibility Provision Characteristics Study, Available at *https://fns-prod.azureedge.us/sites/default/files/resource-files/CEPSY2016-2017.pdf.*

[8] U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at *https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17* (p. 68).

[9] Cohen JFW, Hecht AA, McLoughlin GM, Turner L, Schwartz MB. Universal School Meals and Associations with Student Participation, Attendance, Academic Performance, Diet Quality, Food Security, and Body Mass Index: A Systematic Review. Nutrients. 2021 Mar 11;13(3):911. Diet quality (pp. 6–9); Academic performance (p. 10).

[10] Ibid, p. 33.

[11] National Bureau of Economics. (2022). The Effect of Free School Meals on Household Food Purchases: Evidence from the Community Eligibility Provision. Available at: *https://www.nber.org/papers/w29395.*

[12] Ibid. The term ''CEP exposure'' refers to the probability that a household has a child attending a CEP school.

[13] U.S. Department of Agriculture. (2014). Community Eligibility Provision Evaluation Final Report. Available at: *http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf.*

[14] U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at *https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17* (p. 43).

[15] Ibid, p. 44–45.

[16] School Nutrition Association. (2019). School Nutrition Trends Report. This report is available to the public for purchase at *http://schoolnutrition.org/2019-school-nutrition-trends-summary-report/.*

[17] Beyler, N., Murdoch, J., & Cabili, C. (2021). Child Nutrition Program Operations Study II: SY 2017–18. Prepared by 2M Research. Contract No. AG–3198–C–15–0008. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Holly Figueroa. Available online at: Child Nutrition Program Operations Study, School Year 2017–18 | Food and Nutrition Service (*usda.gov*).

[18] U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at *https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17* (p. 43).

[19] U.S. Department of Agriculture. (2014). Community Eligibility Provision Evaluation Final Report. Available at: *http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf* (p. 127).

[20] Milfort et al. (2021). Third Access, Participation, Eligibility, and Certification Study. Prepared by Westat, Inc., Contract No. AG–3198–K–15–0054. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Conor McGovern. Available online at: *https://fns-prod.azureedge.us/sites/default/files/resource-files/APECIII-Vol1.pdf* (p. 8–14 through 9–3).

matching systems to improve accuracy and reliability.[21]

Study results show that throughout its phase-in and national implementation, CEP accomplishes two goals: feeding schoolchildren and streamlining Program administration and operations. Participating LEAs have been highly satisfied with CEP and are likely to continue their participation: USDA's 2022 CEP Characteristics Study found that most participating LEAs (97 percent) intended to participate in CEP the following school year, as did 23 percent of eligible, but non-participating LEAs.[22]

Discussion

As of SY 2021–2022, 74.3 percent of eligible school districts were participating in CEP, reaching a total of 16.2 million school children in 33,300 schools.[23] Participating schools are located in all 50 States, the District of Columbia, and Guam, ensuring that students in high-poverty communities throughout the country can enter their classrooms well-nourished and ready to learn. Through this rulemaking, USDA intends to provide more LEAs and schools with the option to participate in CEP by lowering the minimum ISP participation threshold from 40 percent to 25 percent.

Rationale for Expanding CEP

As described above, school meals have the potential to positively impact children's health and academic outcomes. Providing meals at no cost can increase student participation and improve household finances and household food security. Electing CEP reduces administrative burden for schools, providing more time to focus on meal quality and other aspects of administering the Programs. To date, only LEAs, groups of schools and schools with ISPs of at least 40 percent have been able to experience the benefits of CEP.

During the CEP phase-in period, USDA was required to set the ISP threshold at 40 percent (42 U.S.C. 1759a(a)(1)(F)(viii)(I)). In the early years of nationwide CEP availability, State agencies and LEAs were concerned about the impact of CEP on NSLP and SBP participation and school finances. As a practical response to support financial viability, USDA established the CEP participation threshold at 40 percent.[24] In response to the 2013 rule that proposed establishing the 40 percent threshold, USDA received public comments that supported making CEP available to all schools, instead of limiting CEP to schools with ISPs of at least 40 percent. Despite supportive comments, USDA maintained the 40 percent threshold in the final rule to support the financial health of nonprofit school nutrition accounts. Now that CEP has been available for almost a decade, States and schools are generally more familiar and comfortable with how CEP works, mitigating some of the concerns that may have prevented earlier CEP elections. USDA has also published guidance and tools to help LEAs decide if CEP is a viable option, including guidance developed collaboratively with the U.S. Department of Education and the Federal Communications Commission around Title I and E-Rate funding, respectively.[25] To assist LEAs with making sound financial decisions related to CEP participation, the USDA created an online resource, the CEP Resource Center, which provides extensive guidance and technical assistance to State agencies and LEAs, including practical tools and best practices to help LEAs estimate the Federal reimbursement under CEP.[26] In addition, USDA worked in cooperation with State agencies and anti-hunger partners to share resources, success stories and best practices for making CEP work at all ISP levels. These collective efforts have positioned LEAs to make informed decisions about CEP participation. Therefore, the concerns that contributed to USDA's decision to establish the ISP threshold at 40 percent have been alleviated. LEAs should now be well-situated to understand the implications of electing CEP and, if they are able to manage CEP financially, should be able to experience the benefits of CEP for their schools, students, and families.

In addition to giving eligible LEAs the choice to decide what is best for their schools, many States, schools, and communities experienced the benefits of healthy school meals for all during SYs 2020–2021 and 2021–2022 due to the COVID–19 pandemic. For these two school years during the COVID–19 pandemic, USDA provided waivers authorized under the Families First Coronavirus Response Act and the Continuing Appropriations Act, 2021 and Other Extensions Act that allowed schools across the country to offer free meals to all students.[27] By offering meals to all students at no cost during the pandemic, many schools experienced the benefits associated with free school meals for all, including increased student participation and positive impacts on student health, well-being, and food and nutrition security. Nationwide waivers permitting schools to offer free school meals to all students via the Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) demonstrated the benefits of offering all students free meals and, as a result, there is renewed interest in CEP.[28]

[21] The calculated national percentage of SNAP-participant children directly certified for free school meals was 98 percent in both SY 2017–18 and SY 2018–19. This is an improvement of 6 percentage points from the direct certification performance rate in SY 2016–17, which was 92 percent, and an 11-percentage point increase since SY 2013–14. Data from Ranalli, Dennis, Templin, Joe, & Applebaum, Maggie (2021). *Direct Certification in the National School Lunch Program: State Implementation Progress Research Summary, School Year 2017–18 and School Year 2018–19.* Prepared by the U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support and Child Nutrition Programs, Alexandria, VA. Available at: *https://fns-prod.azureedge.us/sites/default/files/resource-files/NSLPDirectCertification2017-1.pdf.*

[22] U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at *https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17.* p. 5.

[23] Food Research & Action Center. (2022). Community Eligibility: The Key to Hunger-Free Schools, School Year 2021–2022. Available at *https://frac.org/wp-content/uploads/cep-report-2022.pdf* (p. 4).

[24] As described earlier, LEAs with lower ISPs may need reliable sources of non-Federal funding to support their nonprofit school nutrition accounts, and to make the account whole if operational costs exceed the Federal assistance provided.

[25] Title I Guidance for CEP schools is available at: *https://www.fns.usda.gov/cn/updated-title-i-guidance-schools-electing-community-eligibility.* E-Rate guidance for CEP schools is available at: *https://www.fns.usda.gov/cn/updated-e-rate-guidance-schools-electing-community-eligibility.*

[26] U.S. Department of Agriculture. Community Eligibility Resource Center. Available at *https://www.fns.usda.gov/cn/community-eligibility-provision.*

[27] On March 18, 2020, H.R. 6201—Families First Coronavirus Response Act, became Public Law Number 116–127. The bill gave USDA authority to issue nationwide child nutrition waivers to ensure access to meals through the Child Nutrition Programs as communities responded to the COVID–19 pandemic. The bill also gave USDA authority to waive school meal pattern requirements for the child nutrition programs in response to a disruption to the food supply as a result of the COVID–19 pandemic. More information on the bill is available at: *https://www.congress.gov/bill/116th-congress/house-bill/6201/text/eh.*

[28] States could opt-in to waivers that allowed schools to offer no-cost meals to all students via the SFSP or SSO in SY 2020–21, and via the SSO in SY 2021–22. For additional information, see COVID–19 Child Nutrition Responses #56: Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through December 2020 (available at: *https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-56*), COVID–19 Child Nutrition Response #59: Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through School Year 2020–2021—Extension (available at: *https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-59*), and COVID–19 Child Nutrition Response #85: Nationwide Waiver to Allow the Seamless Summer Option through School Year 2021–22 (available at:

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Census Bureau data show food insecurity surged during the COVID–19 pandemic.[29] However, in 2021, food insecurity among households with children dropped, likely due—at least in part—to the widespread availability of no-cost meals available to children via schools authorized by Congress during the COVID–19 pandemic. Despite this decrease, five million children lived in food insecure households, which have been shown to rely on meals served via schools for their primary source of nutrition.[30] [31] The COVID–19 pandemic provided an unintended experiment that highlighted the critical role that schools play in providing food and nutrition security to millions of children.

During SY 2022–2023, schools returned to operating standard school meals programs as the flexibilities that Congress provided to offer free meals expired. This means that schools that were not participating in a special provision, like CEP, were required to claim meals by eligibility category (*i.e.,* free, reduced price and paid) and charge students for meals. However, a growing number of States are investing in healthy school meals for all: most are maximizing LEAs' use of CEP as a mechanism to offer no-cost meals to all students, and are pairing CEP with State initiatives to expand access to free meals to all students.[32] Many States offering healthy school meals for all are easing LEAs' financial concerns by ensuring that funding is available to cover any gaps between operational costs and Federal assistance.[33] This additional funding helps make CEP financially viable for schools. Lowering the CEP minimum eligibility threshold would provide States and LEAs with greater flexibility to combine CEP with State initiatives to simplify Program administration, reduce burden, and offer meals to all students at no charge.

Why USDA Is Proposing a 25 Percent ISP Threshold

As previously discussed, USDA has the discretion to establish an ISP threshold that is lower than 40 percent. USDA is proposing to establish a 25 percent ISP threshold for LEAs, schools, or groups of schools to elect CEP. This threshold would provide the opportunity for more LEAs located in high poverty areas to elect CEP. The lower threshold will allow these LEAs, especially those with non-Federal funds available to support school meals, to consider CEP and its numerous benefits.

To determine an appropriate threshold, USDA considered operational factors, including characteristics of LEAs currently eligible and near eligible to elect CEP, and analyzed the composition of the ISP and the proportion of free and reduced price students at varying ISP levels. Based on these analyses, at a 25 percent ISP, USDA estimates that at least 45 percent of students would be eligible for free or reduced price meals, if household income applications were collected. This 45 percent reflects both directly certified students and students eligible via household income applications and could be higher if LEAs certify more students for free or reduced price benefits via applications versus direct certification.

A 25 percent CEP eligibility threshold also aligns operationally with the minimum threshold for which severe need payments are provided under the Child Nutrition Act to incentivize schools to participate in the SBP. Severe need payments are provided to help schools that serve high proportions of children from low-income households to start and maintain school breakfast programs. Under CEP, a minimum ISP of 25 percent results in 40 percent of meals reimbursed at the free rate ($25 \times 1.6 = 40$). Schools where at least 40 percent of the lunches served to students in the second preceding school year were are free or reduced price qualify as severe need schools and receive this additional reimbursement (42 U.S.C. 1773(d); 7 CFR 220.9(d)). CEP and severe need payments strive to benefit schools that serve high poverty areas. Under the current ISP threshold of 40 percent, individually eligible CEP schools receive qualify for the additional severe need payments.[34] This would continue under the proposed 25 percent ISP threshold. These schools with an ISP of 25 percent are already likely receiving severe need payments based on USDA's analysis that schools with an ISP of 25 percent are estimated to have a free and reduced price percentage of at least 45 percent. Aligning the CEP threshold with the severe need payments threshold simplifies this determination and further supports the SBP through CEP.[35]

In addition, under current statutory requirements, LEAs and schools that are nearly eligible to elect CEP (*i.e.,* schools with ISPs of at least 30 percent, but less than 40 percent) must be annually notified of their near eligibility (42 U.S.C. 1759a(a)(1)(F)(x)(II); 7 CFR 245.9(f)(5) and (f)(6)). This annual notification intends to prompt nearly eligible LEAs and schools to consider CEP and whether it is beneficial to take actions (*e.g.,* increase direct certification matching) to gain eligibility to elect CEP. A 25 percent threshold increases options for LEAs and schools that are currently near eligible, so they have more opportunity to consider electing CEP.

A 25 percent threshold allows CEP to benefit communities with high proportions of children eligible for free or reduced price meals. For schools with similar identified student populations, especially those with non-Federal funds available to support school meals, CEP may be financially viable and offer significant student health, operational, and administrative benefits. Non-CEP schools that serve high proportions of low-income children are expending already-constrained resources to collect and process school meal applications to ensure low-income students have access to free or reduced price meals. Lowering the CEP threshold to 25 percent provides an opportunity for more LEAs with high proportions of low-income students to capitalize on CEP's

https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-85). A complete list of COVID–19-related waivers issued by State is available at: *https://www.fns.usda.gov/disaster/pandemic/covid-19/cn-waivers-flexibilities.*

[29] Brynne Keith-Jennings, Catlin Nchako, and Joseph Llobrera, ''Number of Families Struggling to Afford Food Rose Steeply in Pandemic and Remains High, Especially Among Children and Households of Color,'' CBPP, April 27, 2021, *https://www.cbpp.org/research/food-assistance/number-of-families-struggling-to-afford-food-rose-steeply-in-pandemic-and.*

[30] Food insecurity may have improved for households with children in 2021 because of the expansion of Federal nutrition assistance programs, such as widespread availability of no-cost meals and other forms of assistance targeting households with children, such as the expanded Child Tax Credit or Pandemic Electronic Benefits Transfer (P–EBT) program. Household Food Security in the United States in 2021, by Alisha Coleman-Jensen, Matthew P. Rabbitt, Christian A. Gregory, and Anita Singh, ERS, September 2022 (p. 9).

[31] Smith, T.A. Do School Food Programs Improve Child Dietary Quality? Am. J. Agric. Econ. 2016, 99, 339–356. Available at: *https://onlinelibrary.wiley.com/doi/full/10.1093/ajae/aaw091.*

[32] National Conference of State Legislatures. (2022). States Step in as End of Free School Meal Waivers Looms. Available at *https://www.ncsl.org/research/human-services/states-step-in-as-end-of-free-school-meal-waivers-looms-magazine2022.aspx.*

[33] Schools must use non-Federal funding to cover food service costs that exceed the Federal assistance provided. As an example, if an LEA's ISP is 40, the LEA would claim 64 percent of meals at the free rate ($40 \times 1.6 = 64$) and 36 percent of meals at the paid rate. If the cost of providing all meals at no cost is greater than the Federal assistance provided, the LEA must contribute non-federal funding to make up the difference.

[34] ''Individually eligible'' means a school's individual ISP is 40 percent or higher.

[35] More than 80 percent of total School Breakfast Program breakfasts served receive severe need payments, based on FNS Administrative data from the National Data Bank.

administrative and operational benefits, while maintaining CEP's intent to provide all students in high poverty areas with healthy, free meals.

What does a lower CEP threshold mean for schools? Considerations for Electing CEP

Participating in CEP is a voluntary decision made by LEAs based on their unique student populations. LEA decisionmakers must consider student health, educational, administrative, and financial factors when deciding to elect CEP. USDA's CEP studies found that financial concerns were the most significant barrier to CEP participation for LEAs with lower ISPs.[36]

Making CEP work at a lower ISP requires careful consideration. A school participating with a 25 percent ISP would receive the Federal free reimbursement for 40 percent of student meals served ($25 \times 1.6 = 40$); the remaining 60 percent of student meals served would be reimbursed at the lower, paid rate. Eligible schools must assess their ability to cover operating costs with Federal assistance and, if necessary, other non-Federal funds. Schools with lower ISPs are strongly encouraged to explore CEP with prudence: for example, conduct a financial analysis to determine if meals can be offered at no charge to all students while, considering the loss of student payments as a revenue stream, maintaining the financial health of the school nutrition department's budget. In addition, conducting robust data matching is critical to support CEP implementation. To optimize CEP's reach and impact, States and school districts must work together to ensure that data matching systems find all identified students, so a school's ISP accurately reflects its student population. Lastly, LEAs and schools should consider how any data loss from school meal applications may impact other funding levels outside of the school meal programs. As previously stated, USDA has worked closely with the U.S. Department of Education and the Federal Communications Commission around Title I and E-Rate funding, respectively.[37] However, there may be additional impacts that LEAs and schools need to consider.

If CEP is financially viable, LEAs with lower ISPs should strongly consider electing CEP to experience the administrative, operational, and health benefits it confers to students, families, schools, and school nutrition departments.

Conclusion

This rulemaking proposes to lower the CEP eligibility threshold from 40 percent to 25 percent, and make related, conforming changes to the CEP regulatory text at 7 CFR 245.9(f). Electing CEP is a LEA-level decision, not a requirement, so local schools and communities have discretion to decide if electing CEP is beneficial. Through this proposed action, USDA aims to expand CEP's nutritional, operational, and administrative benefits to more schools serving low-income students in high poverty areas, which has the potential to positively impact students, low-income families, schools, and school nutrition departments. In addition, a lower threshold would support the growing number of States that are choosing to invest their own funds to provide free school meals to all students, through maximizing LEAs' use of CEP in combination with State-specific initiatives.

Proposed Regulatory Changes

Minimum ISP

Current Requirement

Participating in CEP is a voluntary decision made by LEAs based on their unique student populations. To be eligible for CEP under current regulations at 7 CFR 245.9(f), an LEA, group of schools, or school must:

- Ensure that at least 40 percent of enrolled students are identified students;
- Participate in both the NSLP and SBP; and
- Offer lunches and breakfasts to all enrolled students at no charge.

Section 11(a)(1)(F)(iii) of the NSLA and program regulations at 7 CFR 245.9(f)(3)(i) require the ISP to be established using the number of identified students and the number of total enrolled students as of April 1 of the prior school year. Through CEP's grouping mechanism,[38] LEAs have discretion to elect CEP at schools with an ISP lower than 40 percent as long as the group's aggregate ISP meets the 40 percent threshold. The claiming percentage established for an LEA, group of schools, or an individual school is valid for a period of up to four school years. If the ISP increases during the 4-year cycle, a new cycle can be started using a new ISP at any time.

Proposed Change

This proposed rule would amend 7 CFR 245.9(f)(3)(i) to require a LEA, group of schools, or school to have an ISP of at least 25 percent, as of April 1 of the school year prior to participating in CEP. Individual schools participating in CEP as part of a group would be permitted to have an ISP lower than 25 percent, provided that the group's aggregate ISP is at least 25 percent.

Grace Year

Current Requirement

Section 11(a)(1)(F)(v)(I) of the NSLA requires schools and LEAs in the fourth year of a 4-year CEP cycle interested in continuing participation in CEP to calculate a new ISP reflective of April 1 of the cycle's fourth year to: (1) elect a new 4-year CEP cycle with a new ISP; and (2) meet the following school year's publication and notification requirements as outlined at 7 CFR 245.9(f)(5). If an LEA determines that a new 4-year cycle may not be immediately elected because its ISP is less than the required threshold, but no more than 10 percentage points lower, then the LEA may elect to participate in CEP for an additional (fifth) year, or ''grace year'' (Section 11(a)(1)(F)(v) of the NSLA and 7 CFR 245.9(f)(4)(ix)). This additional year gives CEP LEAs an opportunity to increase their ISPs (*e.g.,* via improved direct certification) to begin a new 4-year CEP cycle. If the ISP as of April 1 of the grace year does not meet the minimum ISP requirement, the LEA must return to standard counting and claiming, or enroll in another special provision option for the following school year. The Federal reimbursement in the grace year is based on the ISP as of April 1 in the fourth year of the CEP cycle multiplied by 1.6.

Proposed Change

This proposed rule would amend 7 CFR 245.9(f)(4)(ix), the regulations governing grace years, to conform with the proposed 25 percent ISP threshold in 7 CFR 245.9(f)(3), allowing an LEA, group of schools, or school with an ISP of less than 25 percent but equal to or greater than 15 percent (as of April 1 of

[36] USDA's Community Eligibility Provision Characteristics Study, School Year 2016–2017 available at *https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17* defined LEAs with ''lower ISPs'' as LEAs with ISPs at the lower end of CEP eligibility: between 40 and 50 percent. USDA assumes that, if the eligibility threshold was lowered to 25 percent, eligible LEAs with lower ISPs (*i.e.,* between 25 and 40 percent) would have similar financial concerns.

[37] Title I Guidance for CEP schools is available at: *https://www.fns.usda.gov/cn/updated-title-i-guidance-schools-electing-community-eligibility.* E-Rate guidance for CEP schools is available at: *https://www.fns.usda.gov/cn/updated-e-rate-guidance-schools-electing-community-eligibility.*

[38] LEAs may ''group'' schools within an LEA to participate in CEP as a single entity with a shared ISP. The ISP for a group of schools is calculated by dividing the sum of the identified students for the entire group of schools by the sum of the total student enrollment for the entire group of schools.

the fourth year of a CEP cycle) to continue using CEP for a grace year. This rulemaking proposes only to change the numbers (*e.g.,* 40 percent to 25 percent, 30 percent to 15 percent) consistent with the proposed lower threshold; no additional substantive changes are proposed by this rulemaking.

Identification and Notification of Potential CEP LEAs and Schools

Current Requirement

Section 11(a)(1)(F)(x)(II) of the NSLA, as implemented by 7 CFR 245.9(f)(5) and (6), requires that States publish, annually by May 1, lists of LEAs and schools eligible and nearly eligible to elect CEP for the next school year. Eligible schools have an ISP that meets the required minimum threshold—currently 40 percent—and nearly eligible schools have an ISP no more than 10 percentage points lower than the minimum required threshold.

To meet this requirement, States must notify LEAs of district wide eligibility, and LEAs must notify State agencies of school-level eligibility by April 15 each year. Requiring this exchange of information by April 15 allows States to meet the May 1 deadline, by which States have to publish the lists of eligible and nearly eligible schools on their public websites. States and LEAs may share the required information prior to the April 15 deadline.

Proposed Change

This rulemaking proposes the following changes to the identification requirements to conform with the proposed 25 percent ISP threshold in 7 CFR 245.9(f)(3):

- At 7 CFR 245.9(f)(5)(i), which requires LEAs to submit to the State agency no later than April 15 of each school year a list of schools that are eligible to elect CEP, the eligibility threshold of ''at least 40 percent'' would change to a threshold of ''at least 25 percent'';
- At 7 CFR 245.9(f)(5)(ii), which requires LEAs to submit to the State agency no later than April 15 of each school year a list of schools that are nearly eligible to elect CEP, the eligibility threshold of ''less than 40 percent but greater than or equal to 30 percent'' would change to a threshold of ''less than 25 percent but greater than or equal to 15 percent''; and
- At 7 CFR 245.9(f)(5)(iii), which requires LEAs to submit to the State agency no later than April 15 of each school year a list of schools currently in year 4 of the CEP cycle and eligible for a grace year, the eligibility threshold of ''less than 40 percent but greater than or equal to 30 percent'' would change to a threshold of ''less than 25 percent but greater than or equal to 15 percent.''

Similarly, this rulemaking proposes the following conforming changes to the State agency notification requirements:

- At 7 CFR 245.9(f)(6)(i), which requires the State agency to notify LEAs that are eligible to participate in CEP district wide of their eligibility to elect CEP in the subsequent school year, the estimated cash assistance the LEA would receive, and the State-specific procedures to participate in CEP, the eligibility threshold of ''at least 40 percent'' would change to a threshold of ''at least 25 percent.''
- At 7 CFR 245.9(f)(6)(ii), which requires the State agency to notify LEAs that they may be eligible to participate in CEP in the subsequent year if they increase their ISP to meet the eligibility requirements as of April 1, the eligibility threshold of ''less than 40 percent district wide but greater than or equal to 30 percent'' would change to a threshold of ''less than 25 percent district wide but greater than or equal to 15 percent''; and
- At 7 CFR 245.9(f)(6)(iv), which requires the State agency to notify LEAs currently in year 4 of their grace year eligibility, the eligibility threshold of ''less than 40 percent but greater than or equal to 30 percent'' would change to a threshold of ''less than 25 percent but greater than or equal to 15 percent.''

This rulemaking proposes only to change the numbers (*e.g.,* 40 percent to 25 percent, 30 percent to 15 percent) consistent with the proposed lower threshold; no additional substantive changes are proposed by this rulemaking.

Public Notification Requirements

Current Requirement

Section 11(a)(1)(F)(x)(III) of the NSLA, as implemented by 7 CFR 245.9(f)(7), requires, annually by May 1, State agencies to submit to USDA lists of LEAs and schools eligible to elect CEP. State agencies are required to publish lists of eligible and nearly eligible LEAs and schools on their websites in a readily accessible format. Eligible schools have an ISP that meets the minimum required threshold, and nearly eligible schools have an ISP no more than 10 percentage points lower than the minimum required threshold.

Proposed Change

This proposed rule would amend the following public notification requirements to conform with the proposed 25 percent ISP threshold in 7 CFR 245.9(f)(3):

- At 7 CFR 245.9(f)(7)(i), which requires the State agency to make readily accessible on its website eligible and near eligible schools and schools currently in year 4 of the CEP cycle, the eligibility threshold of ''at least 40 percent'' would change to ''at least 25 percent.'' In the same paragraph, ''less than 40 percent but greater than or equal to 30 percent'' would change to a threshold of ''less than 25 percent but greater than or equal to 15 percent.''
- At 7 CFR 245.9(f)(7)(ii), which requires the State agency to make readily accessible on its website eligible and near eligible LEAs and LEAs currently in year 4, the eligibility threshold of ''at least 40 percent district wide'' would change to a threshold of ''at least 25 percent district wide,'' and the eligibility threshold of ''less than 40 percent district wide but greater than or equal to 30 percent'' would change to a threshold of ''less than 25 percent district wide but greater than or equal to 15 percent.''

This rulemaking proposes only to change the numbers (*e.g.,* 40 percent to 25 percent, 30 percent to 15 percent) consistent with the proposed lower threshold; no additional substantive changes are proposed by this rulemaking.

Public Comments Requested

USDA solicits public comments on the proposed change to lower the CEP minimum ISP participation threshold to 25 percent. USDA also seeks public comments on the following questions:

(1) To what extent are LEAs that would be newly eligible under this proposed rule expected to elect CEP?

(2) What sources of non-Federal funds are available to support LEAs electing CEP at lower ISPs?

(3) In a typical year, how much time do LEAs spend on administrative duties that may be eliminated by electing CEP (*e.g.,* processing applications, managing unpaid meal charges, conducting verification)? What administrative activities are included in that estimate?

(4) To what extent are administrative cost savings a factor in determining whether to elect CEP?

(5) How do State policies related to offering free school meals for all students influence the likelihood of CEP election among newly eligible LEAs?

Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This proposed rule has been designated as not significant by the Office of Management and Budget. Therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this proposed rule would not have a significant impact on a substantial number of small entities. The provisions of this proposed rule are intended to reflect the operational needs of LEAs of all sizes. No specific additional burdens are placed on small LEAs seeking to operate CEP. USDA's 2022 CEP Characteristics Study found that 36 percent of LEAs participating in CEP in SY 2016–17 were single-school LEAs; 32 percent of participating LEAs were in rural areas; and 83 percent served fewer than 5,000 students.[39] For smaller LEAs, the decision to elect CEP may be a simpler process and/or involve gaining approvals from fewer governing bodies. Additionally, CEP is an optional provision, and there is no requirement for LEAs to participate.

Currently, many small LEAs participate in CEP; in SY 2016–17, 1,939 of the 4,263 school districts (45 percent) electing CEP had enrollments of 999 or less.[40]

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments, and the private sector. Under section 202 of UMRA, USDA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or Tribal governments in the aggregate, or to the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *https://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of URMA) for State, local and Tribal governments, or the private sector, of $146 million or more in any one year. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12372

The NSLP and SBP are assigned Assistance Listing Numbers—NSLP (10.555) and SBP (10.553)—and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV).[41] Since the child nutrition programs are State-administered, USDA's FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this proposed rule does not have federalism implications. Electing CEP is a local decision, not a Federal mandate, and lowering the CEP eligibility threshold from 40 percent to 25 percent does not limit State or local policymaking discretion. Furthermore, this proposed rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. However, FNS does not expect significant inconsistencies between this proposed rule and existing State or local regulations regarding the provision of school food service operations under CEP. This proposed rule would permit schools to elect CEP if their ISP is greater than or equal to 25 percent. Per statutory requirements outlined in the NSLA, State agencies operating the Federal school meal programs are unable to bar an eligible LEA from CEP participation. Additionally, States may not set an eligibility threshold lower than an ISP of 25 percent for participation in CEP. This proposed rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this proposed rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the proposed rule, in accordance with Departmental Regulation 4300–004, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the proposed rule might have on participants on the basis of age, race, color, national origin, sex, and disability. The FNS Civil Rights Division finds that the current mitigation and outreach strategies outlined in the regulations and this Civil Rights Impact Analysis provide ample consideration to participants' ability to participate in the NSLP and SBP. The promulgation of this proposed rule would expand access to no-cost meals for all enrolled students at participating CEP schools by lowering

[39] U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at *https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17.*

[40] Ibid.

[41] Assistance listings are detailed public descriptions of federal programs that provide grants, loans, scholarships, insurance, and other types of assistance awards. More information is available at: *https://sam.gov/content/home.*

the minimum participation threshold. As previously outlined, the proposed rule is likely to impact the growing number of minority students and families attending public schools that face a greater risk of food insecurity and health disparities by providing sustained nutritious food and reducing families' paperwork burdens.[42] [43] The changes implemented by this proposed rule is likely to impact participating LEAs and SFAs by providing greater flexibility to offer no-cost meals to students which would further support eliminating unpaid meal debt, minimizing stigma, streamlining meal service operations, and reducing paperwork for school nutrition staff.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS provides regularly scheduled consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. This proposed rule will be discussed during the next consultation session, planned for Spring 2023. FNS is unaware of any current Tribal laws that could be in conflict with the final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB Control Number. This rulemaking proposes to expand access to the Community Eligibility Provision (CEP) by lowering the minimum ISP participation threshold from 40 percent to 25 percent, which would give States and schools greater flexibility to choose to invest non-Federal funds to offer no-cost meals to all enrolled students. As a result, more students, families, and schools would have an opportunity to experience the benefits of CEP, including access to meals at no cost, eliminating unpaid meal charges, minimizing stigma, reducing paperwork for school nutrition staff and families, and streamlining meal service operations.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule would revise existing information collection requirements, which are subject to review and approval by OMB. These existing requirements are currently approved under OMB Control Number 0584–0026, *7 CFR part 245—Determining Eligibility for Free & Reduced Price Meals and Free Milk in Schools,* expiration date July 31, 2023. Revisions to the currently approved information collection requirements will result in a decrease in burden on State and local program operators as well as participating households. FNS is submitting for public comment the changes in the information collection burden that would result from this proposed rule. Because the approval for OMB Control Number 0584–0026 expires on July 31, 2023, to ensure that the review of this proposed rule does not interfere with this renewal, FNS is requesting a new OMB Control Number for the existing information requirements which are impacted by this proposed rule. The proposals outlined in this rulemaking will therefore initially be shown as increases to the information collection inventory. After OMB has approved the information collection requirements submitted in conjunction with the final rule and after the renewal is completed, FNS will merge these requirements and their burden into OMB Control Number 0584–0026. At this point, the decrease in burden noted above will be fully captured in the burden for the collection.

Comments on this proposed rule and changes in the information collection burden must be received by May 8, 2023.

Comments may be sent to: School Meals Policy Division, Food and Nutrition Service, P.O. Box 9233, Reston, VA 20195. 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.

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 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.

All responses to this document will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Community Eligibility Provision: Increasing Options for Schools.

Form Number: None.

OMB Control Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: This is a new information collection that revises the existing information collection request approved under OMB Control Number 0584–0026. Below is a summary of the changes in the rule and the accompanying reporting and recordkeeping requirements that will impact the burden that program requirements have on State administering agencies, local education agencies (LEAs), and participating households.

Participating in the CEP is a voluntary decision made by local school districts. To be eligible for CEP under current program regulations, an LEA, group of schools, or school must ensure that at least 40 percent of enrolled students are identified students, participate in both the National School Lunch Program and the School Breakfast Program, and serve lunches and breakfasts to all enrolled students at no charge.

Identified students are certified for free school meals without submitting a household application, such as those directly certified through the Supplemental Nutrition Assistance Program (SNAP). This proposed rule will expand access to CEP by lowering the ISP. This will provide more schools with an additional option for offering no-cost meals to students without requiring households to submit applications for free or reduced price meals.

This proposed rule would amend 7 CFR 245.9(f)(3)(i) to require a LEA,

[42] U.S. Department of Education's National Center for Education Statistics. (2022). Racial/Ethnic Enrollment in Public Schools. Available at: *https://nces.ed.gov/programs/coe/indicator/cge/racial-ethnic-enrollment.*

[43] Leveraging the White House Conference to Promote and Elevate Nutrition Security: The Role of the USDA Food and Nutrition Service (2022). Available at: *https://www.usda.gov/sites/default/files/documents/wh-2022-nutrition-conference-fns-role.pdf.* (p. 7).

group of schools, or school to have an ISP of at least 25 percent, as of April 1 of the school year prior to participating in CEP. Individual schools participating in CEP as part of a group would be permitted to have an ISP lower than 25 percent, provided that the group's aggregate ISP is at least 25 percent.

Reporting

State Agencies

The changes proposed in this rulemaking will impact the existing reporting requirement currently approved under OMB Control Number 0584–0026 and found at 7 CFR 245.9(f)(6) that State agencies must notify LEAs of their CEP status. USDA expects that the number of LEAs that must be notified will increase by 4,628 based on the proposed changes. USDA estimates the 54 State agency respondents will be required to notify approximately 86 additional LEAs each year, and that it takes approximately three minutes (.050 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 231 annual burden hours and 4,628 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that an additional 231 hours and 4,628 responses will be added to the collection.

LEAs

The changes proposed in this rulemaking will impact the existing reporting requirements currently approved under OMB Control Number 0584–0026 for LEAs.

USDA estimates that 337 additional LEAs will elect CEP and will be required to fulfill the reporting requirement at 7 CFR 245.9(f)(4)(i) that LEAs submit to the State agency documentation of an acceptable ISP of the LEA/school electing the provision currently approved under OMB Control Number 0584–0026. USDA estimates that the 337 LEA respondents will be required to submit ISP data when electing CEP each year and that it takes approximately 15 minutes (.25 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 84 annual burden hours and 337 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that an additional 84 hours and 337 responses will be added to the collection.

USDA expects that as a result of the proposed changes, more LEAs electing CEP will be electing CEP for all schools in the LEA, or district wide. This will result in a decrease in the number of LEAs required to process free and reduced price meal applications and conduct verification. USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(6)(i) that LEAs notify households of approval of meal benefit applications. USDA estimates that 15,003 LEA respondents will be required to notify 219 households of approval of meal benefit applications each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 65,713 annual burden hours and 3,285,657 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 1,700 hours and 85,018 responses.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(6)(ii) that LEAs notify households in writing that children are eligible for free meals based on direct certification and that no application is required. USDA estimates that 15,003 LEA respondents will be required to notify 332 households in writing that children are eligible for free meals based on direct certification and that no application is required each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 99,620 annual burden hours and 4,980,996 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 2,296 hours and 114,780 responses.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 7 CFR 245.6 (c)(7) that LEAs provide written notice to each household of denied free or reduced price benefits. USDA estimates that 15,003 LEA respondents will be required to provide written notice to approximately 12 households denied free or reduced price benefits each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 3,469 annual burden hours and 173,435 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 79 hours and 3,969 responses.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 7 CFR 245.6a(f) that LEAs notify households of selection for verification. USDA estimates that 15,003 LEA respondents will be required to notify approximately seven households of selection for verification and that it takes approximately 15 minutes (.25 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 24,380 annual burden hours and 97,520 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 712 hours and 2,849 responses.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 7 CFR 245.6a(j) that LEAs provide households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefit. USDA estimates that 15,003 LEA respondents will be required to provide approximately three households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefits and that it takes approximately six minutes (0.1 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 3,976 annual burden hours and 39,798 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 95 hours and 949 responses.

USDA estimates that 4,628 more LEAs than currently approved under OMB Control Number 0584–0026 will fulfill the requirement at 7 CFR 245.9(f)(5) that LEAs must submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status; unless otherwise exempted by State agency. USDA estimates that 4,628 LEA respondents will be required to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status each year and that

it takes approximately five minutes (.08 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 370 annual burden hours and 4,628 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that 370 hours and 4,628 responses will be added to the collection. USDA estimates that 337 more LEAs than currently approved under OMB Control Number 0584–0026 will fulfill the requirement at 7 CFR 245.9(g) that LEAs amend free and reduced policy statements and certify that schools meet the eligibility criteria when electing CEP and that it takes approximately six minutes (.1 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 34 annual burden hours and 337 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that an additional 34 hours and 337 responses will be added to the collection.

Households

Since households attending schools participating in CEP are not required to submit applications, USDA estimates that, with the proposed changes, 77,947 fewer households than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 245.6(a)(1) that households complete an application form for free or reduced price meal benefits. USDA estimates that 3,470,131 household respondents will be required to submit applications and that it takes approximately seven minutes (.110 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 381,714 annual burden hours and 3,470,131 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 8,574 hours and 77,947 responses.

Households attending schools participating in CEP are also not required to assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA. USDA estimates that 2,205 fewer households than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 245.6a (a)(7)(i) that households assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA. USDA estimates that 98,164 household respondents will be required to assemble written evidence for verification of eligibility for free and reduced price meals and that it takes approximately 30 minutes (.5 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 49,082 annual burden hours and 98,164 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 1,103 hours and 2,205 responses.

Recordkeeping

State Agencies

The changes proposed in this rulemaking will impact the existing recordkeeping requirement currently approved under OMB Control Number 0584–0026 and found at 7 CFR 245.9(f)(4)(ii) that State agencies must review and confirm LEAs' eligibility to participate in CEP. USDA expects that State agencies will need to review an additional 337 LEAs with schools newly electing CEP based on the changes proposed in this rulemaking. USDA estimates that 54 State Agency respondents will be required to review and confirm LEAs' eligibility to participate in Provisions 1, 2, or 3 or the CEP for approximately 337 LEAs electing CEP each year and that it takes approximately five minutes (.08 hours) to complete this recordkeeping requirement for each record. The proposed recordkeeping requirement adds a total of 27 annual burden hours and 337 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that an additional 27 hours and 337 responses will be added to the collection.

LEAs

The changes proposed in this rulemaking will impact the existing reporting requirements currently approved under OMB Control Number 0584–0026 for LEAs. USDA expects that as a result of the proposed changes, more LEAs electing CEP will be electing CEP for all schools in the LEA, or district wide. This will result in a decrease in the number of LEAs required to maintain documentation substantiating eligibility determinations. USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 7 CFR 245.6(e) to maintain documentation substantiating eligibility determinations for three years after the end of the fiscal year to which they pertain. USDA estimates that 15,003 LEA respondents will be required to maintain documentation related to substantiating eligibility determinations for three years after the end of the fiscal year to which they pertain and that it takes approximately 5 minutes (.08 hours) to complete this recordkeeping requirement for each record. The proposed recordkeeping requirement adds a total of 1,200 annual burden hours and 15,003 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 27 hours and 337 responses.

USDA expects that as a result of the proposed changes, 337 more LEAs than currently approved under OMB Control Number 0584–0026 will elect CEP and be required to fulfill the recordkeeping requirement at 7 CFR 245.9(h)(3) that LEAs maintain documentation related to the methodology used to calculate the ISP and determine eligibility for the CEP. USDA estimates that 337 LEA respondents will be required to maintain documentation related to methodology used to calculate the ISP and determine eligibility and that it takes approximately 55 minutes (.910 hours) to complete this recordkeeping requirement for each record. The proposed recordkeeping requirement adds a total of 307 annual burden hours and 337 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that an additional 307 hours and 337 responses will be added to the collection.

USDA does not expect lowering the threshold to participate in CEP to an ISP of 25% to impact the approved public notification requirements at 7 CFR 245.9(f)(7). While this proposed rule will increase the number of schools eligible for the CEP, the burden for States to notify LEAs of their community eligibility status due to the increased number of eligible schools is already captured above in the reporting requirements at 7 CFR 245.9(f)(6). Making these lists publicly available will not take any additional time than is currently approved under OMB Control Number 0584–0026 and accordingly is not addressed in this information collection.

As a result of the proposals outlined in this rulemaking, FNS estimates that this new information collection will

have 3,485,188 respondents, 12,171,267 responses, and 630,207 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the information collection request for the final rule is approved and the requirements and associated burden for this new information collection are merged into the existing collection, FNS estimates that the burden for OMB Control Number 0584–0026 will decrease by 277,450 responses and 13,534 burden hours.

Reporting

Respondents (Affected Public): Individual/Households; and State, Local and Tribal Government. The respondent groups identified include households, State Agencies and LEAs.

Estimated Number of Respondents: 3,485,188.

Estimated Number of Responses per Respondent: 3.49.

Estimated Total Annual Responses: 12,155,590.

Estimated Time per Response: 0.052 (approximately 3 minutes).

Estimate Total Annual Burden on Respondents: 628,673 hours.

Recordkeeping

Respondents (Affected Public): State, Local and Tribal Government. The respondent groups identified include State Agencies and LEAs.

Estimated Number of Respondents: 15,057.

Estimated Number of Responses per Respondent: 1.04.

Estimated Total Annual Responses: 15,677.

Estimated Time per Response: .098 (approximately 6 minutes).

Estimate Total Annual Burden on Respondents: 1,534 hours.

REPORTING

Description of activities	Regulation citation	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Estimated total annual burden hours for OMB #0584–00xx due to proposed rulemaking	Hours currently approved under OMB #0584–0026	Estimated future burden hours for OMB #0584–0026 after the merge with OMB #0584–00xx	Estimated future change in burden hours for OMB #0584–0026 due to rulemaking
State agency to notify LEAs of their community eligibility status as applicable.	245.9(f)(6)	54	85.70	4,628	0.050	231	436	667	231
Total State Agency Reporting.	.....	54	.....	4,628	.....	231	436	667	231
LEAs submit to State agency documentation of acceptable ISP of LEA/school electing the provision.	245.9(f)(4)(i)	337	1.00	337	0.250	84	125	209	84
LEAs notify households of approval of meal benefit applications.	245.6(c)(6)(i)	15,003	219.00	3,285,657	0.020	65,713	67,414	65,713	−1,701
LEAs must notify households in writing that children are eligible for free meals based on direct certification and that no application is required.	245.6(c)(6)(ii)	15,003	332.00	4,980,996	0.020	99,620	101,916	99,620	−2,296
LEAs provide written notice to each household of denied free or reduced price benefits.	245.6(c)(7)	15,003	11.56	173,435	0.020	3,469	3,548	3,469	−79
LEAs notify households of selection for verification.	245.6a(f)	15,003	6.50	97,520	0.250	24,380	25,092	24,380	−712
LEAs must provide households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefits.	245.6a(j)	15,003	2.65	39,758	0.100	3,976	4,071	3,976	−95

REPORTING—Continued

Description of activities	Regulation citation	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Estimated total annual burden hours for OMB #0584–00xx due to proposed rulemaking	Hours currently approved under OMB #0584–0026	Estimated future burden hours for OMB #0584–0026 after the merge with OMB #0584–00xx	Estimated future change in burden hours for OMB #0584–0026 due to rulemaking
LEA to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status; unless otherwise exempted by State agency.	245.9(f)(5)	4,628	1.00	4,628	0.080	370	698	1,068	370
LEAs to amend free and reduced policy statement and certify that schools meet eligibility criteria.	245.9(g)	337	1.00	337	0.100	34	50	84	34
Total Local Education Agency Reporting.		15,003		8,582,667		197,646	202,914	198,519	−4,396
Total State and Local Agency Level Total.		15,057		8,587,295		197,877	203,350	199,186	−4,165
Households complete application form for free or reduced price meal benefits.	245.6(a)(1)	3,470,131	1.00	3,470,131	0.110	381,714	390,289	381,714	−8,575
Households assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA.	245.6(a)(7)(i)	98,164	1.00	98,164	0.500	49,082	50,185	49,082	−1,103
Total Household Reporting.		3,470,131		3,568,295		430,796	440,474	430,796	−9,678
Total Reporting ..		3,485,188	3.49	12,155,590	.052	628,673	628,673	629,982	−13,842

REPORTING

Description of activities	Regulation citation	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Estimated total annual burden hours for OMB #0584–00xx due to proposed rulemaking	Hours currently approved under OMB #0584–0026	Estimated future burden hours for OMB #0584–0026 after the merge with OMB #0584–00xx	Estimated future change in burden hours for OMB #0584–0026 due to rulemaking
State Agency to review and confirm LEAs eligibility to participate in Provisions 1, 2, or 3 or the Community Eligibility Provision.	245.9(f)(4)(ii)	54	6.24	337	.080	27	40	67	27
Total State Agency Recordkeeping.		54		337		27	40	67	27

REPORTING—Continued

Description of activities	Regulation citation	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Estimated total annual burden hours for OMB #0584–00xx due to proposed rulemaking	Hours currently approved under OMB #0584–0026	Estimated future burden hours for OMB #0584–0026 after the merge with OMB #0584–00xx	Estimated future change in burden hours for OMB #0584–0026 due to rulemaking
LEA must maintain documentation substantiating eligibility determinations for 3 years after the end of the fiscal year.	245.6(e)	15,003	1	15,003	0.080	1,200	1,227	1,200	−27
LEA to maintain documentation related to methodology used to calculate the ISP and determine eligibility.	245.9(h)(3)	337	1	337	.910	307	455	762	307
Total Local Education Agency Recordkeeping.		15,003		15,340		1,507	1,682	1,962	280
Total Recordkeeping.		15,057	1.04	15,677	.098	1,534	1,722	2,029	307
		OMB #0584–00xx due to proposed rule				OMB #0584–0026 once merged with OMB #0584–00xx			
Total No. Respondents					3,485,188				3,493,364
Average No. Responses per Respondent					3.492				3.513
Total Annual Responses					12,171,267				12,272,745
Average Hours per Response					0.052				.053
Total Burden Hours					630,207				651,192
Current OMB Inventory					0				664,726
Tentative Difference Due to Rulemaking					630,207				−13,534

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

For the reasons stated in the preamble, FNS proposes to amend 7 CFR part 245 as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

■ 1. The authority citation for 7 CFR Part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

§ 245.9 [Amended]

■ 2. In § 245.9, in paragraph (f), wherever it appears, remove ''40 percent'' and add, in its place ''25 percent'', and wherever it appears, remove ''30 percent'' and add, in its place ''15 percent''.

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2023–05624 Filed 3–22–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2023–BT–TP–0007]

RIN 1904–AF50

Energy Conservation Program: Test Procedure for Dishwashers

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: In this notice of proposed rulemaking (''NOPR''), the U.S Department of Energy (''DOE'') proposes to add clarifying instructions regarding the detergent reporting requirements and an enforcement provision for dishwashers to specify the detergent and dosing method that DOE would use for any enforcement testing of dishwasher models certified in accordance with the currently applicable dishwasher test procedure prior to July 17, 2023 (*i.e.,* the date by which the dishwasher test procedure as amended by a final rule published on January 18, 2023, will be mandatory for product testing). DOE is also proposing to add within the amended test procedure clarifying instructions regarding the allowable dosing options for each type of detergent. DOE is seeking comment from interested parties on this NOPR.

DATES:

Comments: DOE will accept comments, data, and information regarding this NOPR no later than May 22, 2023.

Meeting: DOE will hold a public meeting on this NOPR if one is requested by March 30, 2023. If a public meeting is requested, DOE will announce its date and participation information on the DOE website and via email.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2023–BT–TP–0007. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2023–BT–TP–0007, by any of the following methods:

Email: Dishwashers2023TP0007@ee.doe.gov. Include the docket number EERE–2023–BT–TP–0007 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), 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, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2023-BT-TP-0007.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, 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: (202) 287–5649. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Melanie Lampton, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 571–5157. Email: *Melanie.Lampton@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background

A. Authority

The Energy Policy and Conservation Act, PubLic Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. (42 U.S.C. 6281–6309) These products include dishwashers, the subject of this document. (42 U.S.C. 6292(a)(6))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

DOE is conducting this rulemaking to address a single specific issue and make minor corrections to the current test procedures that are required for certification of compliance with applicable energy conservation standards. This rulemaking does not satisfy the 7-year lookback requirement prescribed by EPCA.

B. Background

DOE's currently applicable test procedure for dishwashers is prescribed in the Code of Federal Regulations (''CFR'') at 10 CFR part 430, subpart B, appendix C1 (''appendix C1''). Appendix C1 includes provisions for determining estimated annual energy use and per-cycle water consumption, among other metrics, and is currently required to demonstrate compliance with the energy conservation standards for dishwashers prescribed at 10 CFR 430.32(f). Section 2.10 of the currently applicable appendix C1 specifies the detergent type and dosage that must be used for testing. Specifically, section 2.10 specifies that Cascade with the Grease Fighting Power of Dawn must be used, and detergent dosage must be calculated based on the prewash (if any) and main wash fill water volumes. However, Cascade with the Grease Fighting Power of Dawn has been

[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 B was redesignated Part A.

discontinued and has been replaced on the market with Cascade Complete Powder formulation.

On July 22, 2022, DOE published a final rule that amended the certification provisions for dishwashers (''July 2022 Certification Final Rule''), among other products. 87 FR 43952. In the July 2022 Certification Final Rule, DOE noted that, given that the then-currently specified Cascade with the Grease Fighting Power of Dawn detergent was no longer available on the market, DOE expected that manufacturers may need to (or already had to) switch to the new Cascade Complete Powder formulation to conduct testing according to the currently applicable appendix C1. *Id.* at 87 FR 43969. The July 2022 Certification Final Rule amended the dishwasher certification provisions to require that manufacturers indicate whether Cascade Complete Powder detergent was used in lieu of Cascade with the Grease Fighting Power of Dawn to conduct testing according to the currently applicable appendix C1. *Id.* at 87 FR 43969–43970. DOE stated that it was establishing this additional reporting requirement to ensure that any assessment or enforcement testing pursuant to 10 CFR 429.104 and 429.110, respectively, would be performed using the same detergent used by the manufacturer for certifying compliance with the energy conservation standards. *Id.*

In a final rule published on January 18, 2023, DOE amended the test procedures in appendix C1 (''January 2023 TP Final Rule'') to specify that Cascade Complete Powder detergent may alternately be used for testing dishwashers in conjunction with a new detergent dosing requirement that is based on the number of place settings,[3] among several other updates. 88 FR 3234, 3247–3248. DOE stated in the January 2023 TP Final Rule that permitting the optional use of the new detergent and dosing specified in the Association of Home Appliance Manufacturers (''AHAM'') standard, AHAM DW–1–2020, ''Uniform Test Method for Measuring the Energy Consumption of Dishwashers,'' would avoid the need for manufacturers to request test procedure waivers, given the lack of availability of the current detergent. *Id.* at 88 FR 3247. DOE also stated that by maintaining the use of the current detergent and dosing requirements, manufacturers would not be required to re-test currently certified dishwashers. *Id.* The effective date of amended appendix C1 was February 17, 2023, and the amended appendix C1 will be mandatory for product testing starting July 17, 2023.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the early assessment process in a test procedure rulemaking. Section 8(a) of appendix A states that DOE will follow an early assessment process similar to DOE's consideration of amended energy conservation standards and publish a notice in the **Federal Register** whenever DOE is considering initiation of a rulemaking to amend a test procedure. DOE is conducting this rulemaking to address a single specific issue rather than comply with the 7-year lookback requirement prescribed by EPCA. Furthermore, this proposal seeks to prevent manufacturers from needing to re-test and re-certify certain existing models after July 17, 2023. For these reasons, DOE finds it necessary and appropriate to deviate from the provision in appendix A regarding the early assessment process.

II. Discussion of Proposed Amendments

A. Appendix C1 Amendments

While the July 2022 Certification Final Rule amended the dishwasher certification provisions to require that manufacturers indicate whether Cascade Complete Powder detergent was used in lieu of Cascade with the Grease Fighting Power of Dawn to conduct testing according to the currently applicable appendix C1 (87 FR 43952, 43969–43970), it did not explicitly permit the use of Cascade Complete Powder detergent formulation with the dosage requirements specified in the currently applicable appendix C1 for units certified before July 17, 2023 (*i.e.,* the date on which testing according to the amended appendix C1 will be mandatory). Section 2.5 of the amended appendix C1 allows the use of Cascade with the Grease Fighting Power of Dawn detergent only with the dosage requirements of the currently applicable appendix C1 (*i.e.,* based on fill water volumes), or Cascade Complete Powder detergent only with the new detergent dosing requirement (*i.e.,* based on number of place settings). However, in specifying the new detergent dosing requirement for Cascade Complete Powder in appendix C1 in the January 2023 TP Final Rule, DOE did not intend to require manufacturers who have already certified dishwashers using the new Cascade Complete Powder in conjunction with the currently applicable detergent dosing requirement to re-test and re-certify using the new detergent dosing requirement.

DOE is therefore proposing in this NOPR to amend section 2.5 of appendix C1 to explicitly allow the use of Cascade Complete Powder detergent with either the dosage requirements specified in the currently applicable appendix C1 (*i.e.,* based on fill water volumes) or the amended appendix C1 (*i.e.,* based on number of place settings). This proposal seeks to prevent manufacturers that have used, or intend to use until July 17, 2023, Cascade Complete Powder detergent with the currently applicable detergent dosing based on fill water volumes rather than number of place settings from needing to re-test and re-certify.

DOE requests feedback on its proposal to amend appendix C1 to explicitly allow the use of Cascade Complete Powder detergent with either the currently applicable dosage requirements based on fill water volumes, as specified in section 2.5.1 of appendix C1 as amended, or the new dosage requirements based on number of place settings, as specified in section 2.5 of appendix C1 as amended, until July 17, 2023.

B. Certification Reporting Provisions for Dishwashers

In conjunction with the proposed amendment to explicitly allow the use of the new Cascade Complete Powder detergent with the dosage method in the currently applicable appendix C1, DOE proposes to specify the applicable dates for each detergent formulation and dosing combination through instructions specified in the certification reporting provisions at 10 CFR 429.19(b)(3). DOE proposes to amend 10 CFR 429.19(b)(3)(vi) to specify in a new subsection (A) that before July 17, 2023, Cascade Complete Powder detergent may be used as the basis for certification in conjunction with either detergent dosing methods (*i.e.,* the currently applicable detergent dosing requirement based on fill water volumes, or the new detergent dosing requirement based on number of place settings); and Cascade with the Grease Fighting Power of Dawn detergent may be used as the basis for certification

[3] As amended by the January 2023 TP Final Rule, section 2.5 of appendix C1 specifies that if the detergent specified in section 2.10 of AHAM DW–1–2020 (*i.e.,* Cascade Complete Powder) is used for testing, then the dosage requirements specified in section 2.10 of AHAM DW–1–2020 must be used. Section 2.10 of AHAM DW–1–2020 specifies using half the quantity of detergent that is specified in section 4.1 of AHAM DW–2–2020. Section 4.1 of AHAM DW–2–2020 specifies the detergent dosage as 1.8 grams per place setting in the main compartment of the detergent dispenser and 1.8 grams per place setting in the prewash compartment of the detergent dispenser or other location.

only in conjunction with the currently applicable detergent dosing based on fill water volumes.

DOE proposes to further specify in a new subsection (B) to 10 CFR 429.19(b)(3)(vi) that beginning July 17, 2023, Cascade Complete Powder detergent may be used as the basis for certification of newly certified basic models only in conjunction with the new detergent dosing method based on number of place settings; and Cascade with the Grease Fighting Power of Dawn detergent may be used as the basis for certification only in conjunction with the currently applicable detergent dosing based on fill water volumes. DOE also proposes to clarify that manufacturers may maintain basic model certifications made prior to July 17, 2023.

DOE seeks feedback on its proposal to add two subsections to the certification reporting provisions that specify the date when each detergent formulation and dosage method is applicable.

C. Enforcement Testing Provision for Dishwashers

In addition to amending appendix C1 to specify the detergent formulation and dosage combinations that would be applicable until July 17, 2023, and including instructions to the reporting requirements at 10 CFR 429.19(b)(3), DOE is also proposing a product-specific enforcement provision for dishwashers. This proposal would provide greater certainty regarding how DOE would conduct any enforcement testing for any dishwashers certified in accordance with the currently applicable test procedure using the new Cascade Complete Powder detergent, as implicitly permitted by the July 2022 Certification Final Rule. Specifically, DOE is proposing to add a product-specific enforcement provision at 10 CFR 429.134(z)(2) explicitly specifying that DOE would perform any enforcement testing using the detergent dosing requirement that was used by the manufacturer for certifying compliance with the energy conservation standards. DOE notes that under the requirements specified at 10 CFR 429.106(b), DOE may request any information relevant to determining compliance and DOE would use this authority to request detergent dosage information from manufacturers, if required for the purposes of conducting enforcement testing.

DOE requests comments on its proposal to add a product-specific enforcement requirement for dishwashers to specify that DOE would perform any enforcement testing using the detergent dosing requirement that was used by the manufacturer for certifying compliance with the energy conservation standards, in accordance with the applicable test procedure and certification reporting requirements.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and 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, to the extent practicable, the costs of cumulative regulations, among other things; (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) specify performance objectives wherever feasible, 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 proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

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 Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 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 DOE 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.*

This NOPR proposes an update to the amended appendix C1 to remove uncertainty about dishwashers that may be currently certified under the currently applicable appendix C1 using the new detergent (as permitted by the July 2022 Certification Final Rule), and to prevent such dishwashers from having to be re-tested and re-certified after the February 17, 2023, effective date of the January 2023 TP Final Rule. The proposed amendments in this NOPR do not affect the scope or substance of the currently applicable or amended test procedure for dishwashers. Therefore, DOE initially concludes that the impacts of the amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the 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

Manufacturers of dishwashers must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer

products and commercial equipment, including dishwashers. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not proposing to amend the certification or reporting requirements for dishwashers.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes to add explicit enumeration of currently allowable testing options to the test procedure, certification reporting instructions, and a product-specific enforcement provision that would specify how DOE would conduct any enforcement testing of certain dishwasher models. DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on 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 proposed rule 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 products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), 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. Section 3(b) of Executive Order 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 sections 3(a) and 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, the proposed rule meets the relevant standards of Executive Order 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 proposed 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 small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements 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 proposed rule 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

DOE has determined, under Executive Order 12630, ''Governmental Actions

and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under 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 agencies to review most disseminations of information to the public under 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%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule 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

Executive Order 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 OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated 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 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 proposed 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.

The proposed regulatory action to amend an explicit enumeration of currently allowable testing options to the test procedure, certification reporting instructions, and a product-specific enforcement provision that would specify how DOE would conduct any enforcement testing of certain dishwasher models 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 a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

The following standard included in the proposed regulatory text was previously approved for incorporation by reference for the locations in which it appears in this proposed rule: AHAM DW–1–2020.

IV. Public Participation

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests feedback on its proposal to amend appendix C1 to explicitly allow the use of Cascade Complete Powder detergent with either the currently applicable dosage requirements based on fill water volumes, as specified in section 2.5.1 of appendix C1 as amended, or the new dosage requirements based on number of place settings, as specified in section 2.5 of appendix C1 as amended, until July 17, 2023.

(2) DOE seeks feedback on its proposal to add two subsections to the certification reporting provisions that specify the date when each detergent formulation and dosage method is applicable.

(3) DOE requests comments on its proposal to add a product-specific enforcement requirement for dishwashers to specify that DOE would perform any enforcement testing using the detergent dosing requirement that was used by the manufacturer for certifying compliance with the energy conservation standards, in accordance with the applicable test procedure and certification reporting requirements.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI''). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this Notice of proposed rulemaking and request for comment.

List of Subjects

10 CFR Part 429

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

10 CFR Part 430

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

Signing Authority

This document of the Department of Energy was signed on March 14, 2023, 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 March 15, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317, 28 U.S.C. 2461 note.

■ 2. In § 429.19 revise paragraph (b)(3)(vi) to read as follows:

§ 429.19 Dishwashers.

* * * * *

(b) * * *

(3) * * *

(vi) Indication of whether Cascade Complete Powder or Cascade with the Grease Fighting Power of Dawn was used as the detergent formulation. When certifying dishwashers, other than water re-use dishwashers, according to appendix C1 to subpart B of part 430 of this chapter:

(A) Before July 17, 2023, Cascade Complete Powder detergent may be used as the basis for certification in conjunction with the detergent dosing methods specified in either section 2.5.2.1.1 or section 2.5.2.1.2 of appendix C1 (as amended on February 17, 2023). Cascade with the Grease Fighting Power of Dawn detergent may be used as the basis for certification only in conjunction with the detergent dosing specified in section 2.5.2.1.1 of appendix C1 (as amended on February 17, 2023).

(B) Beginning July 17, 2023, Cascade Complete Powder detergent may be used as the basis for certification of newly certified basic models only in conjunction with the detergent dosing method specified in section 2.5.2.1.2 of appendix C1 (as amended on February 17, 2023). Cascade with the Grease Fighting Power of Dawn detergent may be used as the basis for certification only in conjunction with the detergent dosing specified in section 2.5.2.1.1 of appendix C1 (as amended on February 17, 2023). Manufacturers may maintain existing basic model certifications made prior to July 17, 2023, consistent with the provisions of § 429.19(b)(3)(vi)(A).

■ 3. Amend § 429.134 by adding paragraph (z)(2) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(z) * * *

(2) *Detergent Dosing Requirement.* For any dishwasher basic model certified in accordance with the test procedure at appendix C1 to subpart B of part 430 of this chapter, DOE will conduct enforcement testing using the detergent dosing requirement that was used by the manufacturer as the basis for certifying compliance with the applicable energy conservation standard, in accordance with the applicable test procedure and certification reporting requirements.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 5. Amend appendix C1 to subpart B of part 430 by revising the appendix introductory note and section 2.5 to read as follows:

Appendix C1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

Note: Before [*date 180 days after publication of the final rule*], manufacturers must use the results of testing under this appendix as codified on [*date 30 days after*

publication of the final rule] or February 17, 2023, to determine compliance with the relevant standard from § 430.32(f)(1) as it appeared in the January 1, 2023, edition of 10 CFR parts 200–499. Beginning [*date 180 days after publication of the final rule*], manufacturers must use the results of testing under this appendix to determine compliance with the relevant standard from § 430.32(f)(1) as it appeared in the January 1, 2023, edition of 10 CFR parts 200–499. Manufacturers must use the results of testing under appendix C2 to determine compliance with any amended standards for dishwashers provided in 10 CFR 430.32(f)(1) that are published after January 1, 2023. Any representations related to energy or water consumption of dishwashers must be made in accordance with the appropriate appendix that applies (*i.e.,* appendix C1 or appendix C2) when determining compliance with the relevant standard. Manufacturers may also use appendix C2 to certify compliance with any amended standards prior to the applicable compliance date for those standards.

10 CFR 429.19(b)(3) provides instructions regarding the combination of detergent and detergent dosing, specified in section 2.5 of this appendix, used for certification.

* * * * *

2.5 *Detergent.*

2.5.1 *Detergent Formulation.* Either Cascade with the Grease Fighting Power of Dawn or Cascade Complete Powder may be used.

2.5.2 *Detergent Dosage.*

2.5.2.1 *Dosage for any dishwasher other than water re-use system dishwashers.*

If Cascade with the Grease Fighting Power of Dawn detergent is used, the detergent dosing specified in section 2.5.2.1.1 of this appendix must be used.

If Cascade Complete Powder detergent is used, consult the introductory note to this appendix regarding use of the detergent dosing specified in either section 2.5.2.1.1 or section 2.5.2.1.2 of this appendix.

2.5.2.1.1 *Dosage based on fill water volumes.* Determine detergent dosage as follows:

Prewash Detergent Dosing. If the cycle setting for the test cycle includes prewash, determine the quantity of dry prewash detergent, $D_{pw,}$ in grams (g) that results in 0.25 percent concentration by mass in the prewash fill water as:

$D_{pw} = V_{pw} \times \rho \times k \times 0.25/100$

Where,

V_{pw} = the prewash fill volume of water in gallons,

ρ = water density = 8.343 pounds (lb)/gallon for dishwashers to be tested at a nominal inlet water temperature of 50 °F (10 °C), 8.250 lb/gallon for dishwashers to be tested at a nominal inlet water temperature of 120 °F (49 °C), and 8.205 lb/gallon for dishwashers to be tested at a nominal inlet water temperature of 140 °F (60 °C), and

k = conversion factor from lb to g = 453.6 g/lb.

Main Wash Detergent Dosing. Determine the quantity of dry main wash detergent, $D_{mw,}$ in grams (g) that results in 0.25 percent concentration by mass in the main wash fill water as:

$D_{mw} = V_{mw} \times \rho \times k \times 0.25/100$

Where,

V_{mw} = the main wash fill volume of water in gallons, and ρ and k are as defined above.

For dishwashers that do not have a direct water line, V_{mw} is equal to the manufacturer reported water capacity used in the main wash stage of the test cycle.

2.5.2.1.2 *Dosage based on number of place settings.* Determine detergent dosage as specified in sections 2.10 and 2.10.1 of AHAM DW–1–2020.

2.5.2.2 *Dosage for water re-use system dishwashers.* Determine detergent dosage as specified in section 2.10.2 of AHAM DW–1–2020.

2.5.3 *Detergent Placement.*

Prewash and main wash detergent must be placed as specified in sections 2.10 and 2.10.1 of AHAM DW–1–2020. For any dishwasher that does not have a main wash detergent compartment and the manufacturer does not recommend a location to place the main wash detergent, place the main wash detergent directly into the dishwasher chamber.

* * * * *

[FR Doc. 2023–05588 Filed 3–22–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0437; Project Identifier MCAI–2022–01358–E]

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: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–26–13, which applies to all Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines. AD 2021–26–13 requires revision of the engine Time Limits Manual (TLM) life limits of certain critical rotating parts and direct accumulation counting (DAC) data files. Since the FAA issued AD 2021–26–13, RRD has revised the TLM with more restrictive airworthiness limitations, including updated life limits for certain critical parts and updated DAC data files. This proposed AD would require revising the existing approved maintenance or inspection program, as applicable, to incorporate 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 NPRM by May 8, 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–2023–0437; 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 EASA service information identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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:

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–2023–0437; Project Identifier MCAI–2022–01358–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. 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 2021–26–13, Amendment 39–21872 (86 FR 72840, December 23, 2021) (AD 2021–26–13), for all RRD Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines. AD 2021–26–13 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2020–0241, dated November 5, 2020, to correct an unsafe condition identified as the manufacturer revising the engine TLM life limits of certain critical rotating parts, updating the direct accumulation counting data files, and updating certain maintenance tasks.

AD 2021–26–13 requires operators to update the airworthiness limitations section (ALS) of their approved maintenance and inspection program by incorporating the latest revision of the engine TLM life limits of certain critical rotating parts and updating DAC data files for each affected model turbofan engine. The FAA issued AD 2021–26–13 to prevent the failure of critical rotating parts.

Actions Since AD 2021–26–13 Was Issued

Since the FAA issued AD 2021–26–13, EASA superseded EASA AD 2020–0241 and issued EASA AD 2022–0210, dated October 17, 2022 (EASA AD 2022–0210) (referred to after this as the MCAI). The MCAI states that the manufacturer published a revised TLM introducing new or more restrictive tasks and limitations. These new or more restrictive tasks and limitations include updating declared lives of certain critical parts and updating DAC data files.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0437.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0210. EASA AD 2022–0210 specifies instructions for accomplishing the actions specified in the applicable TLM, including performing maintenance tasks, replacing life-limited parts, and revising the existing approved maintenance or inspection program, as applicable, by incorporating the limitations, tasks, and associated thresholds and intervals described 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**.

FAA's Determination

These products have been approved by the aviation authority of another country, and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, 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 none of the requirements of AD 2021–26–13. This proposed AD would require revising the existing approved maintenance or inspection program, as applicable, to incorporate more restrictive airworthiness limitations, which are specified in EASA AD 2022–0210, and is also proposed for incorporation by reference. Any differences with EASA AD 2022–0210 are identified as exceptions in the regulatory text of this AD and discussed under ''Differences Between this Proposed AD and the MCAI.''

Differences Between This Proposed AD and the MCAI

Where paragraph (3) of EASA AD 2022–0210 specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2022–0210, this proposed AD would require revising the ALS of the existing approved maintenance or inspection program, as applicable, within 90 days after the effective date of this 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 since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0210 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0210 in its entirety 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 the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled

''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0210. Service information required by the EASA AD for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0437 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 32 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the continuous airworthiness maintenance program.	1 work-hours × $85 per hour = $85 ..	$0	$85	$2,720

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 2021–26–13, Amendment 39–21872 (86 FR 72840, December 23, 2021);

■ b. Adding the following new AD:

Rolls-Royce Deutschland Ltd & Co KG: Docket No. FAA–2023–0437; Project Identifier MCAI–2022–01358–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 8, 2023.

(b) Affected ADs

This AD replaces AD 2021–26–13, Amendment 39–21872 (86 FR 72840, December 23, 2021).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc) Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines, all serial numbers.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine Time Limits Manual life limits of certain critical rotating parts, updating the direct accumulation counting data files, and updating certain maintenance tasks. The FAA is issuing this AD to prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0210, dated October 17, 2022 (EASA AD 2022–0210).

(h) Exceptions to EASA AD 2022–0210

(1) Where EASA AD 2022–0210 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 2022–0210 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not require compliance with paragraph (1) of EASA AD 2022–0210.

(4) This AD does not require compliance with paragraph (2) of EASA AD 2022–0210.

(5) Where paragraph (3) of EASA AD 2022–0210 specifies revising the approved AMP within 12 months after the effective date of EASA AD 2022–0210, this AD requires revising the existing approved maintenance or inspection program, as applicable, and airworthiness limitations section within 90 days after the effective date of this AD.

(6) This AD does not adopt the ''Remarks'' paragraph of EASA AD 2022–0210.

(i) Provisions for Alternative Actions and Intervals

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 2022–0210.

(j) Alternative Methods of Compliance (AMOCs)

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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.* 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 2022–0210, dated October 17, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0210, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this material 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 March 14, 2023.

Christina Underwood,

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

[FR Doc. 2023–05668 Filed 3–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1296; Project Identifier MCAI–2022–00628–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) to supersede Airworthiness Directive (AD) 2020–20–05 and AD 2022–09–16, which applies to certain Airbus SAS Model A318 series; A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N; A320 series; and A321 series airplanes. This action revises the NPRM by adding new and revised tasks and limitations that must be incorporated into the existing maintenance or inspection program. The FAA is proposing this AD to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The FAA must receive comments on this proposed AD by May 8, 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–2022–1296; 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 European Union Aviation Safety Agency (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–2022–1296.
- 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: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@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–2022–1296; Project Identifier MCAI–2022–00628–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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@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 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020) (AD 2020–20–05), and AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022) (AD 2022–09–16) for certain Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model –111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. AD 2020–20–05 and AD 2022–09–16 require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–20–05 and AD 2022–09–16 to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD to supersede AD 2020–20–05 and AD 2022–09–16 that would apply to certain Airbus SAS Model A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, A319–171N, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes. The NPRM published in the **Federal Register** on October 20, 2022 (87 FR 63712) (the NPRM). The NPRM was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0085, dated May 12, 2022 (EASA AD 2022–0085), to correct an unsafe condition. The NPRM proposed to require the actions in AD 2022–09–16 in addition to revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, EASA issued 2023–0008, dated January 16, 2023 (EASA AD 2023–0008), which affects EASA AD 2022–0085, dated May 12, 2022. EASA AD 2023–0008 states that new and/or more restrictive maintenance tasks have been published. EASA AD 2023–0008 applies to all Airbus A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, A319–171N, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N and A321–272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 10, 2022, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1296.

Comments

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

The FAA received additional comments from two commenters, including American Airlines and United Airlines. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Retain Provisions of AD 2020–20–05

American Airlines supported the NPRM, but also asserted that the proposed AD should have retained certain provisions of AD 2020–20–05.

American Airlines noted that the NPRM proposed to supersede both AD 2020–20–05 and AD 2022–09–16, but restated only the requirements of AD 2022–09–16. American noted that the Reason section of EASA AD 2022–0085 states that it retains the requirements of both EASA AD 2020–0036R1, dated June 24, 2020 (EASA AD 2020–0036R1) (which corresponds to FAA AD 2020–20–05) and EASA AD 2021–0140, dated June 14, 2021 (EASA AD 2021–0140) (which corresponds to FAA AD 2022–09–16). American Airlines stated that AD 2022–09–16 does not supersede but ''is an extension to'' AD 2020–20–05. American Airlines therefore requested that the proposed AD be revised to retain the requirements of AD 2020–20–05, until the new maintenance program revision required by paragraph (j) of the proposed AD is implemented.

Also, since the NPRM would have approved previous AMOCs for AD 2022–09–16 only, American Airlines recommended that the proposed AD state that AMOCs previously approved for AD 2020–20–05 also continue to be approved for this AD.

The FAA agrees with the requests. AD 2022–09–16 stated, in paragraph (j), that it terminates Task 531135–01–2, which is required, in part, by paragraph (i) of AD 2020–20–05. Therefore, not all requirements of AD 2020–20–05 were terminated by AD 2022–09–16. The FAA has determined that it is necessary to retain the requirements of paragraphs (i), (j), (k), and (l) of AD 2020–20–05, until the maintenance program revision required by paragraph (i) of AD 2020–20–05 is terminated by accomplishment of the requirements of paragraph (j) of this AD.

Therefore, the FAA has revised the proposed AD by restating the requirements of paragraphs (i), (j), (k), and (l) of AD 2020–20–05 in paragraphs (g), (h), (i), and (j) of this AD, and redesignating subsequent paragraphs accordingly. The FAA has also added paragraph (r)(1)(iii) in this proposed AD to extend previous AMOC approval for the requirements of paragraph (i) of AD 2020–20–05 that are retained in paragraph (g) of this proposed AD.

Requests To Allow Alternative Methods of Compliance (AMOCs)

United Airlines requested that the proposed AD allow production concession, repair design approval sheet (RDAS), repair and design approval form (RDAF), and Airbus statement of Airworthiness Compliance (ASAC) as AMOCs if they include instructions for continued airworthiness (ICAs) for repairs to airworthiness limitation (ALI) areas as stated in Section 1, ''Introduction,'' of Airbus A318/A319/A320/A321 ALS Part 2, Revision 09, dated February 7, 2022 (which is referenced in EASA AD 2022–0085). The FAA does not agree that a change to this proposed AD is necessary. The provision in paragraph (r)(2) of this proposed AD addresses where service information specified in EASA AD 2022–0085 and EASA 2023–0008 refers to obtaining instructions from a manufacturer.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0085 and EASA AD 2023–0008. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. These documents are distinct since one includes all damage tolerant airworthiness limitations items and the other revises certain damage tolerant airworthiness limitation items.

This proposed AD would also require EASA AD 2021–0140, which the Director of the Federal Register approved for incorporation by reference as of June 30, 2022 (87 FR 31943, May 26, 2022).

This proposed AD would also require EASA AD 2020–0036R1, which the Director of the Federal Register approved for incorporation by reference as of November 19, 2020 (85 FR 65197, October 15, 2020).

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.

Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed AD Requirements in This NPRM

This proposed AD would retain the requirements of AD 2020–20–05 and AD 2022–09–16. This proposed AD would also expand the applicability and 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 2022–0085 and EASA AD 2023–0008 described previously, as proposed for incorporation by reference. Any differences with EASA AD 2022–0085 and EASA AD 2023–0008 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 (r)(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 2020–0036R1 and EASA AD 2021–0140 and incorporate EASA AD 2022–0085 and EASA AD 2023–0008 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0140, EASA AD 2020–0036R1, EASA AD 2022–0085, and EASA AD 2023–0008 in their entirety 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 2020–0036R1, EASA AD 2021–0140, EASA AD 2022–0085, or EASA AD 2023–0008 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 2020–0036R1, EASA AD 2021–0140, EASA AD 2022–0085, or EASA AD 2023–0008. Service information required by EASA AD 2020–0036R1, EASA AD 2021–0140, EASA AD 2022–0085, and EASA AD 2023–0008 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1296 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 FAA 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 1,864 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 2020–20–05 and AD 2022–09–16 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. 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 AD 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020); and AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–1296; Project Identifier MCAI–2022–00628–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 8, 2023.

(b) Affected ADs

This AD replaces AD 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020) (AD 2020–20–05); and AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022) (AD 2022–09–16).

(c) Applicability

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 10, 2022.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(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 fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes From AD 2020–20–05

This paragraph restates the requirements of paragraph (i) of AD 2020–20–05, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 11, 2019: 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 2020–0036R1, dated June 24, 2020 (EASA AD 2020–0036R1). Accomplishing the maintenance or inspection program revision required by paragraph (o) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0036R1, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2020–20–05, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0036R1 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0036R1 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0036R1 within 90 days after November 19, 2020 (the effective date of AD 2020–20–05).

(3) The initial compliance times for doing the tasks specified in paragraph (3) of EASA AD 2020–0036R1 are at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0036R1, or within 90 days after November 19, 2020 (the effective date of AD 2020–20–05), whichever occurs later.

(4) The provisions specified in paragraphs (4), (5), and (6) of EASA AD 2020–0036R1 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0036R1 does not apply to this AD.

(i) Retained Provisions for Alternative Actions or Intervals From AD 2020–20–05, With New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–20–05, with new exception. Except as required by paragraphs (k) and (o) 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 are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0036R1.

(j) Retained Credit for Original EASA AD, With No changes

This paragraph restates the credit provided in paragraph (l) of AD 2020–20–05, with no changes. This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before November 19, 2020 (the effective date of AD 2020–20–05) using EASA AD 2020–0036, dated February 26, 2020.

(k) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes From AD 2022–09–16

This paragraph restates the requirements of paragraph (g) of AD 2022–09–16, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 10, 2020: Except as specified in paragraph (l) of this AD, comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0140, dated June 14, 2021 (EASA AD 2021–0140). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(l) Retained Exceptions to EASA AD 2021–0140

This paragraph restates the requirements of paragraph (h) of AD 2022–09–16, with no changes.

(1) Where EASA AD 2021–0140 refers to its effective date, this AD requires using June 30, 2022 (the effective date of AD 2022–09–16).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0140 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0140 specifies revising ''the approved [aircraft maintenance program] 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 June 30, 2022 (the effective date of AD 2022–09–16).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0140 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0140, or within 90 days after June 30, 2022 (the effective date of AD 2022–09–16), whichever occurs later.

(5) The provisions specified in paragraph (4) of EASA AD 2021–0140 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0140 does not apply to this AD.

(m) Retained Provisions for Alternative Actions or Intervals From AD 2022–09–16, With New Exception

This paragraph restates the requirements of paragraph (i) of AD 2022–09–16, with new exception. Except as required by paragraph (o) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (k) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0140.

(n) Retained Terminating Action for Certain Requirements in AD 2020–20–05, With Revised References

This paragraph restates the terminating action specified in paragraph (i) of AD 2022–09–16, with revised references. Accomplishing the actions required by paragraph (k) of this AD, including incorporating Task 531135–03–1 as required by EASA AD 2021–0140, terminates Task 531135–01–2, as required by EASA AD 2020–0036R1 by the requirements in paragraph (g) of this AD.

(o) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (p) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0085, dated May 12, 2022 (EASA AD 2022–0085) and EASA AD 2023–0008, dated January 16, 2023 (EASA AD 2023–0008). Where EASA AD 2023–0008 affects the same airworthiness limitations as those in EASA AD 2022–0085, the airworthiness limitations referenced in EASA AD 2023–0008 prevail. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g) and (i) of this AD.

(p) Exceptions to EASA AD 2022–0085 and EASA AD 2023–0008

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0085 and EASA AD 2023–0008 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0085 and EASA AD 2023–0008 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 2022–0085 and EASA AD 2023–0008 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0085 and EASA AD 2023–0008, respectively, or within 90 days after the effective date of this AD, whichever occurs later. Where EASA AD 2023–0008 affects the same airworthiness limitations as those in EASA AD 2022–0085, the airworthiness limitations referenced in EASA AD 2023–0008 prevail.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0085 and EASA AD 2023–0008 do not apply to this AD.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0085 and EASA AD 2023–0008.

(q) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (o) 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 2022–0085 or EASA AD 2023–0008, as applicable.

(r) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (s) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2022–09–16 are approved as AMOCs for the corresponding provisions of EASA AD 2021–0140 that are required by paragraph (i) of this AD.

(iii) AMOCs approved previously for AD 2020–20–05 are approved as AMOCs for the corresponding provisions of EASA AD 2020–0036R1 that are required by paragraph (g) of this AD.

(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, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(s) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(t) 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 April 27, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0085, dated May 12, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2023–0008, dated January 16, 2023.

(4) The following service information was approved for IBR on June 30, 2022 (87 FR 31943, May 26, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0140, dated June 14, 2021.

(ii) [Reserved]

(5) The following service information was approved for IBR on November 19, 2020 (85 FR 65197, October 15, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0036R1, dated June 24, 2020.

(ii) [Reserved]

(6) For the EASA ADs identified in this AD, 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.*

(7) 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.

(8) 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 March 9, 2023.

Christina Underwood,

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

[FR Doc. 2023–05330 Filed 3–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0599; Airspace Docket No. 22–ASO–11]

RIN 2120–AA66

Amendment and Revocation of Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airways in the Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VOR Federal airways V–3, V–157, and V–579; and to remove V–578 in support of the FAA's VOR Minimum Operational Network (MON) Program.

DATES: Comments must be received on or before May 8, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0599 and Airspace Docket No. 22–ASO–11 using any of the following methods:

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

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

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

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

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

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:

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 the 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 modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Availability of Rulemaking Documents

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 Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA, 30337.

Incorporation by Reference

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This

document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order 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

This action proposes to amend VOR Federal airways V–3, V–157, and V–579; and to remove V–578 in support of the FAA's VOR MON Program. The proposed changes facilitate the scheduled decommissioning of the following navigation aids: Alma, GA (AMG), VOR Tactical Air Navigational System (VORTAC), Cross City, FL (CTY), VORTAC, Gators, FL (GNV), VORTAC, and Vance, SC (VAN), VORTAC. The proposed changes are described as follows:

V–3: V–3 currently extends, in two parts: From Key West, FL, to Boston, MA; and From Presque Isle, ME, to Quebec, PQ, Canada. The FAA proposes to remove the route segment between the OWENS, SC, Fix and the Florence, SC (FLO), VORTAC. This segment is dependent on the Vance, SC (VAN), VORTAC which is scheduled to be decommissioned. As a result, the OWENS Fix would be redefined using the Allendale, SC (ALD), VOR 116°(T)/117°(M) radial in place of the current Vance 203° radial. In addition, NAV CANADA has cancelled the segment of V–3 that extends through Canadian airspace to Quebec. Consequently, the FAA proposes to replace the segment from Presque Isle to Quebec with a segment that extends from Presque Isle to a Fix on the U.S./Canadian border. The Fix would be defined by the intersection of Presque Isle 270°(T)/291°(M) and the Millinocket, ME 320°(T)/340°(M) radials. The words that exclude the airspace within Canada would be removed from the route description.

As amended, V–3 would consist of three parts: From Key West, FL, to the intersection of the Savannah, GA 028° and the Allendale, SC 116°(T)/117°(M) radials (*i.e.,* the OWENS Fix); From Florence, SC, to Boston, MA; and From Presque Isle, ME, to the intersection of the Presque Isle 270°(T)/291°(M) and the Millinocket, ME 320°(T)/340°(M) radials.

V–157: Airway V–157 consists of two parts: From Key West, FL, to Richmond, VA; and From Robbinsville, NJ, to Albany, NY. The FAA proposes to amend V–157 by removing the route segment between Waycross, GA and Florence, SC. As amended, V–157 would consist of three parts: From Key West, FL to Waycross, GA; From Florence, SC to Richmond, VA; and From Robbinsville, NJ to Albany, NY.

V–578: V–578 extends from Pecan, GA to Savannah, GA. The route is dependent upon the Alma, GA (AMG), VORTAC which is scheduled to be decommissioned. The route also includes the Tift Myers, GA (IFM), VOR, which is not operational. Without those navigation facilities, V–158 is no longer viable so the FAA proposes to remove the entire route.

V–579: V–579 extends from Lee County, FL to Vienna, GA. The route is dependent upon the Cross City, FL (CTY), VORTAC and the Gators, FL (GNV), VORTAC which are being decommissioned. The route also includes the Tift Myers, GA (IFM), VOR which is no longer operational. The FAA proposes to remove the segments from St. Petersburg, FL to Vienna, GA. As amended, V–579 would extend from Lee County, FL to St. Petersburg, FL.

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 Department of Transportation (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.

List 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 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–3 [Amended]

From Key West, FL; INT Key West 083° and Dolphin, FL, 191° radials; Dolphin; Ft. Lauderdale, FL; Palm Beach, FL; Treasure, FL; Melbourne, FL; Ormond Beach, FL; Brunswick, GA; INT Brunswick 014° and Savannah, GA, 177° radials; Savannah; to INT Savannah 028° and Allendale, SC, 116° radials. From Florence, SC; Sandhills, NC; Raleigh-Durham, NC; INT Raleigh-Durham 016° and Flat Rock, VA, 214° radials; Flat Rock; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena; Solberg, NJ; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; Hartford, CT; INT Hartford 084° and Boston, MA, 224° radials; to Boston. From Presque Isle, ME; to INT Presque Isle 270°T/291°M and the Millinocket, ME 320°T/340° radials. The airspace within R–2916, R–2934, R–2935, is excluded.

* * * * *

V–157 [Amended]

From Key West, FL; INT Key West 038° and Dolphin, FL, 244° radials; Dolphin; INT Dolphin 331°and La Belle, FL, 113° radials; La Belle; Lakeland, FL; Ocala, FL; INT Ocala 346° and Taylor, FL,170° radials; Taylor, FL; to Waycross, GA. From Florence, SC; Fayetteville, NC; Kinston, NC; Tar River, NC; Lawrenceville, VA; to Richmond, VA; From Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Deer Park, NY, 326° radials; INT Deer Park 326° and Kingston, NY, 191° radials; Kingston, NY; to Albany, NY. The airspace within R–6602A, B, and C is excluded when active.

* * * * *

V–578 [Removed]

* * * * *

V–579 [Amended]

From Lee County, FL; INT Lee County 310° and Sarasota, FL, 156° radials; Sarasota; to St. Petersburg, FL.

* * * * *

Issued in Washington, DC, on March 9, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–05566 Filed 3–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0443; Airspace Docket No. 22–AGL–21]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Sandusky, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Sandusky, MI. The FAA is proposing this action to support new public instrument procedures.

DATES: Comments must be received on or before May 8, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0443 and Airspace Docket No 22–AGL–21 using any of the following methods:

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

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

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

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

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

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 CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

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 establish Class E airspace extending upward from 700 feet above the surface at Sandusky City Airport, Sandusky, MI, to support instrument flight rule operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Availability of Rulemaking Documents

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 the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order 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 is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Sandusky City Airport, Sandusky, MI.

This action supports new public instrument procedures.

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.

List 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 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Sandusky, MI [Establish]
Sandusky City Airport, MI
(Lat. 43°27′20″ N, long. 82°50′30″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sandusky City Airport.

Issued in Fort Worth, Texas, on March 14, 2023.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–05664 Filed 3–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0721; Airspace Docket No. 22–ASW–16]

RIN 2120–AA66

Revocation of Jet Route J–184 and Establishment of Area Navigation Route Q–180; Southwest United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Jet Route J–184 and establish Area Navigation (RNAV) route Q–180 in the southwest United States. The existing Jet Route has service limitations associated with signal coverage related issues. The new RNAV route would replace the Jet Route, as well as provide additional RNAV routing within the National Airspace System (NAS) in support of transitioning it from a ground-based to satellite-based navigation system.

DATES: Comments must be received on or before May 8, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0721 and Airspace Docket No. 22–ASW–16 using any of the following methods:

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

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

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

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

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

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

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

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 the 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 modify the enroute structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental,

and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Availability of Rulemaking Documents

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 Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Jet Routes are published in paragraph 2004 and United States Area Navigation Routes (Q-routes) are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order 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.

Background

To support of the large amount of air traffic transiting the NAS between the west coast and the southeast United States, the FAA requires aircraft flying between the Phoenix, AZ, area and West Texas area to be on Jet Routes, including J–184, when flying above 18,000 feet mean sea level (MSL) or Flight Level 180 (FL180). This requirement ensures a safe, efficient flow of air traffic through the area, prevents air traffic bottlenecks, and keeps aircraft clear of the Air Traffic Control Airspace Areas (ATCAA), the White Sands Missile Range (WSMR), and the R–5107 restricted areas located south of WSMR that exist in the area.

During a periodic flight inspection of the Deming, NM, Very High Frequency (VHF) Omni-Directional Range (VOR)/Tactical Air Navigation (VORTAC) navigational aid (NAVAID) conducted June 3–4, 2021, the FAA identified the Deming VORTAC 274° radial was out of tolerance and not available for navigational purposes on Jet Route J–184. As a result of the out of tolerance signal coverage finding, the FAA published a Notice to Air Missions (NOTAM) indicating that the segment of J–184 from the Deming VORTAC 274° radial to the Buckeye, AZ, VORTAC was not available except to aircraft equipped with a suitable Area Navigation (RNAV) system with Global Positioning Service (GPS) capability. The FAA has been unable to overcome the Deming VORTAC 274° radial signal coverage issue since it was identified. The NOTAM requiring aircraft flying J–184 between the Deming and Buckeye VORTACs to be RNAV GPS equipped has remained in effect.

To address the requirement for aircraft flying J–184 between the Deming and Buckeye VORTACs to be RNAV GPS equipped, the FAA is planning to replace J–184 with a new RNAV route, Q–180, that would overlay the J–184 route of flight. The new Q-route would extend between the Buckeye, AZ, VORTAC located west of Phoenix, AZ, and the Newman, TX, VORTAC located in West Texas. The new Q–180 would mitigate the Deming VORTAC signal coverage issue, enable removal of the NOTAM requiring RNAV GPS equipage on J–184, and continue supporting the safe, efficient flow of air traffic equipped with RNAV capabilities between the Phoenix area and the West Texas area. Lastly, the new Q-route would support the FAA's Next Generation Air Transportation System (NextGen) efforts to modernize the NAS navigation system from ground-based to satellite-based.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Jet Route J–184 and establish RNAV route Q–180 due to service limitations associated with signal coverage related issues on J–184. The proposed Air Traffic Service (ATS) route actions are described below.

J–184: J–184 currently extends between the Buckeye, AZ, VORTAC and the Newman, TX, VORTAC. The FAA proposes to remove the route in its entirety.

Q–180: Q–180 is a new RNAV route that would extend between the Buckeye, AZ, VORTAC and the Newman, TX, VORTAC NAVAIDs. This new Q-route would provide RNAV routing along the same route of flight as Jet Route J–184 and would retain flight safety and NAS efficiency for aircraft transiting between the Phoenix, AZ, and El Paso, TX, areas.

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.

List 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 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–184 [Removed]

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–180 Buckeye, AZ (BXK) to Newman, TX (EWM) [New]

Buckeye, AZ (BXK)	VORTAC	(Lat. 33°27′12.45″ N, long. 112°49′28.54″ W)
WOBUG, NM	FIX	(Lat. 32°35′24.04″ N, long. 108°53′44.19″ W)
Deming, NM (DMN)	VORTAC	(Lat. 32°16′31.99″ N, long. 107°36′19.80″ W)
Newman, TX (EWM)	VORTAC	(Lat. 31°57′06.43″ N, long. 106°16′20.85″ W)

* * * * *

Issued in Washington, DC, on March 15, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–05655 Filed 3–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 231

[Docket Number: 230313–0074]

RIN 0693–AB70

Preventing the Improper Use of CHIPS Act Funding

AGENCY: CHIPS Program Office, National Institute of Standards and Technology, Department of Commerce.

ACTION: Proposed rule; request for public comment.

SUMMARY: The CHIPS Act (the Act) established an incentives program to reestablish and sustain U.S. leadership across the semiconductor supply chain. To ensure that funding provided through this program does not directly or indirectly benefit foreign countries of concern, the Act includes certain limitations on funding recipients, such as prohibiting engagement in certain significant transactions involving the material expansion of semiconductor manufacturing capacity in foreign countries of concern and prohibiting certain joint research or technology licensing efforts with foreign entities of concern. The Department of Commerce (Department) is issuing, and requesting public comments on, a proposed rule to set forth terms related to these limitations and procedures for funding recipients to notify the Secretary of Commerce (Secretary) of any planned significant transactions that may be prohibited.

DATES: To be assured of consideration, written comments must be received on or before May 22, 2023.

ADDRESSES: You may submit comments, identified by docket number NIST–2023–0001 or RIN 0693–AB70, through any of the following:

- Federal eRulemaking Portal at *https://www.regulations.gov.* You can find this proposed rule by searching for its *regulations.gov* docket number NIST–2023–0001.
- *Email: guardrails@chips.gov.* Include RIN 0693–AB70 in the subject line of the message.

The Department will consider all comments received before the close of the comment period. Filers should name their files using the name of the person or entity submitting the comments except where comments are intended to be anonymous.

The Department will accept anonymous comments or comments containing business confidential information (BCI). Anyone 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 provide a non-confidential submission that summarizes the BCI in sufficient detail to permit a reasonable understanding of the substance of the information by the public. For anyone seeking to submit comments with BCI, the file name of the business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' and it must be indicated on 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'' and ''P'' 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 ''BC'' will be part of the public record and will generally be made publicly available through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sam Marullo, Director, CHIPS Policy at (202) 482–3844 or *askchips@chips.gov.* Please direct media inquiries to the CHIPS Press Team at *press@chips.gov.*

SUPPLEMENTARY INFORMATION:

Background

Semiconductors are essential components of electronic devices that enable telecommunications and grid infrastructure, run critical business and government information technology and operational technology systems, and are necessary to a vast array of products, from automobiles to fighter jets. Recognizing the criticality of supply chain security and resilience for semiconductors and related products, the President signed the *Executive Order on America's Supply Chains* [1] shortly after taking office in February 24, 2021. This Executive order, among other things, directed several Departments to undertake assessments of critical supply chains; several of the resulting reports address microelectronics and related subcomponent supply chains.[2] The resulting June 2021 *White House Report on Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth* [3]

[1] *https://www.govinfo.gov/content/pkg/FR-2021-03-01/pdf/2021-04280.pdf.*

[2] The White House, *The Biden-Harris Plan to Revitalize American Manufacturing and Secure Critical Supply Chains in 2022* (February 24, 2022), available at *https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/the-biden-harris-plan-to-revitalize-american-manufacturing-and-secure-critical-supply-chains-in-2022/.*

[3] Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth: 100-Day Reviews under Executive Order 14017 (June 2021), available at *https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf.*

highlighted the insufficient domestic manufacturing capacity for semiconductors. The White House Report noted that the United States lacks advanced semiconductor manufacturing capabilities and is dependent on geographically concentrated and in some cases potentially unreliable sources of supply. It recommended dedicated funding to advance semiconductor manufacturing, and research and development to support critical manufacturing, industrial, and defense applications.

In August 2022, the Congress passed the CHIPS Act of 2022,[4] which amended Title XCIX of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 15 U.S.C. 4651 *et seq.,* also known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America Act. Together, these statutory provisions (collectively, the CHIPS Act or Act), establish a semiconductor incentives program (CHIPS Incentives Program) that will provide funding, including via grants, cooperative agreements, loans, loan guarantees, and other transactions, to support investments in the construction, expansion, and modernization of facilities in the United States for the fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment.

The CHIPS Incentives Program aims to strengthen the security and resilience of the semiconductor supply chain by mitigating gaps and vulnerabilities. It aims to ensure a supply of secure semiconductors essential for national security and to support critical manufacturing industries. It also aims to strengthen the resilience and leadership of the United States in semiconductor technology, which is vital to national security and future economic competitiveness of the United States.

The CHIPS Incentives Program is administered by the CHIPS Program Office (CPO) within the National Institute of Standards and Technology (NIST) of the United States Department of Commerce. CPO is separately issuing Notices of Funding Opportunity (NOFO) that lay out the procedures by which interested organizations may apply for CHIPS Incentives Program funds, and criteria under which applications will be evaluated.

To protect national security and the resiliency of supply chains, CHIPS Incentives Program funds may not be provided to a foreign entity of concern, such as an entity that is owned by, controlled by, or subject to the jurisdiction or direction of a country that is engaged in conduct that is detrimental to the national security of the United States. This proposed rule incudes a detailed explanation of what is meant by foreign entities of concern, as well as a definition of ''owned by, controlled by, or subject to the jurisdiction or direction of.''

In further support of U.S. national security interests, CHIPS Incentives Program recipients (funding recipients) are required by the Act to enter into an agreement (required agreement) with the Department restricting engagement by the funding recipient or its affiliates in any significant transaction involving the material expansion of semiconductor manufacturing capacity in foreign countries of concern. In recognition that some potential applicants for CHIPS Incentives may have existing facilities in foreign countries of concern, and to minimize potential supply chain disruptions, the Act includes exceptions for certain transactions involving older (legacy) semiconductor manufacturing in a foreign country of concern.

A funding recipient must notify the Secretary of any planned significant transactions of the funding recipient or its affiliates involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern, including in cases where it believes the transaction is allowed under the exceptions in 15 U.S.C. 4652(a)(6)(C)(ii). Terms related to this notification requirement are defined in Subpart A of this rule. The Secretary will provide direct notice to the funding recipient that a review of a transaction is being conducted and, later, that the Secretary has reached an initial determination regarding whether the transaction is prohibited. Funding recipients may submit additional information or request that the initial determination be reconsidered, after which the Secretary will provide a final determination. In making determinations, the Secretary will consult with the Director of National Intelligence and the Secretary of Defense.

The Secretary will initiate review of transactions by funding recipients through self-reported notifications; the Secretary also may initiate a review of non-notified transactions, including based on information provided by other government agencies or information from other sources.

Failure by a funding recipient (or its affiliate) to comply with this restriction on semiconductor manufacturing capacity expansion in foreign countries of concern may result in recovery of the full amount of Federal financial assistance provided to the funding recipient (referred to in the Act as the ''Expansion Clawback.'')

The Act also prohibits funding recipients from knowingly engaging in any joint research or technology licensing effort with a foreign entity of concern that relates to a technology or product that raises national security concerns as determined by the Secretary and communicated to the funding recipient before engaging in such joint research or technology licensing. A funding recipient's required agreement will include a commitment that the funding recipient and its affiliates will not conduct prohibited joint research or technology licensing. Failure to comply with this restriction may also result in recovery of the full amount of Federal assistance (referred to in the Act as the ''Technology Clawback.'')

Discussion of Proposed Rule

This proposed rule defines terms used in the Act (including terms that will be used in required agreements with funding recipients), identifies the types of transactions that are prohibited under the Expansion Clawback and Technology Clawback sections of the Act, and provides a description of the process for notification of transactions to the Secretary.

A. Definitions

This section provides background and explanation for the way that specific terms used in the Act relating to these prohibitions are defined. Some key terms used in the Expansion Clawback section of the Act are not defined in the Act; however, the definitions of these terms in the proposed rule will affect which business transactions are exceptions to the Expansion Clawback prohibition. The Department has carefully considered each of these terms and is proposing definitions in this proposed rule that are consistent with the intent of the overall CHIPS Incentives Program and the Act. This section discusses the definitions and factors considered in developing these definitions.

The Expansion Clawback section of the Act (15 U.S.C. 4652(a)(6)) states that funding recipients may not engage in any significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern. Consistent with the Act, the proposed rule extends this prohibition to the funding recipient's affiliates, to ensure the purpose of the

[4] CHIPS Act of 2022 (Division A of Pub. L. 117–167).

prohibition is not circumvented. The proposed rule defines terms such as ''affiliate,'' ''significant transaction,'' ''material expansion,'' and ''semiconductor manufacturing.''

In addition, the Expansion Clawback section of the Act spells out exceptions to the prohibition on semiconductor manufacturing capacity expansions, which apply to existing facilities manufacturing legacy semiconductors and for significant transactions involving semiconductor manufacturing capacity expansion for new facilities producing legacy semiconductors that predominately serve the market of a foreign country of concern. The proposed rule defines key terms for these exceptions, including ''legacy semiconductors,'' ''predominately serves the market,'' and ''existing facilities.''

The proposed rule defines ''affiliate'' to include the funding recipient's parent company or parent companies (*i.e.,* entities that directly or indirectly own a majority of the funding recipient's voting interest), the funding recipient's majority-owned subsidiaries, and entities that are majority owned by a parent company or any majority-owned subsidiary of a parent company. This proposed rule defines the term ''significant transaction'' to mean a transaction whose value exceeds $100,000, or series of transactions which in the aggregate during the applicable term of a required agreement are valued at $100,000 or more. This monetary value was chosen in order to provide a clear and quantitative standard that captures even modest expansions by funding recipients of semiconductor manufacturing capacity in foreign countries of concern.

The term ''material expansion'' is defined in the proposed regulations to include the construction of new facilities and the addition of new semiconductor manufacturing capacity and uses a quantitative measure of 5 percent of existing capacity to provide clear and predictable scoping. This definition is meant to allow for funding recipients that have existing facilities in a foreign country of concern to continue to operate and maintain their competitiveness by allowing for technological upgrades, as long as overall semiconductor manufacturing capacity is not increased by more than 5 percent.

''Semiconductor manufacturing'' is proposed to be defined as semiconductor fabrication and/or packaging and includes both front-end fabrication as well as back-end manufacturing (assembly, testing, and packaging of semiconductors). The term ''legacy semiconductor'' is defined in the Act as it pertains to logic semiconductors, but not as it pertains to other types of semiconductors (*e.g.,* memory), or for packaging of semiconductors. With regard to memory semiconductors, the proposed definition was drafted to be harmonious with current export control levels. With regard to packaging, the proposed definition was drafted to exclude semiconductors packaged utilizing 3D integration, which is considered advanced packaging. In addition, the Act provides that semiconductors ''critical to national security'' are not considered legacy semiconductors, regardless of the production technology used. A list of these ''semiconductors critical to national security,'' as determined with input from the Secretary of Defense and the Director of National Intelligence, is included in this proposed rule.

The proposed rule defines ''predominately serves the market'' by referring to where the final products incorporating the legacy semiconductors are used or consumed. This definition is designed to ensure that exceptions under 15 U.S.C. 4652(a)(6)(C)(ii) are limited to legacy semiconductors that remain in the market of the country in which they are manufactured, rather than semiconductors that are incorporated into secondary products and for export and use internationally.

The proposed rule defines ''existing facility,'' as excluding facilities that undergo ''significant renovations'' after the required agreement. Therefore, transactions that significantly renovate an existing facility (*i.e.,* add an additional line or otherwise increase semiconductor manufacturing capacity by 10 percent or more) will not fall under the exception for existing facilities or equipment for manufacturing legacy semiconductors in 15 U.S.C. 4652(a)(6)(C)(ii)(I).

The second prohibition (the Technology Clawback section of the Act (15 U.S.C. 4652(a)(5)(C)) bans funding recipients from engaging in joint research or technology licensing efforts with foreign entities of concern that relate to a technology or product that raises national security concerns. The proposed rule extends this prohibition to the funding recipient's affiliates, to ensure the purpose of the prohibition is not circumvented. Definitions included in this proposed rule in this regard include ''joint research,'' ''technology licensing'' and ''technology or product raising national security concerns.'' This proposed rule defines ''a technology or product that raises national security concerns'' as (a) semiconductors critical to national security and (b) electronics-related products and technologies controlled by the Department in the Export Administration Regulations for national security or regional stability reasons.

The Department recognizes that some funding recipients may have pre-existing contracts or other arrangements which commit them to joint research or technology licensing with foreign entities of concern that relate to a technology or product that raises national security concerns. CPO invites comments from interested parties on the extent and nature of these pre-existing arrangements, the ability of funding recipients to abandon them with or without penalty, and the feasibility and impact of exempting joint research or technology licensing done pursuant to an agreement which predates this rule.

Statutory definitions of several terms, *e.g.,* ''person,'' ''foreign entity,'' ''foreign country of concern,'' and ''foreign entity of concern,'' are incorporated into the regulations in subpart A, Definitions, §§ 231.101 through 231.124. The definitions of several terms, such as ''person'' are not expanded upon. ''Foreign entity,'' is defined per the statute and is understood to include not only an entity incorporated in a foreign country, but also to include any person owned by, controlled by, or subject to the jurisdiction or direction of a foreign entity, including any wholly owned U.S. subsidiaries. The term ''foreign entity of concern'' was defined in the Act with reference to specific categories of entities. However, with authority provided in the Act (15 U.S.C. 4651(8)(E)) the Secretary proposes to designate three additional categories of entities that are determined to be engaged in conduct detrimental to the national security or foreign policy of the United States: entities included on the Bureau of Industry and Security's Entity List, entities included on the Department of the Treasury's list of Non-Specially Designated Nationals (SDN) Chinese Military-Industrial Complex Companies (NS–CMIC List), and entities identified in the Federal Communications Commission's list of Equipment and Services Covered By section 2(a) of the Secure and Trusted Communications Networks Act of 2019 as providing covered equipment or services.

Finally, the proposed rule uses the term ''funding recipient'' rather than ''covered entity.'' A funding recipient in these proposed regulations is a subset of covered entities as defined in the Act at 15 U.S.C. 4651. Whereas covered entities in the Act are those eligible to apply for financial assistance from the

Department, funding recipients are those that have been awarded and receive the financial assistance.

B. General

This subpart primarily tracks the statutory language contained in the Expansion Clawback and Technology Clawback sections of the Act. Additionally, this subpart provides that funding recipients are required to maintain records related to significant transactions in a manner consistent with the recordkeeping practices used in their ordinary course of business. This requirement applies to the 10-year duration of the required agreement and for a period of seven years after any significant transaction.

C. Notification and Review

While this proposed rule sets out definitions and parameters for which types of transactions by funding recipients will be prohibited, and which types qualify for an exception, in accordance with the Act, funding recipients are required to notify the Secretary of any planned significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern (including those that may meet the criteria of one of the exceptions). This subpart provides details on the process by which funding recipients shall notify the Secretary of planned significant transactions, the specific information regarding the transaction that must be included, and the way in which transactions will be considered by the Secretary, including potential mitigations. This subpart also describes the process for review of actions that may violate the prohibition on certain joint research or technology licensing, and the recovery of Federal funds in the case of violations.

D. Other Provisions

In recognition of the fact that semiconductor and semiconductor manufacturing technology evolve and mature over time, the CHIPS Act requires the Secretary of Commerce to regularly assess which additional technology should be considered for inclusion in the meaning of the term ''legacy semiconductor.'' The Act requires the Secretary to identify additional semiconductor technology that will be considered ''legacy'' not later than August 9, 2024, and at least every two years thereafter for a period of eight years. This portion of the proposed rule tracks this requirement; given the rapid cadence of technology adoption and relatively limited duration of market relevance of memory technology nodes, the Secretary may decide to reevaluate the technologies that are considered ''legacy semiconductors'' in this regard on a more frequent basis. The Secretary will provide an opportunity for public input and comment for any proposed updates.

Lastly, this subpart notes that any false or fraudulent information or statements knowingly or willingly provided to the Secretary by funding recipients may result in fines and/or imprisonment in accordance with the False Statements Accountability Act of 1996.

Classification

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is significant as defined by Section 3(f)(1) for purposes of Executive Order 12866.

Regulatory Impact

Background

This notice of proposed rulemaking (NPRM) implements certain provisions of the CHIPS Act related to the clawback of funds provided under the CHIPS Incentives Program. The Act established a program in the Department to provide Federal financial assistance totaling $39 billion to incentivize investment in facilities and equipment in the United States for the fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors. Entities choosing to pursue funding through the CHIPS Incentives Program will undergo a rigorous application and selection process. The first Notice of Funding Opportunity (NOFO) for this Program seeks applications for funding projects for the construction, expansion, or modernization of commercial facilities for the front- and back-end fabrication of leading-edge, current-generation and mature-node semiconductors, and explains the requirements and expectations for funding applicants and recipients. Applications for funding are voluntary and are separate from this proposed rule. The costs of applying for funding are not considered here.

Among the conditions of funding, all funding recipients will be required to enter into an agreement with the Department prohibiting them from engaging in significant transactions involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern. In addition, funding recipients will be prohibited from engaging in joint research or technology licensing efforts with foreign entities of concern that relate to a technology or product that raises national security concerns. Violations of either of these prohibitions may result in recovery of up to the full amount of Federal funding provided. This proposed rule implements these prohibitions in the Act, called the ''Expansion Clawback'' and ''Technology Clawback.'' Because these prohibitions are an integral part of the CHIPS Incentives Program, the impact of this proposed rule is considered in conjunction with the broader impacts of the program as a whole.

Regulated Entities

CHIPS Incentives Program funding recipients constitute the sole population of entities potentially directly impacted by this proposed regulation. It is unknown exactly how many entities will seek and be granted funding or the specific amount of the awards. Business statistics on domestic semiconductor manufacturing provide some information about the number of U.S. businesses potentially affected by this rule. According to the most recent data available from the U.S. Census Bureau, in 2019, there were a total of 723 establishments in the United States involved in ''semiconductor and related device manufacturing'' (North American Industry Classification System (NAICS) 333413) and a total of 150 establishments involved in the manufacturing of machinery used to make semiconductors (NAICS 333242).[5] It is anticipated that only a fraction of such establishments are likely to apply for and receive funding through this program. Furthermore, only a few companies currently maintain productive capacity in foreign countries of concern and produce semiconductors that fall within the thresholds contemplated in the proposed regulation.[6] Therefore, only a small subset of establishments would potentially be subject to the prohibitions on expansion of manufacturing capacity and joint research and, in the case of

[5] U.S. Census Bureau, Department of Commerce, *2019 SUSB Annual Data Tables by Establishment Industry* (February 2022), available at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html*.

[6] SEMI, *World Fab Forecast* (2022). These few companies referred to companies that have productive capacity in countries of concern and are not headquartered in countries of concern.

violations, the potential clawback of funds.

Potential Impact on Investments

The proposed rule would limit funding recipients' ability to invest in new semiconductor manufacturing capacity in countries of concern. This limitation is intended to ensure that Federal funding is used, as intended by the CHIPS Act, to incentivize investment in semiconductor facilities and equipment in the United States. At this time, it is unknown how the investments in countries of concern by those that are not funding recipients will be affected.

Although the provisions in this proposed rule would prohibit funding recipients from establishing most new manufacturing capacity in countries of concern, recipients with existing facilities in countries of concern would be able to continue current operations. The proposed rule would also allow recipients to upgrade technology at existing foreign facilities (in compliance with export controls) if overall production capacity is not increased. In addition, recipients could modestly expand capacity at existing facilities producing mature (legacy) technology. Finally, this proposed rule would allow recipients to make new investments in manufacturing capacity in countries of concerns in the limited circumstance in which such production of legacy-level semiconductors would ''predominately serve the market of the foreign country of concern.'' These provisions ensure minimal disruptions to revenues, for the foreseeable future, to firms that currently have productive capacity in countries of concern. It is estimated that less than ten firms may be impacted.[7]

This regulatory impact analysis does not consider the private costs to funding recipients of limiting their investments in countries of concern. In pursuing program funding, applicants are expected to weigh the private costs and benefits of the conditions for funding outlined by the provisions in this proposed rule. CHIPS Incentives Program funding is intended to complement, not replace, private investment and other sources of funding. Using $39 billion in financial assistance, the CHIPS Incentives Program is designed to restore U.S. leadership in semiconductor manufacturing and innovation. Through the first funding opportunity, released February 28, 2023, the CHIPS Incentives Program aims to (1) to build at least two new large-scale cluster of leading-edge logic fabs, (2) to be home to multiple high-volume advanced packaging facilities, (3) to produce high-volume leading-edge dynamic random-access memory (DRAM) chips on economically competitive terms, and (4) to increase its production capacity for the current-generation and mature node chips that are most vital to U.S. economic and national security. To achieve these aims, the CHIPS Incentives Program funding awards are designed to catalyze private investment in the United States.

By restricting funding recipients' ability to invest in new semiconductor manufacturing capacity in countries of concern, the proposed rule would also likely catalyze investment outside countries of concern.

In particular, the demand for leading-edge, current, and mature semiconductors are estimated to increase significantly in the next decade, from approximately $600 billion per year in 2022 to approximately $1 trillion revenue per year within the next 10 years.[8] An increase in global productive capacity for a wide variety of semiconductors will be needed to supply the increased chip demand. The restriction on expanding manufacturing capacity in countries of concern is likely to increase the need for additional capacity to be built outside countries of concern.

Anticipated Transfers of Funds

Participants in the incentives program that violate the prohibitions face the potential ''clawback'' of Federal funding. For purposes of this analysis, any recovery of funding resulting from entities engaging in activities prohibited by this proposed regulation is considered to be a transfer of funds of an equal amount of the funding award (plus interest) back to the government. This recovery of funds could have negative implications for the award recipients' financial condition and, for public companies, could affect their stock valuation. The recovery of funds might also affect award recipients' willingness or ability to continue constructing semiconductor facilities and equipment in the United States.

The potential clawback of funds is designed to serve as a significant deterrent to violations. The Department, therefore, expects that few, if any, funding recipients will violate the prohibitions laid out in this proposed rule. Damage to corporate reputation resulting from violating an agreement with the U.S. government, while not readily quantifiable, would also be a significant deterrent to violations. Thus, the likelihood of violations that result in a recovery of funding is small and the impact of the transfer is expected to be minimal across all incentives program participants. Furthermore, even in the unlikely event that a violation occurs and clawbacks become necessary, the impacted chipmakers are highly unlikely to abandon their finished or ongoing investments in the United States.

Two reasons make this outcome unlikely: First, because of the high fixed costs associated with chip production, companies are likely to either continue producing in facilities that are already built or finish building ongoing investment projects. Second, semiconductor production capacity is only likely to be built with a high degree of confidence of customer demand, usually with advanced purchases of wafer capacity prior to completion of the facility construction. Abandoning a finished or ongoing project could jeopardize customer relationships and ongoing revenue. The incentives associated with CHIPS are expected to incentivize applicants to locate their productive capacity within the United States. Once those decisions are made, and projects are under-way, there would likely be significant costs to reverse such decisions.

Anticipated Reporting and Recordkeeping Costs

This proposed rule establishes a notification requirement for funding recipients who are planning certain transactions in foreign countries of concern. This notification requirement applies to recipients pursuing transactions that would: (1) expand existing capacity for manufacture of legacy semiconductors; or (2) provide new capacity for legacy semiconductors that primarily serve the market of the foreign country of concern.

The Department estimates that there are not more than a handful of potential CHIPS Incentives Program applicants with existing facilities in foreign countries of concern that may seek to expand manufacturing capacity under the provisions of this proposed rule, and therefore expects few notifications. However, for purposes of this analysis, the Department has conservatively assumed a maximum of 10 notifications per year. The proposed notifications would require general information about

[7] SEMI, *World Fab Forecast* (2022). These firms refer to those with productive capacity in countries of concern, are headquartered outside of countries of concern.

[8] Gartner, *Semiconductor Revenue Forecast* (January 2023); McKinsey & Company, *The Semiconductor Decade: A Trillion-Dollar Industry* (April 2022), available at *https://www.mckinsey.com/industries/semiconductors/our-insights/the-semiconductor-decade-a-trillion-dollar-industry*.

planned transaction, such as the names, location and ownership of the parties involved; information about the manufacturing facility such as current and proposed semiconductor production technology to determine if it meets the ''legacy'' requirement; current and proposed manufacturing capacity to determine if the ''existing facility'' definition is met; and information about the markets or end users for the semiconductors to be manufactured in the case of new capacity. Because the funding recipients would have initiated and planned these transactions, the basic information required in the notification would be known and readily available, and the notification process itself is not expected to be burdensome. The Department estimates that it would take recipients two hours to provide each notification, or a total of 20 hours per year for all recipients.

Anticipated Administrative (Government) Costs

Once received, notifications would be evaluated by the Department as to whether the transactions meet one of the permissible criteria. This analysis will be performed by Department staff, including an anticipated initial review and, if necessary, consultation with industry and technology experts, as well as with the funding recipient. As the number of notifications that will be submitted each year is expected to be small, the staffing requirements for review and analysis of the notifications is also expected to be small. Assuming conservatively 10 notifications per year, two senior analysts and two licensing officers/electronics engineers could handle notifications with a fraction of their annual time. The total estimated cost would be approximately $110,000 per year (10 notifications * 4 staff at a GS–14 salary ($137/hr) [9] * 20 hours each to review for each notification).

The Federal Government may also incur costs for monitoring and enforcement efforts. Because the program is designed to deter violations, we expect that enforcement actions will rarely be needed. In those cases where the Federal Government will ultimately need to take enforcement action, the government will incur additional costs; however, the extent of those costs is currently unknown. Moreover, investments in semiconductor manufacturing are widely monitored and reported in the trade press. New or expanded semiconductor manufacturing capacity requires installation of expensive capital equipment and several years to bring into operation. It is unlikely that such expansions would go unnoticed. Therefore, to the extent that monitoring is required, we would expect that the Government would incur limited costs. The Department requests comments from the public on the anticipated monitoring and enforcement costs.

Anticipated Benefits

The provisions in this proposed rule reinforce the benefits of the CHIPS Incentives Program by ensuring that funding goes toward increasing domestic manufacturing capacity and by discouraging investments in foreign countries of concern that would raise national security concerns. The domestic investments will advance U.S. economic and national security, enhance global supply chain resilience, and cement U.S. leadership in designing and building important semiconductor technologies. In particular, these investments will help address areas where the United States has fallen behind in semiconductor manufacturing. For example, although the United States remains a global leader in chip design and research and development (R&D), it has fallen behind in manufacturing and today accounts for only roughly 10 percent of commercial global production.[10]

The CHIPS Incentives Program is expected to catalyze long-term economically sustainable growth in the domestic semiconductor industry in support of U.S. economic and national security. The Program is also expected to facilitate private investments in large-scale U.S.-based production and R&D, as well as throughout the supply chain, attracting both existing and new private investors to the U.S. semiconductor ecosystem and encouraging innovative approaches to funding industry growth. These are investments in facilities and equipment in the United States that would not occur otherwise.

The $39 billion of Federal funding is intended to serve as a catalyst to galvanize private, state, and local investment in the semiconductor industry. It is expected that this funding will lay the groundwork for long-term growth and economic sustainability in the domestic semiconductor industry and promote the secure and resilient supply chains on which the sector relies. The industry, it is anticipated, will then produce, at scale, leading-edge logic and memory chips critical to the national security and U.S. economic competitiveness. The funding is further expected to support current-generation and mature-node technologies essential for economic and national security. The funding is also expected to lead to development of a robust and skilled workforce and a diverse base of suppliers for semiconductor production. The funding will support research and development that is expected to drive innovation in design, materials, and processes that will accelerate the industries of the future. Further, it is anticipated that the funding will support the broader U.S. economy, creating good jobs accessible to all, and supporting and growing local economies and communities.

Regulatory Alternatives

There is little flexibility for regulatory alternatives regarding the provisions implemented by this proposed regulation. The CHIPS Act clearly spells out the framework for administering the prohibitions on expansions of semiconductor manufacturing capacity in foreign countries of concern. The statute details the types of transactions that are not prohibited (*i.e.,* certain types of transactions involving legacy semiconductors), and lays out a notification requirement, a timeline for review, and the potential for mitigation. The statute also requires imposing the joint research and technology licensing prohibition.

The Act does allow for certain flexibility to determine which transactions qualify as ''significant'', what is meant by ''material expansion'' of ''semiconductor manufacturing capacity'', and what constitutes a ''legacy semiconductor''. For example, the proposed definition of ''significant transaction'' includes a minimum threshold of $100,000, such that transactions involving lower monetary values would not be prohibited. Likewise, the proposed definition of ''material expansion'' refers to increases in capacity of at least 5 percent to identify expansions that would be prohibited. The proposed definition of ''predominately serves the market'' would allow for expansions where at least 85% of a facility's output by value serves a foreign market. The way in which these terms, and others, are defined thus will have an impact on which transactions may be permissible, which, in turn, could affect investment choices of funding recipients. The

[9] This value takes the 2022 hourly wage rate $68.55 for GS–14 step 5 employees in the Washington, DC region and multiplies by two to account for overhead and benefits. Wage information is available at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB.pdf.*

[10] The White House, ''Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth: 100-Day Reviews under Executive Order 14017,'' June 2021, 9, *https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf.*

Department seeks comment on these proposed definitions and how the interpretation of terms in this proposed rule would impact industry members, including, in particular, those with existing facilities in a foreign country of concern.

Conclusion

This proposed rule, which implements the CHIPS Act's provisions for recovery of funding for violating the prohibitions on certain expansion of semiconductor manufacturing and certain joint research or technology licensing is expected to provide significant deterrence against potential violations and to reinforce CHIPS Act objectives to incentivize investment in semiconductor facilities and equipment in the United States. Together with the Act's infusion of funding into semiconductor manufacturing, the proposed rule is expected to provide substantial national security and economic benefits. As a result, the overall benefits of this proposed rule are expected to significantly outweigh any negative impact from the prohibitions on expansions of capacity in foreign countries of concern. The Department requests comments on any aspect of this impact assessment.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this proposed rule because this rule, which places certain limitations on funding recipients, relates to ''public property, loans, grants, benefits, or contracts.'' [11] However, because the Department is interested in receiving public input to help inform the actions within this rulemaking, this proposed rule includes a 60-day period for public comment.

The CHIPS Program Office seeks broad input from all interested stakeholders on this proposed rule, including information on limitations and procedures for funding recipients to notify the Secretary of any planned significant transactions that may be prohibited. Specifically, the CHIPS Program Office requests information regarding the definitions of ''significant transaction,'' ''material expansion,'' ''semiconductor manufacturing,'' ''legacy semiconductors,'' ''predominately serves the market,'' ''a technology or product that raises national security concerns,'' and ''existing facilities.'' Commenters are encouraged to address any of the specific definitions, any other parts of this proposed rule, or the proposed rule more generally. To properly submit comments on this rule, please follow the submission instructions in the **ADDRESSES** section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule if adopted, would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA). A summary of the factual basis for this certification is below.

The first prohibition in this proposed rule (described in the Expansion Clawback section of the Act) applies to significant transactions involving the material expansion of semiconductor manufacturing capacity in foreign countries of concern (15 U.S.C. 4652(a)(6)(C)(i)). There are two industry sectors identified by their classification under the North American Industry Classification System (NAICS) that are potentially impacted: Semiconductor and related device manufacturing (NAICS 334413) and semiconductor machinery manufacturing (NAICS 333242). According to the most recent data from the Bureau of the Census (*2019 SUSB Annual Data Tables by Establishment Industry,* U.S. Census Bureau, February 2022), in 2019 there were a total of 723 establishments in the United States involved in ''semiconductor and related device manufacturing'' (NAICS 333413). Note that this industry category includes an unknown number of manufacturers of ''related devices'' such as solar cells, fuel cells and light emitting diodes that are not impacted by the prohibitions in this proposed rule. It is likely that many of the small entities in this NAICS fall into this ''related devices'' category, as semiconductor device manufacturing is a highly complex, highly capital-intensive industry beyond the technical and financial capability of most small businesses.

Of these 723 firms in the semiconductor and related devices NAICS segment, 655 (90 percent) were small businesses with fewer than 500 employees; over a third (251) had five or fewer employees. There were 68 establishments with 500 or more employees. Total employment in the sector was 97,617, of which larger establishments with 500 or more employees accounted for over 80 percent. The total number of establishments in 2019 involved in manufacturing the machinery that is used to make semiconductors (NAICS 333242) was 150, of which 125 had 500 or fewer employees.

While small entities may qualify for and receive incentive awards under the program (either individually or as part of a group), they are not likely to engage in the types of transactions that are addressed in this proposed rule. Specifically, they will not likely engage in any significant transaction involving the material expansion of semiconductor manufacturing capacity in foreign countries of concern (15 U.S.C. 4652(a)(6)(C)(i)). Of the entities chosen to receive CHIPS Incentives Program awards, the expansion prohibition only applies to those that either plan to expand an existing semiconductor manufacturing facility in a foreign country of concern or plan to establish such a facility in a country of concern. Technology upgrades of existing facilities (that do not expand semiconductor manufacturing capacity) are not affected, and there is an exception for semiconductor manufacturing capacity expansions of existing facilities involving manufacture of legacy semiconductors. To the extent that there are semiconductor manufacturers participating in the CHIPS program that are small businesses, they would likely fall into this ''legacy semiconductor'' category. Leading-edge semiconductor manufacturing targeted by this prohibition (because of its importance to national security) is an exceedingly complex and capital-intensive industry that is dominated by large multinational firms.

The second prohibition codified in this proposed rule (described in the Technology Clawback section of the Act) prevents award recipients from entering into joint research or technology licensing efforts with foreign entities of concern that relate to a technology or product that raises national security concerns (15 U.S.C. 4652(a)(5)(C)). This prohibition has been largely harmonized with existing oversight and restrictions on these types of transactions imposed by the Export Administration Regulations (15 CFR parts 730 through 744). Therefore, the (additional) economic impact of this prohibition will be negligible for both large and small entities.

Based on the above, the Department does not anticipate that this proposed

[11] In addition, the provisions of this rule implementing the Expansion Clawback provisions of the Act are exempt from the rulemaking provisions of the Administrative Procedure Act pursuant to 15 U.S.C. 4652(a)(6)(A)(iii).

rule will have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act. This rule creates new requirements by establishing a notification requirement for funding recipients that plan to engage in any significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern that may be permitted if certain conditions are met. Public reporting burden for this notification is estimated to average 20 hours (10 respondents * 2 hours per response), including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. The total estimated cost is $110,000 (10 notifications * 4 staff @GS–14 salary ($137/hr) * 20 hours each to review for each notification). The $137 per hour cost estimate for this information collection is consistent with the GS-scale salary data for a GS–14 step 5. The information requested in these notifications is related to business transactions that are being proposed or planned by funding recipients. Since it is the funding recipients themselves that are initiating these transactions, the information requested on them will be known to them and readily available.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility.

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used.

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

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses).

Comments on these or any other aspects of the collection of information can be submitted via *www.regulations.gov.*

List of Subjects in 15 CFR Part 231

Business and industry, Computer technology, Exports, Foreign trade, Government contracts, Grant programs, Investments (U.S. investments abroad), National defense, Research, Science and technology, Semiconductor chip products.

■ For the reasons stated in the preamble, and under the authority of 15 U.S.C. 4651, *et seq.,* the National Institute of Standards and Technology proposes to revise 15 CFR chapter II, subchapter C, to read as follows:

Subchapter C—CHIPS Program

PART 231—CLAWBACKS OF CHIPS FUNDING

Sec.

Authority: 15 U.S.C. 4651, *et seq.*

PART 231—CLAWBACKS OF CHIPS FUNDING

Subpart A—Definitions

§ 231.101 Affiliate

Affiliate means:

(a) Any subsidiary of the funding recipient, *i.e.,* any entity in which the funding recipient directly or indirectly holds at least 50 percent of the outstanding voting interest;

(b) Any parent entity of the funding recipient, *i.e.,* any entity that directly or indirectly holds at least 50 percent of the outstanding voting interest in the funding recipient; or

(c) Any entity in which the funding recipient's parent entity or parent entities directly or indirectly hold at least 50 percent of the outstanding voting interest.

§ 231.102 Applicable term.

For both the prohibition on certain expansion transactions and the prohibition on certain joint research or licensing transactions, the applicable term shall be the 10 years following the date of the award of Federal financial assistance, unless otherwise specified in the required agreement.

§ 231.103 Existing facility.

Existing facility means any facility built, equipped, and operating at the semiconductor manufacturing capacity level for which it was designed prior to entering into the required agreement. Existing facilities must be documented in the required agreement. Existing facilities shall be defined by their semiconductor manufacturing capacity at the time of the required agreement; a facility that undergoes significant renovations after the required agreement is entered into shall no longer qualify as an ''existing facility.''

§ 231.104 Foreign country of concern.

The term *foreign country of concern* means:

(a) A country that is a covered nation (as defined in 10 U.S.C. 4872(d)); and

(b) Any country that the Secretary, in consultation with the Secretary of Defense, the Secretary of State, and the

Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.

§ 231.105 Foreign entity.

Foreign entity, as used in this part:

(a) Means—

(1) A government of a foreign country or a foreign political party;

(2) A natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in 18 U.S.C. 1324b(a)(3)); or

(3) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; and

(b) Includes—

(1) Any person owned by, controlled by, or subject to the jurisdiction or direction of an entity listed in paragraph (a) of this section;

(2) Any person, wherever located, who acts as an agent, representative, or employee of an entity listed in paragraph (a) of this section;

(3) Any person who acts in any other capacity at the order, request, or under the direction or control of an entity listed in paragraph (a) of this section, or of a person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part by an entity listed in paragraph (a) of this section;

(4) Any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise, owns 25 percent or more of the equity interests of an entity listed in paragraph (a) of this section;

(5) Any person with significant responsibility to control, manage, or direct an entity listed in paragraph (a) of this section;

(6) Any person, wherever located, who is a citizen or resident of a country controlled by an entity listed in paragraph (a) of this section; or

(7) Any corporation, partnership, association, or other organization organized under the laws of a country controlled by an entity listed in paragraph (a) of this section.

§ 231.106 Foreign entity of concern.

Foreign entity of concern means any foreign entity that is—

(a) Designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. 1189;

(b) Included on the Department of Treasury's list of Specially Designated Nationals and Blocked Persons (SDN List), or for which one or more individuals or entities included on the SDN list, individually or in the aggregate, directly or indirectly, hold at least 50 percent of the outstanding voting interest;

(c) Owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (as defined in 10 U.S.C. 4872(d));

(d) Alleged by the Attorney General to have been involved in activities for which a conviction was obtained under—

(1) The Espionage Act, 18 U.S.C. 792 *et seq.;*

(2) 18 U.S.C. 951;

(3) The Economic Espionage Act of 1996, 18 U.S.C. 1831 *et seq.;*

(4) The Arms Export Control Act, 22 U.S.C. 2751 *et seq.;*

(5) The Atomic Energy Act, 42 U.S.C. 2274, 2275, 2276, 2277, or 2284;

(6) The Export Control Reform Act of 2018, 50 U.S.C. 4801 *et seq.;*

(7) The International Economic Emergency Powers Act, 50 U.S.C. 1701 *et seq.;* or

(8) 18 U.S.C. 1030.

(b) Included on the Bureau of Industry and Security's Entity List (15 CFR part 744, supplement no. 4);

(c) Included on the Department of the Treasury's list of Non-SDN Chinese Military-Industrial Complex Companies (NS–CMIC List), or for which one or more individuals or entities included on the NS–CMIC list, individually or in the aggregate, directly or indirectly, hold at least 50 percent of the outstanding voting interest;

(d) Identified in the Federal Communications Commission's list of Equipment and Services Covered By section 2(a) of the Secure and Trusted Communications Networks Act of 2019 as providing covered equipment or services; or

(e) Determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States under this chapter.

§ 231.107 Funding recipient.

Funding recipient means any entity receiving a Federal financial assistance award under 15 U.S.C. 4652 that enters into a required agreement.

§ 231.108 Joint research.

Joint research means any research and development activity as defined at 15 U.S.C. 638(e)(5) that is jointly undertaken by two or more persons, including any research and development activities undertaken as part of a joint venture, as defined at 15 U.S.C. 4301(a)(6).

§ 231.109 Knowingly.

Knowingly means acting with knowledge that a circumstance exists or is substantially certain to occur, or with an awareness of a high probability of its existence or future occurrence. Such awareness can be inferred from evidence of the conscious disregard of facts known to a person or of a person's willful avoidance of facts.

§ 231.110 Legacy semiconductor.

(a) *Legacy semiconductor* means:

(1) A digital or analog logic semiconductor that is of the 28-nanometer generation or older (*i.e.,* has a gate length of 28 nanometers or more for a planar transistor);

(2) A memory semiconductor with a half-pitch greater than 18 nanometers for Dynamic Random Access Memory (DRAM) or less than 128 layers for Not AND (NAND) flash that does not utilize emerging memory technologies, such as transition metal oxides, phase-change memory, perovskites, or ferromagnetics relevant to advanced memory fabrication; or

(3) A semiconductor identified by the Secretary in a public notice issued under 15 U.S.C. 4652(a)(6)(A)(ii).

(b) Notwithstanding paragraph (a) of this section, the following are not legacy semiconductors:

(1) Semiconductors critical to national security, as defined in § 231.120;

(2) A semiconductor with a post-planar transistor architecture (such as fin-shaped field field-effect transistor (FinFET) or gate all around field-effect transistor); and

(3) For the purposes of packaging facilities, semiconductors packaged utilizing three-dimensional (3D) integration.

§ 231.111 Material expansion.

Material expansion means the addition of physical space or equipment that has the purpose or effect of increasing semiconductor manufacturing capacity of a facility by more than five percent or a series of such expansions which, in the aggregate during the applicable term of a required agreement, increase the semiconductor manufacturing capacity of a facility by more than five percent of the existing capacity when the required agreement was entered into.

§ 231.112 Owned by, controlled by, or subject to the jurisdiction or direction of.

(a) A person is owned by, controlled by, or subject to the jurisdiction or direction of an entity where at least 25 percent of the person's outstanding voting interest is held directly or indirectly by that entity.

(b) A person is owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country or of a foreign political party where:

(1) The person is a citizen, national, or resident of the foreign country located in the foreign country;

(2) The person is organized under the laws of or has its principal place of business in the foreign country; or

(3) At least 25 percent of the person's outstanding voting interest is held directly or indirectly by the government of a foreign country or a foreign political party.

§ 231.113 Person.

The term *person* includes an individual, partnership, association, corporation, organization, or any other combination of individuals.

§ 231.114 Predominately serves the market.

Predominately serves the market means that 85 percent of the output of the semiconductor manufacturing facility (*e.g.,* wafers, semiconductor devices, or packages) by value is incorporated into final products (*i.e.,* not an intermediate product that is used as factor inputs for producing other goods) that are used or consumed in that market.

§ 231.115 Required agreement.

Required agreement means the agreement required under 15 U.S.C. 4652(a)(6)(C) that is entered into by a funding recipient on or before the date on which the Secretary awards Federal financial assistance under 15 U.S.C. 4652. The required agreement shall include, *inter alia,* provisions describing the prohibitions on certain joint research or technology licensing in § 231.202 and on certain joint research or technology licensing in § 231.203.

§ 231.116 Secretary.

Secretary means the Secretary of Commerce or the Secretary's designees.

§ 231.117 Semiconductor.

Semiconductor means an integrated electronic device or system most commonly manufactured using materials such as, but not limited to, silicon, silicon carbide, or III–V compounds, and processes such as, but not limited to, lithography, deposition, and etching. Such devices and systems include but are not limited to analog and digital electronics, power electronics, and photonics, for memory, processing, sensing, actuation, and communications applications.

§ 231.118 Semiconductor manufacturing.

Semiconductor manufacturing means semiconductor fabrication or semiconductor packaging. Semiconductor fabrication includes the process of forming devices like transistors, poly capacitors, non-metal resistors, and diodes, as well as interconnects between such devices, on a wafer of semiconductor material. Semiconductor packaging means the process of enclosing a semiconductor in a protective container (package) and providing external power and signal connectivity for the assembled integrated circuit.

§ 231.119 Semiconductor manufacturing capacity.

Semiconductor manufacturing capacity means the productive capacity of a semiconductor facility. In the case of a semiconductor fabrication facility, semiconductor manufacturing capacity is measured in wafer starts per month. In the case of a packaging facility, semiconductor manufacturing capacity is measured in packages per month.

§ 231.120 Semiconductors critical to national security.

Semiconductors critical to national security means:

(a) Compound semiconductors;

(b) Semiconductor utilizing nanomaterials, including 1D and 2D carbon allotropes such as graphene and carbon nanotubes;

(c) Wide-bandgap/ultra-wide bandgap semiconductors;

(d) Radiation-hardened by process (RHBP) semiconductors;

(e) Fully depleted silicon on insulator (FD–SOI) semiconductors;

(f) Silicon photonic semiconductors;

(g) Semiconductors designed for quantum information systems; and

(h) Semiconductors designed for operation in cryogenic environments (at or below 77 Kelvin).

§ 231.121 Significant transaction

Significant transaction means:

(a) Any investment, whether proposed, pending, or completed, that is valued at $100,000 or more, including:

(1) A merger, acquisition, or takeover, including:

(i) The acquisition of an ownership interest in an entity;

(ii) A consolidation;

(iii) The formation of a joint venture; or

(iv) A long-term lease or concession arrangement under which a lessee (or equivalent) makes substantially all business decisions concerning the operation of a leased entity (or equivalent), as if it were the owner; or

(2) Any other investment, including any capital expenditures or the formation of a subsidiary; or

(b) A series of transactions described in paragraph (a) of this section, which, in the aggregate during the applicable term of a required agreement, are valued at $100,000 or more.

§ 231.122 Significant renovations.

Significant renovations means any set of changes to a facility that, in the aggregate during the applicable term of the required agreement, increase semiconductor manufacturing capacity (as defined in § 231.119) by adding an additional line or otherwise increase semiconductor manufacturing capacity by 10 percent or more.

§ 231.123 Technology licensing.

A contractual agreement in which one party's patents, trade secrets, or know-how are sold or made available to another party.

§ 231.124 Technology or product that raises national security concerns.

A technology or product that raises national security concerns means:

(a) Any semiconductors critical to national security; or

(b) Any item listed in Category 3 of the Commerce Control List (supplement no. 1 to part 774 of the Export Administration Regulations, 15 CFR part 774) that is controlled for National Security (''NS'') reasons, as described in 15 CFR 742.4, or Regional Stability (''RS'') reasons, as described in 15 CFR 742.6

Subpart B—General

§ 231.201 Scope.

This subpart sets forth the provisions to be used in the required agreements (defined in § 231.115), the processes for notifying the Secretary of a significant transaction, and the process for review by the Secretary of a transaction or an action that may violate the prohibition on certain joint research or technology licensing.

§ 231.202 Prohibition on certain expansion transactions.

(a) During the 10-year period beginning on the date of the award of Federal financial assistance under 15 U.S.C. 4652, the funding recipient and its affiliates may not engage in any significant transaction involving the material expansion of semiconductor

manufacturing capacity in a foreign country of concern. This prohibition does not apply to—

(1) A funding recipient's existing facilities or equipment for manufacturing legacy semiconductors that exist on the date of the award; or

(2) Significant transactions involving material expansion of semiconductor manufacturing capacity that—

(i) Produces legacy semiconductors; and

(ii) Predominately serves the market of a foreign country of concern.

(b) No later than the date of the award of Federal financial assistance award under 15 U.S.C. 4652, the funding recipient shall enter into a required agreement that contains this prohibition and is otherwise consistent with this part.

§ 231.203 Prohibition on certain joint research or technology licensing.

During the applicable term of a Federal financial assistance award under 15 U.S.C. 4652, neither a funding recipient nor its affiliates may knowingly engage in any joint research or technology licensing with a foreign entity of concern that relates to a technology or product that raises national security concerns.

§ 231.204 Retention of records.

(a) During the 10-year period beginning on the date of the Federal financial assistance award under 15 U.S.C. 4652 and for a period of seven years following any significant transaction, a funding recipient or its affiliate planning or engaging in any significant transaction shall maintain records related to the significant transaction in a manner consistent with the recordkeeping practices used in their ordinary course of business for such transactions.

(b) Any funding recipient or its affiliate that is notified that a transaction is being reviewed under § 231.305 shall immediately take steps to retain all records relating to such transaction.

Subpart C—Notification, Review, and Recovery

§ 231.301 Procedures for notifying the Secretary of transactions.

During the term of the required agreement the funding recipient shall submit a notification to the Secretary (notification) regarding any planned significant transactions of the funding recipient or its affiliate involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern, as set forth in § 231.202, including any transaction it believes to qualify as an exception to the prohibition under 15 U.S.C. 4652(a)(6)(C)(ii). A notification must include the information set forth in § 231.302 and be submitted to *notifications@chips.gov.*

§ 231.302 Contents of notifications; certifications.

The funding recipient submitting a notification shall provide the information set out in this section, which must be accurate and complete. The notification shall be certified by the funding recipient's Chief Executive Officer, President, or equivalent, and shall contain the following information about the parties and the transaction:

(a) The funding recipient and any affiliate that is party to the transaction, including for each a primary point of contact, telephone number, and email address.

(b) The identity and location(s) of all other parties to the transaction.

(c) Information, including organizational chart(s), on the ownership structure of parties to the transactions.

(d) A description of any other significant foreign involvement, *e.g.,* through financing, in the transaction.

(e) The name(s) and location(s) of any entity in a foreign country of concern where or at which semiconductor manufacturing capacity may be materially expanded by the transaction.

(f) A description of the transaction, including the specific types of semiconductors currently produced at the facility planned for expansion, the current production technology node (or equivalent information) on production technology in current use and semiconductor manufacturing capacity, as well as the specific types of semiconductors planned for manufacture, the planned production technology node, and planned semiconductor manufacturing capacity.

(g) If the transaction involves the material expansion of semiconductor manufacturing capacity that produces legacy semiconductors which will predominately serve the market of a foreign country of concern, provide documentation as to where the final products incorporating the legacy semiconductors are to be used or consumed, including the percent of semiconductor manufacturing capacity or percent of sales revenue that will be accounted for by use or consumption of the final goods in the foreign country of concern.

(h) If applicable, a statement explaining how the transaction meets the requirements, set forth in 15 U.S.C. 4652(a)(6)(C)(ii), for an exception to the prohibition on significant transactions that involve the material expansion of semiconductor manufacturing capacity, including details on the calculations for semiconductor manufacturing capacity and/or sales revenue by the market in which the final goods will be consumed.

§ 231.303 Response to notifications.

After receiving a notification pursuant to § 231.301, the Secretary may:

(a) Reject the notification, and, if so, inform the funding recipient promptly in writing, if:

(1) The notification does not meet the requirements of § 231.302; or

(2) The notification contains apparently false or misleading information; or

(b) Initiate a review under § 231.304, and, if so, inform the funding recipient promptly in writing.

§ 231.304 Initiation of review.

(a) The Secretary may initiate review of a transaction:

(1) After receiving a notification pursuant to § 231.301; or

(2) Where the Secretary believes that a transaction may be prohibited. Information may be submitted to the Department, including by persons other than a funding recipient, via *notifications@chips.gov.*

(b) Upon receipt of a notification submitted pursuant to § 231.301, the Secretary will review the notification for completeness and may request additional information from the funding recipient. Once a notification is deemed complete, the Secretary will initiate a review of the transaction, notify the funding recipient in writing following the initiation of review, and consult with the Secretary of Defense and the Director of National Intelligence.

(c) Where the Secretary initiates review of under paragraph (a)(2) of this section, the Secretary will notify the funding recipient in writing following the initiation of review and consult with the Secretary of Defense and the Director of National Intelligence.

§ 231.305 Procedures for review.

(a) If the Secretary finds that additional information is necessary, the Secretary will ask the funding recipient in writing to supply the supplemental information, and the funding recipient shall promptly provide any supplemental information the Secretary requests. The Secretary will determine whether the supplemental information is complete and notify the funding recipient. The running of the time period for a determination will be suspended from the date on which the request for supplemental information is

sent to the funding recipient until the Secretary receives the supplemental information and finds the notification to be complete.

(b) Not later than 90 days after a notification is deemed complete, or after the Secretary initiates a review under § 231.304(a)(2), the Secretary will provide the funding recipient with an initial determination as to whether the transaction would be a violation of § 231.202. The initial determination may include a determination that the funding recipient or its affiliate has violated § 231.202 by engaging in a prohibited significant transaction.

(c) If the Secretary's initial determination is that the transaction would violate § 231.202 or that the funding recipient or its affiliate has violated § 231.202 by engaging in a prohibited significant transaction, then:

(1) The Secretary will provide the funding recipient with an explanation of the initial determination. The funding recipient may respond within 14 days, including by submitting additional information or requesting that the initial determination be reconsidered.

(2) The Secretary will request tangible evidence from the funding recipient in the form of a signed letter by the funding recipient's Chief Executive Officer, President, or equivalent, certifying that the transaction has been ceased or abandoned. Such a letter must certify, under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), that the information in the letter is accurate and complete in all material respects.

(3) If the funding recipient requests that the initial determination be reconsidered, the Secretary will provide a final determination. If the funding recipient does not request that the initial determination be reconsidered within 14 days, the initial determination will become a final determination.

(4) Unless the Secretary provides a final determination that the transaction does not violate § 231.202, the funding recipient must cease or abandon the transaction (or, if applicable, ensure that its affiliate ceases or abandons the transaction) and must submit the evidence requested pursuant to paragraph (d)(1) of this section electronically to *notifications@chips.gov* within 45 days of the initial determination under paragraph (c) of this section.

(d) Unless recovery is waived pursuant to § 231.306, a violation of § 231.202 for engaging in a prohibited significant transaction or failing to cease or abandon a planned significant transaction that the Secretary has determined would be in violation of § 231.202 will result in the recovery of the full amount of the Federal financial assistance provided to the funding recipient under 15 U.S.C. 4652, which will be a debt owed to the U.S. Government.

(e) The running of any deadline or time limitation for the Secretary will be suspended during a lapse in appropriations.

§ 231.306 Mitigation of national security risks.

If the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, determines that a funding recipient or its affiliate is planning to undertake or has undertaken a significant transaction that is in violation of § 231.202, the Secretary may seek to take measures in connection with the transaction to mitigate the risk to national security. Such measures may include the negotiation of an agreement with the funding recipient to mitigate the risk to national security in connection with the transaction. The Secretary also may decide to waive the recovery of funds.

§ 231.307 Review of actions that may violate the prohibition on certain joint research or technology licensing.

(a) The Secretary will notify a funding recipient in writing of any action the Secretary suspects may be a violation of the prohibition on certain joint research or technology licensing in § 231.203 and may request additional information from the funding recipient, which the funding recipient must provide promptly (generally within three business days) to the Secretary.

(b) The Secretary may make an initial determination as to whether the funding recipient or its affiliate violated § 231.203. If the Secretary's initial determination is that the funding recipient or its affiliate has violated § 231.203, the Secretary will provide the funding recipient with that initial determination, an explanation of the initial determination, and an opportunity of 14 days to respond to the initial determination, including by submitting additional information or requesting that the initial determination be reconsidered.

(c) If the funding recipient requests that the initial determination be reconsidered, the Secretary will provide a final determination. If the funding recipient does not request that the initial determination be reconsidered within 14 days, the initial determination will become a final determination.

(d) If the Secretary makes a final determination that an action violated § 231.203, the funding recipient will be required to refund the full amount of the Federal financial assistance provided to the funding recipient under 15 U.S.C. 4652 which for all purposes will be a debt owed to the U.S. Government.

§ 231.308 Recovery and other remedies.

(a) Interest on a debt under § 231.305 or § 231.307 will be calculated from the date on which the Federal financial assistance under 15 U.S.C. 4652 was awarded.

(b) The Secretary may take action to collect a debt under § 231.305 or § 231.307 if such debt is not paid within the time prescribed by the Secretary. In addition or instead, the matter may be referred to the Department of Justice for appropriate action.

(c) If the Secretary makes an initial determination that the funding recipient or its affiliate has violated § 231.202 or § 231.203, the Secretary may suspend Federal financial assistance under 2 CFR 200.339.

(d) The recoveries and remedies available under this section are without prejudice to other available remedies, including civil or criminal penalties.

Subpart D—Other Provisions

§ 231.401 Amendment.

Not later than August 9, 2024, and not less frequently than once every two years thereafter for the eight-year period after the last award of Federal financial assistance under 15 U.S.C. 4652 is made, the Secretary, after public notice and an opportunity for comment, if applicable and necessary, shall issue a public notice identifying any additional semiconductors included in the meaning of the term ''legacy semiconductor'' (see § 231.110(a)(3)).

§ 231.402 Submission of false information.

Section 1001 of title 18 of the United States Code, as amended, shall apply to all information provided to the Secretary under 15 U.S.C. 4652 or under the regulations found in this part.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–05869 Filed 3–21–23; 11:15 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120653–22]

RIN 1545–BQ54

Advanced Manufacturing Investment Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to implement the advanced manufacturing investment credit established by the CHIPS Act of 2022 to incentivize the manufacture of semiconductors and semiconductor manufacturing equipment within the United States. The regulations address the credit's eligibility requirements, an election that eligible taxpayers may make to be treated as making a payment of tax (including an overpayment of tax), or for an eligible partnership or S corporation to receive an elective payment, instead of claiming a credit, and a special 10-year credit recapture rule that applies if there is a significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern. This document also requests comments on the proposed regulations, including the definition of the term ''semiconductor.'' These proposed regulations affect taxpayers that claim the advanced manufacturing investment credit or instead make an elective payment election.

DATES: Written or electronic comments and requests for a public hearing must be received by May 22, 2023. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–120653–22) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted electronically and comments submitted on paper to its public docket. Send hard copy submissions to: CC:PA:LPD:PR (REG–120653–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jason P. Deirmenjian of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317–4137 (not a toll-free number); concerning submissions of comments and requests for a public hearing, call Vivian Hayes (202–317–5306) (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 48D of the Internal Revenue Code (Code).

Section 107(a) of the CHIPS Act of 2022 (CHIPS Act), enacted as Division A of Public Law 117–167, 136 Stat. 1366, 1393 (August 9, 2022), added section 48D to the Code to establish the advanced manufacturing investment credit (section 48D credit) as an investment credit for purposes of section 46 of the Code, which is a current year general business credit under section 38 of the Code.

The amount of the section 48D credit allowable to a taxpayer for any taxable year is generally an amount equal to 25 percent of the basis of any qualified property that is part of an eligible taxpayer's advanced manufacturing facility if the qualified property is placed in service during such taxable year and after December 31, 2022. See section 48D(a), and (b)(1) of the Code and section 107(f)(1) of the CHIPS Act. However, section 48D(e) provides that the section 48D credit does not apply to property the construction of which begins after December 31, 2026. In addition, in the case of any qualified property placed in service after December 31, 2022, but the construction of which began prior to January 1, 2023, the section 48D credit is available only to the extent of the basis of qualified property attributable to the construction, reconstruction, or erection after August 9, 2022 (the date of enactment of the CHIPS Act). See section 107(f)(1) of the CHIPS Act. In addition, the portion of the basis of any such property that is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2) of the Code) in determining the rehabilitation credit under section 47 is excluded from a taxpayer's qualified investment with respect to any advanced manufacturing facility for any taxable year.

For purposes of the section 48D credit, an ''eligible taxpayer'' is any taxpayer that (1) is not a foreign entity of concern (as defined in section 9901(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act), and (2) has not made an applicable transaction (as defined in section 50(a) of the Code) during the taxable year. See section 48D(c).

Section 48D(b)(1) provides that the ''qualified investment'' with respect to any advanced manufacturing facility for any taxable year is the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of an advanced manufacturing facility. Section 48D(b)(2) provides that for purposes of section 48D(b), the term ''qualified property'' means tangible property with respect to which depreciation (or amortization in lieu of depreciation) is allowable that is integral to the operation of the advanced manufacturing facility if (I) constructed, reconstructed, or erected by the taxpayer, or (II) acquired by the taxpayer, if the original use of such property commences with the taxpayer. Qualified property includes any building or its structural components satisfying such requirements unless the building or portion of the building is used for offices, administrative services, or other functions unrelated to manufacturing. Section 48D(b)(3) provides that the term ''advanced manufacturing facility'' means a facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment.

Section 48D(d)(1) allows a taxpayer to elect to treat the section 48D credit determined for the taxpayer for a taxable year as a payment against the tax imposed by subtitle A of the Code (that is, treated as a payment of Federal income tax) equal to the amount of the credit rather than a credit against the taxpayer's Federal income tax liability for that taxable year (elective payment election). Section 48D(d)(2) provides special rules relating to an elective payment election made for (A) property held directly by a partnership (within the meaning of section 761(a) of the Code) or an S corporation (as defined in section 1361(a)(1) of the Code) in which the partnership or S corporation actually receives a payment rather than a credit, (B) the period during which an elective payment election can be made, (C) the timing of the elective payment, (D) appropriations for making elective payments to partnerships and S

corporations, (E) authority of the Secretary of the Treasury or her delegate (Secretary) to require additional information or registration of taxpayers, and (F) repayment of an excessive elective payment, plus a penalty of an amount equal to 20 percent of such excessive payment. Section 48D(d)(3) provides that the section 48D credit is zero for a taxpayer making an elective payment election.

Section 48D(d)(4) provides that the elective payment election will not be treated as part of the income tax laws of any U.S. territory with a mirror code tax system (as defined in section 24(k) of the Code) unless the U.S. territory elects to have the elective payment election apply under its income tax laws. Under section 48D(d)(5), basis reduction and recapture rules similar to the rules of section 50(a) and (c) of the Code apply with respect to amounts treated as paid or actually received by a taxpayer under an elective payment election. Finally, section 48D(d)(6) authorizes the Secretary to issue regulations or other guidance determined to be necessary or appropriate to carry out the elective payment election provisions of section 48D(d), including (A) regulations or other guidance providing rules for determining a partner's distributive share of deemed tax-exempt income, and (B) guidance to ensure that the amount treated as a payment made or the payment received by a taxpayer is commensurate with the amount of the section 48D credit that generally would be otherwise allowable (determined without regard to section 38(c)).

Pursuant to section 107(c) of the CHIPS Act, payments made to a partnership or S corporation pursuant to the elective payment election, as well as amounts treated as payments against tax by taxpayers making an elective payment election, are exempt from reduction under any sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 *et seq.*) on or after December 31, 2022.

Section 107(b) of the CHIPS Act added new sections 50(a)(3) and (6)(D) and (E) to the Code to provide special recapture rules for certain expansions in connection with advanced manufacturing facilities. Under section 50(a)(3)(A), if there is an applicable transaction by an applicable taxpayer before the close of the 10-year period beginning on the date such taxpayer placed in service property that is eligible for the section 48D credit, then the taxpayer's Federal income tax liability under chapter 1 of the Code (chapter 1) for the taxable year in which such transaction occurs must be increased by 100 percent of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any investment credit determined under section 46 that is attributable to the section 48D credit with respect to such property (applicable transaction recapture rule). Section 50(a)(3)(B) provides an exception to the applicable transaction recapture rule for an applicable taxpayer that demonstrates to the satisfaction of the Secretary that the applicable transaction has been ceased or abandoned within 45 days of a determination and notice by the Secretary. Section 50(a)(3)(C) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of the applicable transaction recapture rule, including regulations or other guidance providing for recordkeeping requirements or information reporting for purposes of administering the requirements of section 50(a)(3).

As added to the Code by section 107(b)(2) of the CHIPS Act, section 50(a)(6)(D) provides that for purposes of section 50(a), the term ''applicable transaction'' means, with respect to any applicable taxpayer, any significant transaction (as determined by the Secretary, in coordination with the Secretary of Commerce and the Secretary of Defense) involving the material expansion of semiconductor manufacturing capacity of such applicable taxpayer in a foreign country of concern (as defined in section 9901(7) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act) other than certain transactions that primarily involve the expansion of manufacturing capacity for legacy semiconductors (as defined in section 9902(a)(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act). As discussed in the Explanation of Provisions section of this preamble, the proposed regulations primarily apply long-established credit mechanics and procedures common to all investment tax credits (including the section 48D credit) previously set forth in regulations and subregulatory guidance and, consistent with statute, incorporate definitional concepts as determined by the Secretary of Commerce, which are provided in proposed 15 CFR part 231, as contained in the proposed rule, *Preventing the Improper Use of CHIPS Act Funding,* issued by the CHIPS Program Office, National Institute of Standards and Technology, Department of Commerce (Commerce Proposed Rule). The Commerce Proposed Rule provides guardrails to prevent the improper use of CHIPS Act funding overseen by the Department of Commerce.

Section 50(a)(6)(E) defines an ''applicable taxpayer'' for purposes of section 50(a) as any taxpayer who has been allowed a section 48D credit for any prior taxable year.

Explanation of Provisions

I. Advanced Manufacturing Investment Credit Determined

The proposed regulations provide rules for calculating the amount of a taxpayer's qualified investment pursuant to section 48D(b)(1), generally, and in the context of certain passthrough entities. Section 48D(b)(1) specifies that qualified investment ''is the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of an advanced manufacturing facility.'' The statute is silent as to manner in which a taxpayer's basis in qualified property is allocated in the context of passthrough entities. The proposed regulations clarify that a partner's share of basis in the qualified property of a partnership is determined under the rules in § 1.46–3(f). Section 1.46–3(f) contains rules for determining a partner's share of the qualified basis of a partnership under the former investment tax credit provisions (former sections 46(a) (amount of investment credit) and (c) (qualified basis)). Under those regulations and consistent with section 48D(b)(1), a partner is treated as the taxpayer with respect to its share of the basis of the partnership's qualified property for calculating its qualified investment. A partner's share of the partnership's basis generally is determined in accordance with the ratio in which the partners divide the general profits of the partnership (that is, taxable income of the partnership as described in section 702(a)(8)).

The proposed regulations specify that an S corporation must apportion the basis of qualified property pro rata among its shareholders. A shareholder is treated as the taxpayer with respect to the shareholder's share of basis in the qualified property of the S corporation. The proposed regulations further specify that an estate or trust must apportion the basis of the estate or trust's qualified property among the estate or trust and its beneficiaries on the basis of the income of the estate or trust allocable to each for that taxable

year. A beneficiary to which the basis of qualified property is apportioned is, for purposes of the section 48D credit, treated as the taxpayer with respect to the property. The proposed regulations are consistent with the rules for allocating basis with respect to an electing small business corporation and estates and trusts under § 1.48–5 and § 1.48–6, respectively, which contain rules for allocating basis for purposes of former sections 48(e) and (f), respectively. Comments are requested as to whether it would be helpful for the final regulations or other guidance to further address the manner in which a taxpayer's basis in qualified property is allocated in the context of passthrough entities.

Under section 48D(b)(5), ''rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of section 48D(a).'' The proposed regulations address a taxpayer's ability to make a qualified progress expenditure election, as provided in § 1.46–5, to increase its qualified investment by any qualified progress expenditures, made after December 31, 2022. Comments are requested as to whether it would be helpful for the final regulations or other guidance to expand or clarify a taxpayer's ability to claim a section 48D credit for qualified progress expenditures.

Section 48D(b)(4) excludes from qualified investment ''that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)).'' The proposed regulations clarify that a taxpayer's qualified investment does not include the amount of any capital expenditures that meet the definition of a qualified rehabilitation expenditure.

II. Qualified Property

Section 48D(b)(2)(B)(ii) excepts from the definition of qualified property ''a building, or a portion of a building, used for offices, administrative services, or other functions unrelated to manufacturing.'' The proposed regulations clarify that human resources or personnel services, payroll services, legal and accounting services, and procurement services; sales and distribution functions; and security services (not including cybersecurity operations) are among functions unrelated to manufacturing semiconductors or semiconductor manufacturing equipment.

Under section 48D(b)(2)(A)(iii)(II), the term ''qualified property'' means property acquired by the taxpayer if the original use of such property commences with the taxpayer. The proposed regulations define the term ''original use'' generally as the first use to which the property is put by any taxpayer in connection with a trade or business or for the production of income. In addition, the proposed regulations add rules related to the definition of ''original use'' for inventory.

Under section 48D(b)(2)(A)(iv) property must be ''integral to the operation of the advanced manufacturing facility'' to meet the definition of qualified property. The proposed regulations specify that property is integral to the manufacturing of semiconductors or semiconductor manufacturing equipment if it is used directly in the manufacturing operation and is essential to the completeness of the manufacturing operation. The proposed regulations further specify that property, including a building and its structural components, that constitutes a research or storage facility may qualify as integral to the operation of an advanced manufacturing facility if the property is used in connection with the manufacturing of semiconductors or semiconductor manufacturing equipment. Conversely, a research facility that does not manufacture any type of semiconductors or semiconductor manufacturing equipment does not qualify.

III. Advanced Manufacturing Facility

Section 48D(b)(3) provides that an advanced manufacturing facility must be a ''facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment.'' The proposed regulations explain that the determination of whether the primary purpose of a facility is manufacturing finished semiconductors or manufacturing finished semiconductor manufacturing equipment will be made based on all the facts and circumstances and list certain facts and circumstances relevant to this test. The proposed regulations make clear that a facility that manufactures, produces, grows, or extracts materials or chemicals that are supplied to an advanced manufacturing facility that manufactures semiconductors, or semiconductor manufacturing equipment, does not meet the primary purpose requirement.

The proposed regulations also define the terms ''semiconductor manufacturing'' or ''manufacturing of semiconductors'' and ''manufacturing of semiconductor manufacturing equipment'' for purposes of section 48D.

The Treasury Department and the IRS specifically request comments on the scope of the definition in proposed § 1.48–2(k) of the term ''semiconductor.'' Specifically, comments are requested as to whether this term, for purposes of the section 48D credit, should include semiconductive substances—materials with electronic properties controllable by the addition of, typically small, quantities of specific elements or dopants—on which an electronic device or system is manufactured, such as, but not limited to polysilicon and compound semiconductor wafers. If so, commenters are requested to explain in detail what principle, standard, or parameters could be incorporated in a definition of the term ''semiconductor'' so as to prevent extending the definition of that term to also include other materials and supplies used in the manufacture of finished semiconductors.

IV. Beginning of Construction

The proposed regulations provide guidance regarding the beginning of construction requirement for purposes of the effective date provision in section 107(f)(1) of the CHIPS Act, and the credit termination rule in section 48D(e). The proposed regulations specify that a taxpayer can establish that construction of a property has begun by meeting the Physical Work Test or the Five Percent Safe Harbor, as that test and safe harbor are described in the proposed regulation. The proposed regulations define what is considered the unit of property for purposes of determining the beginning of construction under section 48D(e). Solely for purposes of determining whether construction of a property has begun for purposes of section 48D and the section 48D regulations, multiple items of qualified property or advanced manufacturing facilities that are operated as part of a single advanced manufacturing facility project are treated as a single item of property. Whether multiple qualified properties or advanced manufacturing facilities are operated as part of a single advanced manufacturing facility project will depend on all the relevant facts and circumstances. Thus, whether the beginning of construction requirement is satisfied with respect to any item of property generally is determined based on the date construction of the item of property began, or the date construction of the single advanced manufacturing facility project that the item is part of began.

In addition, the proposed regulations further explain that under either the

Physical Work Test or the Five Percent Safe Harbor, a taxpayer must meet the Continuity Requirement, as described in the proposed regulation, to establish the beginning of construction. For this requirement, a taxpayer must demonstrate that either continuous construction or continuous efforts have occurred. Whether a taxpayer meets the Continuity Requirement under either test is determined by all the relevant facts and circumstances. The IRS will closely scrutinize a unit of property and may determine that the beginning of construction is not satisfied with respect to property if a taxpayer does not meet the Continuity Requirement.

Finally, section 1 of Executive Order 14080 of August 25, 2022 (E.O. 14080), *Implementation of the CHIPS Act of 2022* (87 FR 52847), states that the policy underlying the CHIPS Act (which established the section 48D credit) is, in part, to ''make transformative investments to restore and advance our Nation's leadership in the research, development, and manufacturing of semiconductors'' and to ''bolster United States technology leadership; and reduce our dependence on critical technologies from China and other vulnerable or overly concentrated foreign supply chains.'' In this regard, section 2 of E.O. 14080 directs, in part, that in implementing the CHIPS Act, as appropriate, and to the extent consistent with the law, the Treasury Department and the IRS prioritize, economic, sustainability, and national security needs, by building domestic manufacturing capacity that reduces reliance on vulnerable or overly concentrated foreign production for both leading-edge and mature microelectronics, and ensuring long-term United States leadership in the microelectronics sector. Given the critical national security and foreign policies of the United States that the section 48D credit, as part of the CHIPS Act, is intended to achieve, the Department of the Treasury and the IRS have determined that it is appropriate for the proposed regulations to provide an extended safe harbor for satisfying the Continuity Requirement in this unique case. Under the safe harbor provided in proposed § 1.48D–5(e)(6), a taxpayer is deemed to satisfy the Continuity Requirement provided the property is placed in service no more than 10 calendar years after the date that the Physical Work Test or the Five Percent Safe Harbor is first satisfied with respect to that item of property or the single advanced manufacturing facility project that the item of property is part of.

V. Elective Payment Election

Section 48D(d)(2)(A)(i) provides that, in the case of a partnership or an S corporation that makes an election under section 48D(d)(1) (in such manner as the Secretary may provide) with respect to the section 48D credit, ''the Secretary shall make a payment to such partnership or S corporation equal to the amount of such credit.'' Comments are requested on any guidance needed to determine the extent to which, if any, other Code provisions that limit the amount of a credit to a taxpayer, such as section 469 (passive activity credits), section 49 (at-risk credit rules), and section 50, may be applied to limit the amount of the Secretary's payment to the partnership or S corporation pursuant to section 48D(d)(2)(A)(i)(I). Comments are also generally requested on the treatment of the Secretary's payment to the partnership or S corporation under the provisions of subchapters K and S of chapter 1, respectively.

Section 48D(d)(2)(E) provides that ''as a condition of, and prior to, any amount being treated as a payment which is made by the taxpayer under [section 48D(d)(1)] or any payment being made pursuant to [section 48D(d)(2)(A)(i)(I)], the Secretary may require such information or registration as the Secretary deems necessary or appropriate for purposes of preventing duplication, fraud, improper payments or excessive payments under [section 48D].'' The IRS intends to provide, through forms and instructions, the procedures for registration of properties for which an election under section 48D(d) will be made. Comments are requested on the registration requirements and other procedures for purposes of section 48D(d)(2)(E).

Section 48D(d)(2)(F)(i) provides that in the case of an elective payment election, that the Secretary determines constitutes an excessive payment, the tax imposed on such taxpayer by chapter 1 for the taxable year in which such determination is made will be increased by an amount equal to the sum of (I) the amount of such excessive payment, plus (II) an amount equal to 20 percent of such excessive payment. Section 48D(d)(2)(F)(iii) defines an excessive payment as ''an amount equal to the excess of—(I) the amount treated as a payment under [section 48D(d)(1)], or the amount of the payment made pursuant to [section 48D(d)(2)(A)], . . . over (II) the amount of the credit which, without application of this subsection, would be otherwise allowable (determined without regard to section 38(c)) under [section 48D(a)] with respect to such property for such taxable year.'' Comments are requested on any guidance needed with respect to the amount that ''would be otherwise allowable'' for purposes of section 48D(d)(2)(F)(iii)(II).

Section 48D(d)(5) provides that ''rules similar to the rules of [sections 50(a) and (c)] shall apply with respect to—(A) any amount treated as a payment which is made by the taxpayer under [section 48D(d)(1)], and (B) any payment made pursuant to [section 48D(d)(2)(A)].'' Comments are requested on the guidance necessary to clarify the rules that are similar to the rules of sections 50(a) (investment credit recapture in the case of dispositions, etc.) and (c) (basis adjustment to investment credit property) for purposes of section 48D(d)(5).

VI. Recapture in the Case of Certain Expansions

The statutory applicable transaction recapture rule in section 50(a)(3) is intended to dissuade an ''applicable taxpayer'' from engaging in an ''applicable transaction'' after property qualifying for a section 48D credit is placed in service.

Section 50(a)(6)(D) defines an applicable transaction to mean, with respect to any applicable taxpayer, any significant transaction (as determined by the Secretary, in coordination with the Secretary of Commerce and the Secretary of Defense) involving the material expansion of semiconductor manufacturing capacity of such applicable taxpayer in a foreign country of concern. The term ''foreign country of concern'' is defined in section 9901(a)(7) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, as amended by section 103 of the CHIPS Act, to mean a country that is a covered nation (as defined in section 4872(d) of title 10) and any country that the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States. The proposed regulations define a foreign country of concern consistent with the statute. Additionally, in coordination with the Secretary of Commerce and the Secretary of Defense and pursuant to the Secretary's authority under section 50(a)(6)(D)(i) to determine whether transactions are significant transactions, the proposed regulations define the term ''significant transaction'' to align and harmonize the scope of applicable transactions under section 50(a)(3) with

the scope of prohibited expansion transactions within the meaning of proposed § 231.202 (relating to the Prohibition on Certain Expansion Transactions) as contained in the Commerce Proposed Rule. Accordingly, proposed § 1.50–2(b)(10) defines the term ''significant transaction'' consistent with proposed § 231.202 as contained in the Commerce Proposed Rule to include certain transactions engaged in by an applicable taxpayer or an applicable taxpayer's affiliates (within the meaning of proposed § 231.101 as contained in the Commerce Proposed Rule).

Section 50(a)(6)(E) defines an applicable taxpayer to mean ''any taxpayer who has been allowed a credit under section 48D(a) for any prior taxable year.'' The proposed regulations provide that an applicable taxpayer also includes (i) any member of an affiliated group under section 1504(a) of the Code, determined without regard to section 1504(b)(3) of the Code, that includes a taxpayer who has been allowed a credit under section 48D(a) for any prior taxable year, (ii) any taxpayer who has made an election under section 48D(d)(1), (iii) any partnership or S corporation that has made an election under section 48D(d)(2), and (iv) any partner in a partnership (directly or indirectly through one or more tiered partnerships) or shareholder in an S corporation for which the entity has made an election under section 48D(d)(2) with respect to a credit determined under section 48D(a)(1) for any taxable year prior to the taxable year in which such entity entered into an applicable transaction.

If an applicable taxpayer engages in an applicable transaction before the close of the 10-year period beginning on the date such taxpayer placed in service any property eligible for the section 48D credit, then the applicable taxpayer is subject to an increase in tax under chapter 1 for the taxable year in which the applicable transaction occurs, as provided in section 50(a)(3). The proposed regulations generally address the amount of recapture required pursuant to section 50(a)(3). For example, if a taxpayer claims a section 48D credit on property it owns directly and also claims a section 48D credit on property placed in service by a partnership in which it is a partner, and that taxpayer subsequently enters into an applicable transaction within 10 years of claiming those section 48D credits, then the proposed regulations require that the taxpayer recapture all the credits claimed (that is, credits for property owned directly and through its investment in the partnership). The proposed regulations provide for the same result if, instead of the taxpayer entering into the applicable transaction, the partnership enters into the applicable transaction. Comments are requested on the appropriate amount of recapture required in the context of partnerships and S corporations, including the appropriateness of the recapture results in the above examples.

As noted in the Background section of this preamble, section 50(a)(3)(C) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of the applicable transaction recapture rule, including regulations or other guidance providing for recordkeeping requirements or information reporting for purposes of administering the requirements of section 50(a)(3). The Treasury Department and the IRS are considering proposing record retention and information reporting requirements for applicable taxpayers in addition to those required under current law such that the IRS would have sufficient knowledge regarding proposed applicable transactions and applicable transactions the taxpayer has engaged in. For example, record retention or information reporting requirements may require an applicable taxpayer to maintain records or file information with the IRS related to any proposed or planned significant transaction for a period not ending earlier than the applicable period of limitations under section 6501 of the Code on assessment and collection of tax under chapter 1 with respect to the applicable taxpayer's return filed for the taxable year that includes the close of the 10-year period beginning on the date such taxpayer placed in service investment credit property that is eligible for the section 48D credit.

Additionally, the Treasury Department and the IRS are considering information reporting requirements that would require notifying the IRS regarding any planned significant transactions of the applicable taxpayer involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern, including any transaction the applicable taxpayer considers to be eligible for an exception under section 50(a)(3) or proposed § 1.50–2. For example, such requirements may require the applicable taxpayer to report accurate and complete information relating to the applicable transaction, including: (i) the name, employer identification number, and other identifying information regarding the applicable taxpayer that is proposing or engaging in a planned applicable transaction, and all other parties to the applicable transaction; (ii) the name and location of any business in a foreign country of concern where semiconductor manufacturing capacity may be materially expanded by the applicable transaction; (iii) a brief description of the planned applicable transaction, including the specific semiconductor products currently manufactured, the current production technology node and semiconductor manufacturing capacity, as well as the specific semiconductor products proposed for manufacture, the proposed production technology node, and proposed semiconductor manufacturing capacity; (iv) if the planned applicable transaction involves the material expansion of semiconductor manufacturing capacity that produces legacy semiconductors for which the products will predominately serve the market of a foreign country of concern, documentation as to where the final products incorporating the legacy semiconductors are to be used or consumed including the percentage of semiconductor manufacturing capacity or percentage of sales revenue that will be accounted for by use or consumption of the final goods in the foreign country of concern, and (v) if applicable, a statement explaining how the planned significant transaction meets the requirements of an exception to the applicable transaction recapture rule that involve the material expansion of semiconductor manufacturing capacity in proposed § 1.50–2. The Treasury Department and the IRS request comments on the ability of applicable taxpayers to comply with such requirements and what specific procedures should be considered to ensure that the IRS has sufficient information to determine whether an applicable taxpayer engages in an applicable transaction within the meaning of section 50(a)(3) and proposed § 1.50–2.

IV. Applicability Date

These regulations (§§ 1.48D–1 through 1.48D–6, and § 1.50–2) are proposed to apply to taxable years ending on or after the date the Treasury decision adopting these regulations as final regulations are published in the **Federal Register**. Taxpayers may rely on these proposed regulations for property placed in service after December 31, 2022, in taxable years ending before the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**, provided the taxpayers follow proposed §§ 1.48D–1 through 1.48D–6, and § 1.50–2 in their entirety and in a consistent manner.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

For purposes of the PRA, the reporting burden associated with the collection of information in proposed § 1.48D–6(a)(1) and (2) will be reflected in the Paperwork Reduction Act Submissions associated with Form 3468 (OMB control number 1545–0155). The reporting burden associated with the collection of information in proposed § 1.48D–6(c) will be reflected in the Paperwork Reduction Act Submissions associated with Form 15396 (OMB control number pending). The reporting burden associated with the collection of information proposed in § 1.50–2(a) will be reflected in the Paperwork Reduction Act Submissions associated with Form 4255 (OMB control number 1545–0166). The IRS anticipates providing an opportunity to comment on any revisions to the forms through subsequent notice in the **Federal Register** and on *www.irs.gov/draftforms.*

II. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Although the rules may affect small entities, data are not readily available about the number of taxpayers affected. The economic impact of these regulations is not likely to be significant, because these proposed regulations substantially incorporate statutory changes by the CHIPS Act in establishing section 48D and amending section 50(a) and assist taxpayers in understanding section 48D and the changes to section 50(a). The proposed regulations will also make it easier for taxpayers to comply with section 48D and the changes to section 50(a). Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these regulations on small entities.

III. Section 7805(f)

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Regulatory Planning and Review

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has determined that this proposed rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this proposed rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (OMB).

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people requesting a reasonable accommodation.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Jason P. Deirmenjian Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding sectional authorities for §§ 1.48D–6 and 1.50–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.48D–6 also issued under 26 U.S.C. 48D(d)(6).

Section 1.50–2 also issued under 26 U.S.C. 50(a)(3)(C).

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■ **Par. 2.** Sections 1.48D–0 through 1.48D–6 are added to read as follows:

Sec.

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§ 1.48D–0. Table of contents.

This section lists the table of contents for §§ 1.48D–1 through 1.48D–6.

§ 1.48D–1 Advanced manufacturing investment credit determined.

(a) *Overview.* For purposes of section 46 of the Internal Revenue Code (Code), the amount of the advanced manufacturing investment credit under section 48D of the Code determined for any taxable year is the amount determined under section 48D and the section 48D regulations (subject to any applicable provisions of the Code that may limit the amount determined under section 48D), for such taxable year with respect to any advanced manufacturing facility of an eligible taxpayer. Paragraph (b) of this section provides the general rules for determining the amount of a taxpayer's section 48D credit for a taxable year. Paragraph (c) of this section provides rules coordinating the section 48D credit with the rules of section 47 (relating to the rehabilitation credit). Section 1.48D–2 provides definitions that apply for purposes of section 48D and the section 48D regulations. Section 1.48D–3 provides rules relating to the definition of qualified property for purposes of the section 48D credit. Section 1.48D–4 provides rules relating to the definition of an advanced manufacturing facility of an eligible taxpayer for purposes of the section 48D credit. Section 1.48D–5 provides rules regarding the beginning of construction of property for purposes of the section 48D credit. Section 1.48D–6 provides rules relating to the elective payment election available to a taxpayer under section 48D(d) to be treated as making a payment of tax, or for a partnership or S corporation to receive an actual payment, in lieu of claiming a section 48D credit. See § 1.50–2 for additional rules under section 50(a)(3) and (6) of the Code relating to applicable transactions that result in the recapture of section 48D credits.

(b) *Determination of credit.* Subject to any applicable sections of the Code that may limit the credit determined under section 48D, the section 48D credit for any taxable year of an eligible taxpayer with respect to any advanced manufacturing facility is an amount equal to 25 percent of the taxpayer's qualified investment for the taxable year with respect to that advanced manufacturing facility. A section 48D credit is available only with respect to qualified property that a taxpayer places in service after December 31, 2022, and, for any qualified property the construction of which began prior to January 1, 2023, but only to the extent of the basis of that property attributable to the construction, reconstruction, or erection of that property occurring after August 9, 2022. Under section 48D(e),

no section 48D credit is allowed to a taxpayer for placing qualified property in service in any taxable year if the beginning of construction of that qualified property as determined under § 1.48D–5 begins after December 31, 2026 (the date specified in section 48D(e)).

(c) *Coordination with section 47*—(1) *In general.* The qualified investment with respect to any advanced manufacturing facility of an eligible taxpayer for any taxable year does not include that portion of the basis of any property that is attributable to qualified rehabilitation expenditures, as defined in section 47(c)(2) and § 1.48–12(c), with respect to a qualified rehabilitated building, as defined in section 47(c)(1) and § 1.48–12(b).

(2) *Example: Coordination with section 47.* X Corp, a calendar-year C corporation, owns Building A, a certified historic structure. X Corp's adjusted basis in Building A is $100,000. Between August 1, 2024, and October 31, 2024, X Corp incurs $1 million to reconstruct, within the meaning of section 48D(b)(2)(A)(iii)(I) and § 1.48–12(b)(2)(iv), Building A. X Corp places the reconstructed Building A, a qualified rehabilitated building, in service on November 15, 2024. Of the $1 million of capitalized expenditures incurred to reconstruct Building A (all of which would meet the definition of qualified investment), $250,000 also meets the definition of qualified rehabilitation expenditures. As such, X's qualified investment in Building A is $750,000 ($1 million − $250,000).

(d) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after [DATE OF PUBLICATION OF FINAL RULE].

§ 1.48D–2 Definitions.

(a) *In general.* The definitions in paragraphs (b) through (n) of this section apply for purposes of sections 48D and 50 of the Internal Revenue Code (Code) and the section 48D regulations.

(b) *Applicable transaction.* The term *applicable transaction* has the meaning provided in section 50(a)(6) of the Code and § 1.50–2.

(c) *Basis.* With respect to any qualified property, the term *basis* means the the basis of the qualified property determined immediately before the qualified property is placed in service by the taxpayer and in accordance with the general rules of subtitle A of the Code (subtitle A) for determining the basis of property (see subtitle A, subchapter O, part II). Thus, the basis of qualified property would generally be its cost (see section 1012) unreduced by any adjustments to basis and would include all items properly included by the taxpayer in the depreciable basis of the property.

(d) *Beginning of construction.* The term *beginning of construction* has the meaning provided in § 1.48D–4.

(e) *Eligible taxpayer.* The term *eligible taxpayer* means any taxpayer that—

(1) Is not a foreign entity of concern; and

(2) Has not made an applicable transaction during the taxable year.

(f) *Foreign entities*—(1) *Foreign entity.* The term *foreign entity* has the same meaning as provided in 15 CFR 231.105.

(2) *Foreign entity of concern.* The term *foreign entity of concern* has the same meaning as provided in 15 CFR 231.106.

(3) *Owned by, controlled by, or subject to the jurisdiction or direction of.* The term *owned by, controlled by, or subject to the jurisdiction or direction of* has the same meaning as provided in 15 CFR 231.112 for purposes of determining whether an entity is a foreign entity under paragraph (f)(1) of this section or a foreign entity of concern under paragraph (f)(2) of this section.

(g) *Placed in service.* The term *placed in service* has the same meaning as provided in § 1.46–3(d).

(h) *Qualified Investment*—(1) *In general.* Except as provided in paragraphs (h)(2) and (3) of this section, the term *qualified investment* with respect to an advanced manufacturing facility means, for any taxable year, the basis of any qualified property that is part of an advanced manufacturing facility and placed in service by the taxpayer during the taxable year.

(2) *Special rules for certain passthrough entities.* In the case of any qualified property that is part of an advanced manufacturing facility of an eligible taxpayer and placed in service by an entity described in paragraphs (h)(2)(i) through (iii) of this section during a taxable year, the rules of this paragraph (h)(2) apply to determine the qualified investment for the taxable year with respect to the advanced manufacturing facility.

(i) *Partnership.* In the case of a partnership that places in service qualified property that is part of an advanced manufacturing facility of an eligible taxpayer, each partner in the partnership must take into account separately the partner's share of the basis of the qualified property placed in service by the partnership during the taxable year as provided in § 1.46–3(f).

(ii) *S corporation.* The basis of qualified property that is part of an advanced manufacturing facility of an eligible taxpayer and placed in service during the taxable year by an S corporation (as defined in section 1361(a) of the Code) must be apportioned pro rata among the S corporation's shareholders on the last day of the S corporation's taxable year as provided in section 1366.

(iii) *Estate or trust.* The basis of qualified property that is part of an advanced manufacturing facility of an eligible taxpayer and placed in service during the taxable year by an estate or trust must be apportioned among the estate or trust and its beneficiaries on the basis of the income of the estate or trust allocable to each for that taxable year.

(3) *Qualified progress expenditures election.* A taxpayer may elect, as provided in § 1.46–5, to increase the qualified investment with respect to any advanced manufacturing facility of an eligible taxpayer for the taxable year, by any qualified progress expenditures made after August 9, 2022.

(4) *Examples.* The provisions of this paragraph (h) are illustrated by the following examples.

(i) *Example 1: Advanced manufacturing investment credit—qualified investment in general.* On November 1, 2023, X, a calendar-year C corporation, places in service qualified property with a basis of $200,000, and on December 1, 2023, X places in service qualified property with a basis of $300,000. X's qualified investment for the taxable year is $500,000 ($200,000 + $300,000).

(ii) *Example 2: Advanced manufacturing investment credit, qualified investment for partnerships.* A, B, C, and D, all calendar-year C corporations, are partners in the ABCD partnership. Partners A, B, C, and D share partnership profits equally. On November 1, 2023, the ABCD partnership placed in service qualified property with a basis of $1 million. Each partner's share of the basis of the qualified property, as determined in § 1.46–3(f)(2), is $250,000 ($1m × 0.25) and each partner's qualified investment is $250,000.

(i) *Section 48D credit.* The term *section 48D credit* means the advanced manufacturing investment credit determined under section 48D and the section 48D regulations.

(j) *Section 48D regulations.* The term *section 48D regulations* means this section and §§ 1.48D–2 through 1.48D–6 and 1.50–2.

(k) *Semiconductor* means, consistent with 15 CFR 231.117, an integrated electronic device or system most commonly manufactured using

materials such as, but not limited to, silicon, silicon carbide, or III–V compounds, and processes such as, but not limited to, lithography, deposition, and etching. Such devices and systems include, but are not limited to, analog and digital electronics, power electronics, and photonics, for memory, processing, sensing, actuation, and communications applications.

(l) *Semiconductor manufacturing*—(1) *In general.* The term *semiconductor manufacturing* and the term *manufacturing of semiconductors* are synonymous and mean, consistent with 15 CFR 231.118, semiconductor fabrication or semiconductor packaging. Semiconductor fabrication includes the process of forming devices like transistors, poly capacitors, non-metal resistors, and diodes, as well as interconnects between such devices, on a wafer of semiconductor material. Semiconductor packaging means the process of enclosing a semiconductor in a protective container (package) and providing external power and signal connectivity for the assembled integrated circuit.

(2) *Semiconductor manufacturing processes.* The following definitions apply for purposes of section 48D and the section 48D regulations:

(i) *Packaging* means the process of enclosing a semiconductor in a protective container (package) and providing external power and signal connectivity for the assembled integrated circuit.

(ii) *Advanced packaging* means a subset of packaging technologies that uses novel techniques and materials to increase the performance, power, modularity, and/or durability of an integrated circuit. Advanced packaging technologies include flip-chip, 2D, 2.5D, and 3D stacking, fan-out and fan-in, and embedded die/system-in-package (SiP).

(m) *Semiconductor manufacturing equipment.* The term *semiconductor manufacturing equipment* means the specialized equipment integral to the manufacturing of semiconductors and subsystems that enable or are incorporated into the manufacturing equipment. Specific examples of semiconductor manufacturing equipment and subsystems that enable semiconductor manufacturing equipment include:

(1) Deposition equipment, including, Chemical Vapor Deposition (CVD), Physical Vapor Deposition (PVD), and Atomic Layer Deposition (ALD);

(2) Etching equipment (wet etch, dry etch);

(3) Lithography equipment (steppers, scanners, extreme ultraviolet (EUV));

(4) Wafer slicing equipment, wafer dicing equipment, and wire bonders;

(5) Inspection and measuring equipment, including scanning electron microscopes, atomic force microscopes, optical inspection systems, and wafer probes;

(6) Certain metrology and inspection systems; and

(7) Ion implantation and diffusion/oxidation furnaces.

(n) *Manufacturing semiconductor manufacturing equipment.* The term *manufacturing semiconductor manufacturing equipment* means the physical production of semiconductor manufacturing equipment in a manufacturing facility.

(o) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after [DATE OF PUBLICATION OF FINAL RULE].

§ 1.48D–3 Qualified property.

(a) *In general.* This section provides definitions and rules relating to qualified property for purposes of section 48D of the Internal Revenue Code and the section 48D regulations.

(b) *Qualified property.* The term *qualified property* means tangible depreciable property that is integral to the operation of an advanced manufacturing facility and that is either—

(1) Constructed, reconstructed, or erected by the taxpayer; or

(2) Acquired by the taxpayer if the original use of such property commences with the taxpayer.

(c) *Tangible depreciable property*—(1) *In general.* The term *tangible depreciable property* means tangible personal property (as defined in § 1.48–1(c)), other tangible property (as defined in § 1.48–1(d)), and building and structural components (as defined in § 1.48–1(e), except as provided in paragraph (c)(2) of this section) with respect to which depreciation (or amortization in lieu of depreciation) is allowable. The law of a State or local jurisdiction is not controlling for purposes of determining whether property is tangible property for purposes of section 48D or the section 48D regulations.

(2) *Exception.* Pursuant to section 48D(b)(2)(B)(ii), the term *tangible depreciable property* does not include a building and its structural components, or a portion thereof, used for:

(i) Offices;

(ii) Administrative services such as human resources or personnel services, payroll services, legal and accounting services, and procurement services;

(iii) Sales or distribution functions;

(iv) Security services (not including cybersecurity operations); or

(v) Any other functions unrelated to manufacturing of semiconductors or semiconductor manufacturing equipment.

(d) *Constructed, reconstructed, or erected by the taxpayer.* Property is considered constructed, reconstructed, or erected by the taxpayer if the work is done for the benefit of the taxpayer in accordance with the taxpayer's specifications.

(e) *Original use*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the term *original use* means with respect to any property the first use to which the property is put by any taxpayer in connection with a trade or business or for the production of income. Additional capital expenditures paid or incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfy the original use requirement to the extent of the amount of the expenditures paid or incurred by a taxpayer. However, a taxpayer's cost to acquire property reconditioned or rebuilt by another taxpayer does not satisfy the original use requirement. Whether property is reconditioned or rebuilt property will be determined based on the facts and circumstances.

(2) *Treatment of inventory.* For purposes of paragraph (e)(1) of this section, if a taxpayer initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the taxpayer's trade or business and subsequently withdraws the property from inventory and uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. If a person initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the person's business and a taxpayer subsequently acquires the property from the person for use primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. For purposes of this paragraph (e), the original use of the property by the taxpayer commences on the date on which the taxpayer first uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income.

(f) *Integral to the operation of an advanced manufacturing facility*—(1) *In general.* To qualify for the section 48D credit, property must be integral to the operation of manufacturing

semiconductors or manufacturing semiconductor manufacturing equipment, both as provided in § 1.48D–2. Property is integral to the operation of manufacturing semiconductors or semiconductor manufacturing equipment if such property is used directly in the manufacturing operation, is essential to the completeness of the manufacturing operation, and is not transformed in any material way as a result of the manufacturing operation. Materials, supplies, and other inventoriable items of property that are transformed into a finished semiconductor or into a finished unit of semiconductor manufacturing equipment are not considered property integral to the operation of manufacturing semiconductors or semiconductor manufacturing equipment. In addition, property such as pavements, parking areas, inherently permanent advertising displays, or inherently permanent outdoor lighting facilities, although used in the operation of a business, ordinarily are not integral to the operation of manufacturing semiconductors or semiconductor manufacturing equipment. Thus, for example, all property used by the taxpayer to acquire or transport materials or supplies to the point where the actual manufacturing activity commences (such as docks, railroad tracks, and bridges), or all property (other than materials or supplies) used by the taxpayer to manufacture semiconductors or to manufacture semiconductor manufacturing equipment within the meaning of § 1.48D–2, would be considered property integral to the operation of an advanced manufacturing facility of an eligible taxpayer. Property is considered integral to the operation of an advanced manufacturing facility of an eligible taxpayer if so used either by the owner of the property or by the lessee of the property. Specific examples of property which normally would be integral to the operation of the advanced manufacturing facility of an eligible taxpayer are:

(i) Deposition equipment used in the processes of Chemical Vapor Deposition (CVD), and Physical Vapor Deposition (PVD), Etching Equipment, lithography equipment, including Extreme Ultraviolet Lithography (EUV);

(ii) Wet process tools, analytical tools, E-Beam operation tools, mask manufacturing equipment, chemical mechanical polishing equipment, reticle handlers, and stockers;

(iii) Inspection and metrology equipment;

(iv) Clean room facilities, including specialized lighting systems, automated material systems for wafer handling, locker and growing rooms, specialized recirculating air handlers, to maintain the cleanroom free from particles, control temperature and humidity levels, and specialized ceilings comprised of HEPA filters;

(v) Electrical power facilities, cooling facilities, chemical supply systems, and wastewater systems;

(vi) Sub-fab levels containing pumps, transformers, abatement systems, ultrapure water systems, uninterruptible power supply, and boilers, pipes, storage systems, wafer routing systems and databases, backup systems, quality assurance equipment, and computer data centers; and

(vii) Utility level equipment including chillers, systems to handle nitrogen, argon, and other gases, compressor systems, and pipes.

(2) *Research or storage facilities.* If property, including a building and its structural components, constitutes a research or storage facility and is used in connection with the manufacturing of semiconductors or semiconductor manufacturing equipment, the property may qualify as integral to the operation of the advanced manufacturing facility under section 48D(b)(2)(A)(iv). Specific examples of research facilities include research facilities that manufacture semiconductors in connection with research, such as pre-pilot production lines and prototypes, including semiconductor packaging. Specific examples of storage facilities are mineral, chemical, and gas storage tanks, including high pressure cylinders or specially designed tanks and drums. A research facility that does not manufacture any type of semiconductors, as provided in § 1.48D–2(k), or semiconductor manufacturing equipment, as provided in § 1.48D–2(m), does not qualify.

(g) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after [DATE OF PUBLICATION OF FINAL RULE].

§ 1.48D–4 Advanced manufacturing facility of an eligible taxpayer.

(a) *In general.* This section provides definitions and rules relating to advanced manufacturing facilities of eligible taxpayers for purposes of section 48D of the Internal Revenue Code and the section 48D regulations.

(b) *Advanced manufacturing facility.* For purposes of section 48D(b)(3) and this section, the term *advanced manufacturing facility* means a facility of an eligible taxpayer for which the primary purpose, as determined under paragraph (c)(1) of this section, is the manufacturing of finished semiconductors, as defined in § 1.48D–2(l), or the manufacturing of finished semiconductor manufacturing equipment, as defined in § 1.48D–2(n).

(c) *Primary purpose*—(1) *In general.* The determination of the *primary purpose* of a facility will be made based on all the facts and circumstances surrounding the construction, reconstruction, or erection of the advanced manufacturing facility of an eligible taxpayer. Facts that may indicate a facility has a primary purpose of manufacturing finished semiconductors or manufacturing finished semiconductor manufacturing equipment include designs or other documents for the facility that demonstrate that the facility is designed to make finished semiconductors or finished products consisting of specialized equipment that can only be used for semiconductor manufacturing; the possession of permits or licenses needed to manufacture finished semiconductors or finished semiconductor manufacturing equipment; and executed contracts to supply finished semiconductor manufacturing equipment to a finished semiconductor manufacturer in place either before or within 6 months after the facility is placed in service.

(2) *No primary purpose.* A facility that manufactures, produces, grows, or extracts materials or chemicals that are supplied to an advanced manufacturing facility is not a facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment. Thus, for example, facilities that grow wafers or produce gases, or that manufacture components or parts, to supply an advanced manufacturing facility that manufactures semiconductors or semiconductor manufacturing equipment are not facilities for which the primary purpose is the manufacturing of semiconductors or the manufacturing of semiconductor manufacturing equipment.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c):

(i) *Example (i)—Primary purpose.* In January 2023, X Corp, a calendar-year C corporation, begins construction of a facility that will manufacture equipment that is integral to the manufacturing operations of a manufacturer of semiconductors. A portion of the equipment, however, could be used for other manufacturing operations. X Corp enters into a contract with Y Corp, which is building a semiconductor manufacturing facility to be placed in service in July 2024, to supply Y Corp

with the equipment it will need for its semiconductor manufacturing operations. Such equipment represents approximately 75 percent of the potential output of X Corp's facility (by cost to produce such equipment) of X Corp's facility for the first year of operations. X Corp will be considered as having a primary purpose of manufacturing semiconductor manufacturing equipment.

(ii) *Example (ii)—Primary purpose.* In January 2023, Y Corp, a C corporation, with a calendar-year taxable year, begins construction of a facility that will manufacture scanning electron microscopes. Y Corp enters into a contract with Z Corp, which is building a semiconductor manufacturing facility to be placed in service in July 2024, to supply Z Corp with equipment it will use as an integral part of its semiconductor manufacturing operations. Such equipment represents approximately 75 percent of the potential output (by cost) of Y Corp's facility for the first year of operations. Y Corp will be considered as having a primary purpose of manufacturing semiconductor manufacturing equipment because scanning electron microscopes are specialized equipment integral to the manufacturing of semiconductors.

(d) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after [DATE OF PUBLICATION OF FINAL RULE].

§ 1.48D–5 Beginning of construction.

(a) *Termination of credit*—(1) *In general.* The credit allowed under section 48D of the Internal Revenue Code (Code) and the section 48D regulations does not apply to property that is part of an advanced manufacturing facility of an eligible taxpayer if the beginning of construction of the property, as defined in paragraph (a)(2) of this section, begins after December 31, 2026 (the date specified in section 48D(e)).

(2) *Property.* For purposes of determining beginning of construction of property under this section, the unit of property is—

(i) A single advanced manufacturing facility project as described in paragraph (a)(3) of this section; or

(ii) An item of qualified property (as defined in § 1.48D–3(b)).

(3) *Single advanced manufacturing facility project.* Solely for purposes of determining whether construction of a qualified property has begun for purposes of section 48D and the section 48D regulations, multiple items of qualified property or advanced manufacturing facilities that are operated as part of a single advanced manufacturing facility project (along with any items of property, such as clean rooms, chemical delivery systems, chemical storage facilities, temperature control systems, and robotic handling systems that are integral to the operation of the single advanced manufacturing facility project) will be treated as a single item of qualified property. Whether multiple qualified properties or advanced manufacturing facilities are operated as part of a single advanced manufacturing facility project will depend on all the relevant facts and circumstances.

(i) *Factors used for single advanced manufacturing facility project determination.* Factors indicating that multiple qualified properties or advanced manufacturing facilities are operated as part of a single advanced manufacturing facility project may include:

(A) The properties or facilities are owned by a single legal entity;

(B) The properties or facilities are constructed on contiguous pieces of land;

(C) The properties or facilities are described in a common supply contract or other type of relevant contract;

(D) The properties or facilities share a common electricity and/or water supply;

(E) The properties or facilities are described in one or more common environmental or other regulatory permits;

(F) The properties or facilities were constructed pursuant to a single master construction contract; or

(G) The construction of the properties or facilities was financed pursuant to the same loan agreement or other financing arrangement.

(ii) *Example.* A taxpayer is developing Project C, a project that will consist of 3 advanced manufacturing facilities constructed on the same campus. Project C will share a common electricity supply, and semiconductors manufactured by Project C will be sold to Buyer through a single supply contract. In 2023, for 1 of the 3 advanced manufacturing facilities, the taxpayer installs deposition equipment. Thereafter, the taxpayer completes the construction of all 3 advanced manufacturing facilities pursuant to a continuous program of construction. For purposes of the section 48D credit, Project C is a single project that will be treated as a single property, and the taxpayer performed physical work of a significant nature that constitutes the beginning of construction of Project C in 2023.

(iii) *Timing of single advanced manufacturing facility project determination.* Whether multiple properties or advanced manufacturing facilities are operated as part of a single advanced manufacturing facility project and are treated as a single item of property for purposes of the beginning of construction requirement of section 48D and the section 48D regulations is determined in the taxable year during which the last of the multiple properties or facilities is placed in service.

(iv) *Disaggregation.* Multiple properties or advanced manufacturing facilities that are operated as part of a single advanced manufacturing facility project and treated as a single item of qualified property under paragraph (a)(3) of this section for purposes of determining whether construction of a qualified property or advanced manufacturing facility has begun may be disaggregated and treated as separate items of qualified property for purposes of determining whether a separate advanced manufacturing facility or item of qualified property satisfies the continuity safe harbor (as defined in paragraph (e) of this section). Those disaggregated separate advanced manufacturing facilities or items of qualified property that are placed in service prior to the continuity safe harbor deadline will be eligible for the continuity safe harbor. The remaining disaggregated separate items of property or facilities may satisfy the continuity requirement under a facts and circumstances determination.

(v) *Example.* A taxpayer is developing Project D, a project that will consist of 4 separate properties. Project D will use the same water supply and each property within Project D will be constructed pursuant to a single master construction contract. Under the single project rule provided in paragraph (a)(3) of this section, Project D is a single project that will be treated as a single property. In 2024, for 3 of the 4 separate properties, the taxpayer installs property integral to the operation of the advanced manufacturing facility. Accordingly, the taxpayer has performed physical work of a significant nature that constitutes the beginning of construction of Project D for purposes of section 48D(e). Thereafter, on the last day of the 10-year continuity safe harbor period, the taxpayer places in service only 3 of the 4 separate properties within Project D. The taxpayer disaggregates Project D under paragraph (a)(3)(iv) of this section and accordingly, only 3 of the 4 separate properties satisfy the Continuity Safe Harbor. For

the remaining 1 separate property, the taxpayer may demonstrate that it satisfies the continuity requirement provided in paragraph (e) of this section based on the facts and circumstances, to enable the taxpayer to claim the section 48D credit.

(b) *Beginning of construction*—(1) *In general.* For purposes of section 48D, the section 48D regulations, and section 107(f)(1) of the CHIPS Act of 2022, Public Law 117–167, div. A, 136 Stat. 1366, 1399 (August 9, 2022), a taxpayer may establish that construction of an item of property (as defined in paragraph (a)(2) of this section) of the taxpayer begins under either:

(i) The physical work test of paragraph (c) of this section; or

(ii) The five percent safe harbor of paragraph (d) of this section.

(2) *Continuity requirement.* See paragraph (e) of this section for the continuity requirement applicable for purposes of the physical work test and the five percent safe harbor, which must be demonstrated either by maintaining continuous construction (as defined in paragraph (e)(2) of this section) or continuous efforts (as defined in paragraph (e)(3) of this section).

(c) *Physical work test*—(1) *In general.* Under the physical work test, construction of an item of property begins when physical work of a significant nature begins, provided that the taxpayer maintains continuous construction or continuous efforts. This test focuses on nature of the work performed, not the amount of the costs. Assuming the work performed is of a significant nature, there is no fixed minimum amount of work, monetary or percentage threshold required to satisfy the physical work test.

(2) *Physical work of significant nature*—(i) *In general.* Work performed by the taxpayer and work performed for the taxpayer by other persons under a binding written contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in the taxpayer's trade or business of manufacturing semiconductors or semiconductor manufacturing equipment is taken into account in determining whether physical work of a significant nature has begun. Both on-site and off-site work (performed either by the taxpayer or by another person under a binding written contract) may be taken into account for purposes of demonstrating that physical work of a significant nature has begun. A written contract is binding only if it is enforceable under local law against the taxpayer or a predecessor and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least five percent of the total contract price will not be treated as limiting damages to a specified amount. For additional guidance regarding the definition of a binding written contract, see § 1.168(k)–1(b)(4)(ii)(A) through (D).

(ii) *Exceptions.* Physical work of significant nature does not include preliminary activities, including but not limited to planning or designing, securing financing, exploring, researching, obtaining permits, licensing, conducting surveys, environmental and engineering studies, or clearing a site, even if the cost of those preliminary activities is properly included in the depreciable basis of the property. Physical work of a significant nature also does not include work (performed either by the taxpayer or by another person under a binding written contract) to produce property that is either in existing inventory or is normally held in inventory by a vendor.

(d) *Five percent safe harbor*—(1) *In general.* Construction of a property will be considered as having begun if:

(i) A taxpayer pays or incurs (within the meaning of § 1.461–1(a)(1) and (2)) five percent or more of the total cost of the property; and

(ii) Thereafter, the taxpayer maintains continuous construction or continuous efforts.

(2) *Costs.* All costs properly included in the basis of the property are taken into account to determine whether the five percent safe harbor has been met. For property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, costs incurred with respect to the property by the other person before the property is provided to the taxpayer are deemed incurred by the taxpayer when the costs are incurred by the other person under the principles of section 461 of the Code.

(3) *Cost overruns*—(i) *Single advanced manufacturing facility project.* If the total cost of a property that is a single advanced manufacturing facility project comprised of multiple properties (as described in paragraph (a)(3) of this section) exceeds its anticipated total cost such that the amount the taxpayer actually paid or incurred with respect to the single advanced manufacturing facility project to establish the beginning of its construction under paragraph (b)(1)(ii) of this section is less than five percent of the total cost at the time it is placed in service, the five percent safe harbor is not fully satisfied. However, the five percent safe harbor will be satisfied with respect to some, but not all, of the separate properties or facilities (as described in paragraph (a)(3) of this section) comprising the single advanced manufacturing facility project, as long as the total aggregate cost of those properties is not more than twenty times greater than the amount the taxpayer paid or incurred.

(ii) *Example.* In 2023, taxpayer incurs $300,000 in costs to construct Project A, comprised of six advanced manufacturing facilities that will be operated as a single project. Taxpayer anticipates that each advanced manufacturing facility will cost $1,000,000 for a total cost for Project A of $6,000,000. Thereafter, the taxpayer makes continuous efforts to advance towards completion of Project A. The taxpayer timely places Project A in service in 2025. In 2025, the actual total cost of Project A amounts to $7,500,000, with each advanced manufacturing facility costing $1,250,000. Although the taxpayer did not pay or incur five percent of the actual total cost of Project A in 2023, the taxpayer will be treated as satisfying the Five Percent Safe Harbor in 2023 with respect to four of the advanced manufacturing facilities, as their actual total cost of $5,000,000 is not more than twenty times greater than the $300,000 in costs incurred by the taxpayer. The taxpayer will not be treated as satisfying the five percent safe harbor in 2023 with respect to two of the properties. Thus, the taxpayer may claim the section 48D credit based on $5,000,000 the cost of four of the properties.

(iii) *Single property.* If the total cost of a single property, which is not part of a single advanced manufacturing facility project comprised of multiple properties or facilities (as described in paragraph (a)(3) of this section) and cannot be separated into multiple properties or facilities, exceeds its anticipated total cost so that the amount a taxpayer actually paid or incurred with respect to the single property as of an earlier year is less than five percent of the total cost of the single property at the time it is placed in service, then the taxpayer will not satisfy the five percent safe harbor with respect to any portion of the single property in such earlier year.

(A) *Example.* In 2023, a taxpayer incurs $250,000 in costs to construct Project B, a single property. The taxpayer anticipates that the total cost of Project B will be $5,000,000. Thereafter, the taxpayer makes continuous efforts to advance towards completion of Project B. The taxpayer places Project B in service in a later year. At that time, its actual total cost amounts to $6,000,000.

Because Project B is a single property that is not a single project comprised of multiple properties, the taxpayer will not satisfy the five percent safe harbor as of 2023. However, if the construction of Project B satisfies the requirements of the physical work test by also beginning physical work of a significant nature in 2024, the taxpayer may be able to demonstrate that construction began in 2024.

(B) [Reserved]

(e) *Continuity requirement*—(1) *In general.* For purposes of the physical work test and five percent safe harbor, taxpayers must satisfy the *continuity requirement* by demonstrating either continuous construction or continuous efforts regardless of whether the physical work test or the five percent safe harbor was used to establish the beginning of construction. Whether a taxpayer meets the continuity requirement under either test is determined by the relevant facts and circumstances. The Commissioner will closely scrutinize a property and may determine that the beginning of construction is not satisfied with respect to a property if a taxpayer does not meet the continuity requirement.

(2) *Continuous construction.* The term *continuous construction* means a continuous program of construction that involves continuing physical work of a significant nature. Whether a taxpayer maintains a continuous program of construction to satisfy the continuity requirement will be determined based on all the relevant facts and circumstances.

(3) *Continuous efforts.* The term *continuous efforts* means continuous efforts to advance towards completion of a property to satisfy the continuity requirement. Whether a taxpayer makes continuous efforts to advance towards completion of a property will be determined by the relevant facts and circumstances. Facts and circumstances indicating continuous efforts to advance towards completion of a property may include:

(i) Paying or incurring additional amounts included in the total cost of the property;

(ii) Entering into binding written contracts for the manufacture, construction, or production of the property or for future work to construct the property;

(iii) Obtaining necessary permits; and

(iv) Performing physical work of a significant nature.

(4) *Excusable disruptions to continuous construction and continuous efforts tests*—(i) *In general.* Certain disruptions in a taxpayer's continuous construction or continuous efforts to advance towards completion of a property that are beyond the taxpayer's control will not be considered as indicating that a taxpayer has failed to satisfy the continuity requirement.

(ii) *Effect of excusable disruptions on continuity safe harbor.* The excusable disruptions provided in this paragraph (e)(4) will not extend the continuity safe harbor deadline that is provided in paragraph (e)(6) of this section.

(iii) *Non-exclusive list of construction disruptions.* The following is a non-exclusive list of construction disruptions that will not be considered as indicating that a taxpayer has failed to satisfy the continuity requirement:

(A) Delays due to severe weather conditions;

(B) Delays due to natural disasters;

(C) Delays in obtaining permits or licenses from Federal, Indian Tribal, State, territorial, or local governments, including—

(*1*) Delays in obtaining air emissions, water discharge, or hazardous waste management permits or chemical handling licenses from the Environmental Protection Agency (EPA) or another environmental protection authority;

(*2*) Delays as a result of the review process under State, local, or Federal environmental laws, for example, a review under the National Environmental Policy Act; and

(*3*) Delays in obtaining construction permits;

(D) Delays at the written request of a Federal, State, local, or Indian Tribal government regarding matters of public health, public safety, security, or similar concerns, including hazardous chemical transport;

(E) Delays related to electrical or water supply, such as those relating to the completion of construction on a distribution line or water supply line that may be associated with a project's electrical and water needs, whether constructed by the eligible taxpayer that is the owner of the advanced manufacturing facility, a governmental entity, or another person;

(F) Delays in the manufacture of custom components or equipment;

(G) Delays due to the inability to obtain specialized equipment of limited availability;

(H) Delays due to supply shortages;

(I) Delays due to the presence of endangered species;

(J) Financing delays; and

(K) Delays due to specialized labor shortages or labor stoppages.

(5) *Timing of excusable disruption determination.* In the case of a single advanced manufacturing facility project comprised of a single property, whether an excusable disruption has occurred for purposes of the beginning of construction requirement of section 48D and the section 48D regulations must be determined in the taxable year during which the property is placed in service. In the case of a single advanced manufacturing facility project comprised of multiple properties or facilities, whether an excusable disruption has occurred for purposes of the beginning of construction requirement of section 48D and the section 48D regulations must be determined in the taxable year during which the last of multiple properties or facilities is placed in service.

(6) *Continuity safe harbor*—(i) *In general.* A taxpayer will be deemed to satisfy the continuity requirement provided the property is placed in service no more than 10 calendar years after the calendar year during which construction of the property began for purposes of section 48D and the section 48D regulations.

(ii) *Example.* If construction begins on a property on January 15, 2023, and the property is placed in service by December 31, 2033, the property will be considered to satisfy the Continuity Safe Harbor. If the property is not placed in service before January 1, 2034, whether the continuity requirement was satisfied will be determined based on all the relevant facts and circumstances.

(f) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after [DATE OF PUBLICATION OF FINAL RULE].

§ 1.48D–6 Elective payment election.

(a) *Elective payment election*—(1) *In general.* Except as provided in paragraph (b) of this section, a taxpayer may elect under section 48D(d)(1) of the Internal Revenue Code (Code) and this section with respect to the section 48D credit to be treated as making a payment against the tax imposed by subtitle A of the Code (for the taxable year with respect to which such credit was determined) equal to the amount of the credit with respect to any property otherwise allowable to the taxpayer (determined without regard to section 38(c) of the Code).

(2) *Timing of election.* Any election under section 48D(d)(1) and this section must be made not later than the due date (including extensions of time) for the return of tax imposed by subtitle A of the Code for the taxable year for which the election is made, but in no event earlier than May 8, 2023.

(3) *Irrevocable.* Any election under section 48D(d)(1) and this section, once

made, will be irrevocable and, except as otherwise provided, will apply with respect to any amount of section 48D credit for the taxable year for which the election is made.

(4) *Denial of double benefit.* In the case of a taxpayer making an election under section 48D(d) and this section with respect to any section 48D credit determined under section 48D(a) and § 1.48D–1, such credit will be reduced to zero and will, for any other purposes under the Code, be deemed to have been allowed to the taxpayer for such taxable year.

(5) *Treatment of payment.* The payment described in section 48D(d)(1) and paragraph (a)(1) of this section will be treated as made on the later of the due date (determined without regard to extensions) of the return of tax imposed by subtitle A of the Code for the taxable year or the date on which such return is filed.

(b) *Special rules for partnerships and S corporations*—(1) *In general.* If a partnership or S corporation directly holds any property for which an advanced manufacturing investment credit is determined, any election under paragraph (a) must be made by the partnership or S corporation. No election under 48D(d) and this section by any partner or shareholder is allowed.

(2) [Reserved]

(c) *Registration required*—(1) *In general.* As a condition of, and prior to, any amount being treated as a payment that is made by the taxpayer under section 48D(d)(1) or any payment made pursuant to section 48D(d)(2)(A)(i)(I), the eligible taxpayer or partnership or S corporation must timely comply with the registration procedures set forth in this paragraph (c).

(2) [Reserved]

(d) *Excessive payment*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, in the case of any amount treated as a payment which is made by the taxpayer under section 48D(d)(1) and paragraph (a) of this section, or any payment made pursuant to section 48D(d)(2)(A)(i)(II) and paragraph (b) of this section, with respect to any property, which amount the Commissioner determines constitutes an excessive payment as defined in paragraph (d)(3) of this section, the tax imposed on such taxpayer by chapter 1 of the Code for the taxable year in which such determination is made is increased by an amount equal to the sum of—

(i) The amount of such excessive payment; plus

(ii) An amount equal to 20 percent of such excessive payment.

(2) *Reasonable cause.* Paragraph (d)(1) of this section will not apply if the taxpayer demonstrates to the satisfaction of the Commissioner that the excessive payment resulted from reasonable cause.

(3) *Excessive payment defined.* For purposes of section 48D(d) and this paragraph (d), the term *excessive payment* means, with respect to any property for which an election is made under section 48D(d) and this section for any taxable year, an amount equal to the excess of—

(i) The amount treated as a payment which is made by the taxpayer pursuant to section 48D(d)(1) and paragraph (a) of this section, or any payment made by the Commissioner pursuant to section 48D(d)(2)(A)(I)(i) and paragraph (b) of this section, with respect to such property for such taxable year; over

(ii) The amount of the section 48D credit which, without application of section 48D(d) and this section, would be otherwise allowable (determined without regard to section 38(c)) under section 48D(a) and the section 48D regulations with respect to such property for such taxable year.

(4) [Reserved]

(e) *Basis reduction and recapture*—(1) *In general.* The rules in sections 50(a) and (c) of the Code apply with respect to elective payments under paragraphs (a) and (b) of this section.

(2) [Reserved]

(f) *Mirror code territories.* In the case of any possessions of the United States (U.S. territory) with a mirror code tax system (as defined in section 24(k) of the Code), section 48D(d) and this section are not treated as part of the income tax laws of the United States for purposes of determining the income tax law of such U.S. territory unless such territory elects to have section 48D(d) and this section so treated. Taxpayers must consult the applicable territory tax authority on whether such an election was made for the particular U.S. territory.

(g) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after [DATE OF PUBLICATION OF FINAL RULE].

■ **Par. 3.** Section 1.50–2 is added to read as follows:

§ 1.50–2 Recapture of the advanced manufacturing investment credit in the case of certain expansions.

(a) *Recapture in connection with certain expansions*—(1) *In general.* Except as provided in section 50(a)(3)(B) of the Internal Revenue Code (Code) and paragraph (a)(2) of this section, if an applicable taxpayer engages in an applicable transaction before the close of the applicable period, then the tax under chapter 1 of the Code for the taxable year in which such transaction occurs is increased by 100 percent of the applicable transaction recapture amount. Any applicable taxpayer that engages in an applicable transaction during a taxable year does not meet the definition of an eligible taxpayer under section 48D(c) and the section 48D regulations and is ineligible for the section 48D credit for that taxable year. See paragraph (b) of this section for definitions of terms used in section 50(a)(3) and this section.

(2) *Exception.* Section 50(a)(3)(A) and paragraph (a)(1) of this section do not apply if the applicable taxpayer demonstrates to the satisfaction of the Commissioner that the applicable transaction has been ceased or abandoned within 45 days of a determination and notice by the Commissioner. A taxpayer that ceases or abandons an applicable transaction for a taxable year may still be treated as engaging in a separate applicable transaction for a taxable year. However, a taxpayer may not circumvent the application of section 50(a)(3) and this section by engaging in a series of applicable transactions, multiple applicable transactions, or other similar arrangements.

(3) *Carrybacks and carryover adjusted.* In the case of any cessation described in section 50(a)(1) or (2), or any applicable transaction to which section 50(a)(3) and paragraph (a)(1) of this section apply, any carryback or carryover under section 39 is appropriately adjusted by reason of such cessation or applicable transaction.

(b) *Definitions.* The following definitions apply for purposes of section 50(a)(3) and this section.

(1) *Applicable period.* The term *applicable period* means the 10-year period beginning on the date that an applicable taxpayer placed in service property that is eligible for the section 48D credit.

(2) *Applicable taxpayer*—(i) *In general.* The term *applicable taxpayer* means—

(A) Any taxpayer who was allowed a section 48D credit or made an election under section 48D(d)(1) and § 1.48D–6(a) with respect to such credit, for any taxable year prior to the taxable year in which such taxpayer entered into an applicable transaction;

(B) Any partnership or S corporation that made an election under section 48D(d)(2) and § 1.48D–6(b) with respect to a credit determined under section 48D(a)(1) for any taxable year prior to

the taxable year in which such partnership or S corporation entered into an applicable transaction; and

(C) Any partner in a partnership (directly or indirectly through one or more tiered partnerships) or shareholder in an S corporation for which the partnership or S corporation made an election under section 48D(d)(2) and § 1.48D–6(b) with respect to a credit determined under section 48D(a) for any taxable year prior to when such partner or shareholder entered into an applicable transaction.

(ii) *Affiliated groups.* For purposes of this paragraph (b)(2), all members of an affiliated group under section 1504(a) of the Code, determined without regard to section 1504(b)(3) of the Code, are treated as one taxpayer.

(3) *Applicable transaction.* Except as provided in section 50(a)(6)(D)(ii) and paragraph (c)(1) of this section, the term *applicable transaction* means, with respect to any applicable taxpayer, any significant transaction involving the material expansion of semiconductor manufacturing capacity of such applicable taxpayer in any foreign country of concern.

(4) *Applicable transaction recapture amount*—(i) *In general.* The term *applicable transaction recapture amount* means, with respect to an applicable taxpayer, the aggregate decrease in the credits allowed under section 38 of the Code for all prior taxable years that would have resulted solely from reducing to zero any credit determined under section 46 of the Code that is attributable to the advanced manufacturing investment credit under section 48D(a), with respect to property that has been placed in service during the applicable period.

(ii) *[Reserved]*

(5) *Existing facility.* The term *existing facility,* consistent with 15 CFR 231.103, means any facility built, equipped, and operating at the semiconductor manufacturing capacity level for which it was designed prior to being placed in service by the taxpayer. Existing facilities are defined by their semiconductor manufacturing capacity at the time the qualified property is placed in service; facilities that undergo significant renovations after being placed in service will no longer qualify as existing facilities within the meaning of this paragraph (b)(5).

(6) *Foreign country of concern.* The term *foreign country of concern* has the same meaning as provided in 15 CFR 231.104.

(7) *Material expansion.* The term *material expansion* means, consistent with 15 CFR 231.111, the addition of physical space or equipment that has the purpose or effect of increasing semiconductor manufacturing capacity of a facility by more than 5 percent; or a series of such expansions which, in the aggregate at any time during the applicable period, increasing the semiconductor manufacturing capacity of a facility by more than 5 percent.

(8) *Semiconductor manufacturing capacity.* The term *semiconductor manufacturing capacity* means, consistent with 15 CFR 231.119, the productive capacity of a semiconductor facility. In the case of a semiconductor fabrication facility, semiconductor manufacturing capacity is measured in wafer starts per month. In the case of a packaging facility, semiconductor manufacturing capacity is measured in packages per month.

(9) *Significant renovations.* The term *significant renovations* means, consistent with 15 CFR 231.122, any set of changes to a facility that, in the aggregate during the applicable period, increase semiconductor manufacturing capacity by adding an additional line, or otherwise increasing semiconductor manufacturing capacity by 10 percent or more.

(10) *Significant transaction.* As determined in coordination with the Secretary of Commerce and the Secretary of Defense, the term *significant transaction* means—

(i) Any investment, whether proposed, pending, or completed, that is valued at $100,000 or more, including:

(A) A merger, acquisition, or takeover, including:

(*1*) The acquisition of an ownership interest in an entity;

(*2*) A consolidation;

(*3*) The formation of a joint venture; or

(*4*) A long-term lease or concession arrangement under which a lessee (or equivalent) makes substantially all business decisions concerning the operation of a leased entity (or equivalent), as if it were the owner; or

(B) Any other investment, including any capital expenditures or the formation of a subsidiary;

(ii) A series of transactions described in paragraph (b)(10)(i) of this section, which, in the aggregate at any time during, the applicable period, are valued at $100,000 or more;

(iii) A transaction that involves the expansion of manufacturing capacity for legacy semiconductors (other than with respect to an existing facility or equipment of an applicable taxpayer for manufacturing legacy semiconductors) if less than 85 percent of the output of the semiconductor manufacturing facility (for example, wafers, semiconductor devices, or packages) by value, is incorporated into final products (that is, not an intermediate product that is used as a factory inputs for producing other goods) that are used or consumed in the market of a foreign country of concern;

(iv) A transaction during the applicable period in which an applicable taxpayer knowingly (within the meaning of 15 CFR 231.109) engages in any joint research, as defined in 15 CFR 231.108, or technology licensing effort with a foreign entity of concern that relates to a technology or product that raises national security concerns; or

(v) Any of the transactions described in paragraphs (b)(10)(i) through (iv) of this section engaged in by any entity described in this paragraph (b)(10)(v) (consistent with the definition of affiliate in 15 CFR 231.101):

(A) Any entity if an applicable taxpayer directly or indirectly owns at least 50 percent of the outstanding voting interests in such entity.

(B) Any entity if such entity directly or indirectly owns at least 50 percent of the outstanding voting interests in an applicable taxpayer.

(C) Any entity if one or more entities described in paragraph (b)(10)(v)(B) of this section directly or indirectly owns at least 50 percent of the outstanding voting interests.

(11) *Technology licensing.* The term *technology licensing* has the same meaning as provided in 15 CFR 231.123.

(12) *Technology or product that raises national security concerns.* The term *technology or product that raises national security concerns* means, consistent with 15 CFR 231.124, any semiconductors critical to national security, as defined in 15 CFR 231.120, or any technology or product listed in Category 3 of the Commerce Control List (supplement No. 1 to part 774 of the Export Administration Regulations, 15 CFR part 774) that is controlled for National Security (''NS'') reasons, as described in 15 CFR 742.4, or Regional Stability (''RS'') reasons, as described in 15 CFR 742.6.

(c) *Exception from the definition of applicable transaction for the manufacturing of legacy semiconductors*—(1) *In general.* The term *applicable transaction,* as defined in section 50(a)(6)(D) and paragraph (b)(3) of this section, does not include a transaction that primarily involves the expansion of manufacturing capacity for legacy semiconductors, but only to the extent not described in paragraph (b)(10)(iii) of this section.

(2) *Legacy semiconductor.* The term *legacy semiconductor* means, consistent with 15 CFR 231.110—

(i) A digital or analog logic semiconductor that is of the 28 nanometer generation or older (that is, has a gate length of 28 nanometers or more for a planar transistor);

(ii) A memory semiconductor with a half-pitch greater than 18 nanometers for Dynamic Random Access Memory (DRAM) or less than 128 layers for Not AND (NAND) Flash that does not utilize emerging memory technologies, such as transition metal oxides, phase-change memory, perovskites, ferromagnetics relevant to advanced memory fabrication; or

(iii) A semiconductor identified by the Secretary of Commerce in a public notice issued under 15 U.S.C. 4652(a)(6)(A)(ii).

(3) *Exception from the definition of legacy semiconductor.* Notwithstanding paragraph (c)(2) of this section, the following are not legacy semiconductors:

(i) Semiconductors critical to national security, as defined in 15 CFR 231.120; or

(ii) A semiconductor with a post-planar transistor architecture (such as fin-shaped field field-effect transistor (FinFET) or gate all around field-effect transistor); and

(iii) For the purposes of packaging facilities, semiconductors packaged utilizing three-dimensional (3D) integration.

(d) *Example.* The provisions of this section are illustrated by the following example.

(1) *Example: Applicable transaction credit claimed.* On October 15, 2024, X Corp, a C corporation that is a calendar-year taxpayer, placed in service Property A, qualified property with a basis of $1 million. X Corp's qualified investment, as determined in § 1.46–3(c), for the taxable year is $1 million. X Corp's advanced manufacturing investment credit for the taxable year is $250,000 ($1 million × 0.25) and, assume that X Corp's income tax liability is $400,000. X Corp does not determine any other credits in 2024. X claims an advanced manufacturing investment credit of $250,000 for its 2024 taxable year. On January 15, 2026, X Corp engages in an applicable transaction, as defined in section 50(a)(6)(D) and paragraph (b)(3) of this section and did not cease or abandon the transaction within 45 days of a determination and notice by the Commissioner. X Corp has not determined or claimed any general business credits since its 2024 taxable year. The aggregate decrease in credits allowed under section 38 for all prior years resulting from reducing to zero any credit determined under section 46 that is attributable to the advanced manufacturing investment credit is $250,000 ($250,000 (credit allowed) − $0 (credit that would have been allowed). X Corp's tax under chapter 1 is increased by $250,000 (1.0 × $250,000). Pursuant to section 48D(c), for the 2026 taxable year, X Corp is not an eligible taxpayer and is ineligible to claim or carryforward the advanced manufacturing investment credit.

(2) [Reserved]

(f) *Applicability date.* This section applies to property that is placed in service after December 31, 2022, and during a taxable year ending on or after [DATE OF PUBLICATION OF FINAL RULE].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–05871 Filed 3–21–23; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application No. D–12022]

Z–RIN 1210 ZA07

Reopening Comment Period for the Proposed Amendment to Prohibited Transaction Class Exemption 84–14 (the QPAM Exemption)

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed amendment to class exemption; reopening of comment period.

SUMMARY: As discussed in the **DATES** section below, the Department of Labor's Employee Benefits Security Administration (EBSA) is announcing that it is reopening the comment period for the proposed amendment to prohibited transaction class exemption 84–14 (the QPAM Exemption).

DATES: The public comment period for the proposed amendment to the class exemption published on July 27, 2022, at 87 FR 45204, will reopen on the date of publication of this notice and close on April 6, 2023.

ADDRESSES: Please submit all written comments to the Office of Exemption Determinations through the Federal eRulemaking Portal at *www.regulations.gov* at Docket ID number: EBSA–2022–0008.

FOR FURTHER INFORMATION CONTACT: Erin Scott Hesse, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor. Telephone: (202) 693–8546 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department published a proposed amendment to prohibited transaction class exemption 84–14 (the Proposed QPAM Exemption Amendment) on July 27, 2022, with a 60-day comment period that was set to expire on September 26, 2022.[1] The Department received two letters requesting an extension of the comment period after the Department published the Proposed QPAM Exemption Amendment.[2] After carefully considering the extension request, the Department extended the initial comment period for an additional 15 days until October 11, 2022 in a **Federal Register** Notice published on September 9, 2022 [3] and received 31 comment letters.

In that same **Federal Register** notice of September 9, 2022, the Department announced on its own motion that it would hold a virtual public hearing on November 17, 2022 (and if necessary, on November 18, 2022), to provide an opportunity for all interested parties to testify on material information and issues regarding the Proposed QPAM Amendment.[4] The Department received 13 requests to testify at the hearing. The notice also indicated the Department would: (1) reopen the public comment period from the hearing date until approximately 14 days after the Department publishes the hearing transcript on EBSA's website; and (2) publish a **Federal Register** notice announcing that it has posted the hearing transcript to EBSA's website and providing the date the reopened comment period closes.

The Department held the virtual public hearing on November 17, 2022 and reopened the comment period on the hearing date.[5] The reopened comment period in connection with the hearing closed on January 6, 2023, and the Department received 150 additional comments. The hearing transcript may be accessed here: *https://www.dol.gov/agencies/ebsa/laws-and-regulations/*

[1] 87 FR 45204.

[2] See Public Comment #1 from American Bankers Association et al. and Public Comment #2 from American Retirement Association. The extension requests can be accessed here: *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/.*

[3] 87 FR 54715.

[4] Id.

[5] The hearing did not continue on November 18, 2022, because the Department was able to schedule all witnesses that requested to testify on one day.

rules-and-regulations/public-comments/1210-ZA07.

The Department understands that at least one interested party may have additional information to provide the Department that was not submitted by the comment deadline of January 6, 2023. Therefore, the Department is reopening the comment period to provide an opportunity for all interested parties to submit additional information. The Department encourages interested parties to submit comments on the proposed amendment before the additional reopened comment period closes on April 6, 2023. All written comments should be identified by Z–RIN 1210 ZA07 and sent to the Office of Exemption Determinations through the Federal eRulemaking Portal: *https://www.regulations.gov* at Docket ID number: EBSA–2022–0008. Please follow the instructions for submitting comments.

All comments on the proposed amendment and requests to testify at the hearing are available to the public without charge online at *https://www.regulations.gov* at Docket ID number: EBSA–2022–0008 and *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07*. They also are available for public inspection in EBSA's Public Disclosure Room, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC, this 13th day of March, 2023.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–05522 Filed 3–22–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0168]

RIN 1625–AA08

Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for certain waters of the Bush River and Otter Point Creek, in Maryland. This action is necessary to provide for the safety of life on these navigable waters located at Edgewood, MD, during a high-speed power boat race on May 13, 2023 and May 14, 2023. This proposed rulemaking would prohibit persons and vessels (other than those already at berth at the time the regulation takes effect) from being in the regulated area unless authorized by the Captain of the Port, Sector Maryland-National Capital Region (COTP), or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 24, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0168 using the Federal Decision Making Portal at *https://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST2 Courtney Perry, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2596, email *MDNCRWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On November 11, 2022, the Kent Narrows Racing Association (KNRA) notified the Coast Guard that it will be conducting the Harford County Spring Nationals Inboard Hydroplane Race on May 13, 2023 and May 14, 2023 from 9 a.m. to 7 p.m. both days. The high-speed power boat racing event consists of approximately 60 participating racing boats—including composite and wood hull inboard hydroplanes—12 to 28 feet in length. The vessels will compete along a marked, approximately 1-mile long course located on the Bush River and Otter Point Creek, at Flying Point Park, between Perryman, MD and Edgewood, MD. Hazards from the power boat racing event include the risks of injury or death resulting from near or actual contact among participant vessels and waterway users if normal vessel traffic were to interfere with the event. The COTP, (Commander of the Coast Guard Sector Maryland-National Capital Region) has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to participate in this event and for vessels that operate within the specified waters of the Bush River and Otter Point Creek.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulations from 9 a.m. on May 13, 2023, through 7 p.m. on May 14, 2023. The regulations would be enforced from 9 a.m. to 7 p.m. on May 13, 2023 and from 9 a.m. to 7 p.m. on May 14, 2023. The regulated area would cover all navigable waters of the Bush River and Otter Point Creek, shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°21′15″ N, longitude 076°14′39″ W and thence eastward to the eastern shoreline of the Bush River at latitude 39°27′03″ N, longitude 076°13′57″ W, and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. These boundaries are based on a detailed course map for the event which the Coast Guard received from the sponsor on March 7, 2023.

This proposed rule provides additional information about zones within the regulated area, their definitions, and the restrictions that would apply to mariners. These zones include ''Race Area,'' ''Buffer Zone,'' and ''Spectator Area.''

The proposed duration of the special local regulation and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat racing event, which is scheduled to take place from 10 a.m. to 6 p.m. on May 13, 2023, and from 10 a.m. to 6 p.m. on May 14, 2023. The COTP, and the Coast Guard Event Patrol Commander (or ''Event PATCOM,'' a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been so designated by the COTP) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person

in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Harford County Spring Nationals participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at a safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the COTP with a commissioned, warrant, or petty officer onboard and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed, one that minimizes wake while within the regulated area in a manner and that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while present within the regulated area. Only participant vessels and official patrol vessels would be allowed to enter the race area. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Bush River for a total of 20 enforcement hours. Although this regulated area extends across a large portion of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic able to do so safely would be able to transit the regulated area as instructed by the Event PATCOM. Such vessels must operate at a safe speed that minimized wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for 20 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov*. To do so, go to *https://www.regulations.gov,* type USCG- 2023–0168 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T05–0168 to read as follows:

§ 100.T05–0168 Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD.

(a) *Location.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Bush River and Otter Point Creek, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°27′15″ N, longitude 076°14′39″ W and thence eastward to the eastern shoreline of the Bush River at latitude 39°27′03″ N, longitude 076°13′57″ W; and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. The following locations are within the regulated area: The regulations in this section apply to the following area:

(2) *Race Area.* The area is bounded by a line commencing at position latitude 39°26′39.48″ N, longitude 076°15′23.44″ W, to latitude 39°26′36.52″ N, longitude 076°15′13.33″ W, to latitude 39°26′36.94″ N, longitude 076°15′10.01″ W, to latitude 39°26′38.59″ N, longitude 076°15′07.41″ W, to latitude 39°26′41.03″ N, longitude 076°15′06.22″ W, to latitude 39°26′43.61″ N, longitude 076°15′06.76″ W, to latitude 39°26′45.63″ N, longitude 076°15′08.89″ W, to latitude 39°26′47.93″ N, longitude 076°15′16.76″ W, to latitude 39°26′50.24″ N, longitude 076°15′24.63″ W, to latitude 39°26′49.81″ N, longitude 076°15′27.95″ W, to latitude 39°26′48.16″ N, longitude 076°15′30.56″ W, to latitude 39°26′45.72″ N, longitude 076°15′31.75″ W, to latitude 39°26′43.15″ N, longitude 076°15′31.20″ W, to latitude 39°26′41.13″ N, longitude 076°15′29.07″ W thence back to the beginning point.

(3) *Buffer Zone.* The buffer zone surrounds the entire race area and is bounded by a line commencing at position latitude 39°26′39.60″ N, longitude 076°15′30.00″ W, to latitude 39°26′37.80″ N, longitude 076°15′24.00″ W, to latitude 39°26′34″ N, longitude 076°15′14.40″ W, to latitude 39°26′34.80″ N, longitude 076°15′09.00″ W, to latitude 39°26′37.20″ N, longitude 076°15′05.40″ W, to latitude 39°26′40.80″ N, longitude 076°15′03.60″ W, to latitude 39°26′44.40″ N, longitude 076°15′04.20″ W, to latitude 39°26′46.80″ N, longitude 076°15′07.20″ W, to latitude 39°26′49.80″ N, longitude 076°15′15.60″ W, to latitude 39°26′52.20″ N, longitude 076°15′25.20″ W, to latitude 39°26′51.60″ N, longitude 076°15′28.80″ W, to latitude 39°26′49.20″ N, longitude 076°15′32.40″ W, to latitude 39°26′45.60″ N, longitude 076°15′34.20″ W, to latitude 39°26′42.60″ N, longitude 076°615′33.60″ W thence back to the beginning point.

(4) *Spectator Area.* The spectator area is designated as the all waters immediately surrounding the buffer zone up to a distance of 500 feet immediately surrounding the buffer zone.

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

Buffer Zone is a neutral area that surrounds the perimeter of the race area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and nearby transiting vessels. This area provides separation between a race area and other

vessels that are operating in the vicinity of the regulated area established by the special local regulations in this section.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the regulations in this section.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been so designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

Race area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

Spectator means a person or vessel not registered with the event sponsor as a participant or assigned as official patrols.

(c) *Regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 a.m. to 7 p.m. on May 13, 2023 and from 9 a.m. to 7 p.m. on May 14, 2023.

Dated: March 17, 2023.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2023–0001]

RIN 1625–AA08 and 1625–AA00

Special Local Regulations and Safety Zones; Recurring Marine Events, Fireworks Displays, and Swim Events Held in the Coast Guard Sector Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the special local regulations and annual recurring marine events requiring safety zones for fireworks displays and swim events along the Coast Guard Sector Long Island Sound Captain of the Port Zone. When enforced, these special local regulations and safety zones restrict vessels from transiting regulated areas during certain annually recurring events. The proposed amendments to the special local regulations and safety zones are intended to expedite public notification and ensure the protection of the maritime public and event participants from the hazards associated with certain marine events. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 24, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0001 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician 2nd Class Mark Paget, Waterways Management Division, Sector Long Island Sound; telephone (203) 468–4583; email *mark.a.paget@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

Swim events, fireworks displays, and marine events are held on an annual recurring basis on the navigable waters within the Coast Guard Sector Long Island Sound COTP Zone. The Coast Guard has established special local regulations and safety zones for some of these annually recurring events to ensure the protection of the maritime public and event participants from potential hazards.

The COTP Sector Long Island Sound proposes to revise 33 CFR 100.100 Special Local Regulations; Regattas and Boat Races in the Coast Guard Sector Long Island Sound Captain of the Port Zone, Table 1 to § 100.100 and 33 CFR 165.151 Safety Zones; Fireworks Displays, Air Shows, and Swim Events in the Captain of the Port Long Island Sound Zone, Table 1 to § 165.151 and to make notifications of the enforcement periods of exact dates and times through the Local Notice to Mariners and Broadcast Notice to Mariners in advance of the events. Under these current regulations, § 100.100 and 165.151, if an event does not have a date listed, then exact dates and times of the enforcement period are announced through a Notice of Enforcement in the **Federal Register**.

The marine events listed therein include air shows, firework displays, swim events, and other marine related events requiring a limited access area restricting vessel traffic for safety purposes. The proposed revision to the tables would more accurately reflect the dates of marine events based on historical occurrences.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after a scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 and 70041.

The Coast Guard encourages the public to participate in this proposed rulemaking through the comment process so that any necessary changes can be identified and implemented in a timely and efficient manner. The Coast Guard will address all public comments accordingly, whether through response, additional revision to the regulation, or otherwise.

III. Discussion of Proposed Rule

Parts 100 and 165 of 33 CFR contain regulations establishing special local regulations and safety zones to restrict vessel traffic for the safety of persons and property. Section 100.100 establishes Special Local Regulations to ensure the safety and security of marine related events, participants, and spectators in the Coast Guard Sector Long Island Sound Zone.

From time to time, these sections require revisions to properly advertise the recurring regulations and to remove such regulations that have not been enforced over a 5-year period in the Coast Guard Sector Long Island Sound Zone. This proposed rule would reduce the number of events listed in the Table 1 to § 100.100 from 21 to 20.

The Coast Guard proposes to amend regulations in 33 CFR 100.100 Special Local Regulations; Regattas and Boat Races in the Coast Guard Sector Long Island Sound Captain of the Port Zone, by revising § 100.100(a) to note that that exact dates and times of the enforcement period of marine events listed in Table 1 to § 100.100 would be made by means such as Local Notice to Mariners and Broadcast Notice to Mariners in advance of the events and to revise the Table 1 to § 100.100 as indicated below. Our proposed revision of § 100.100(a) and Table 1 to § 100.100 appear at the end of this document. Section 165.151, Table 1, establishes recurring safety zones to restrict vessel transit into and through specified areas to protect spectators, mariners, and other persons and property from potential hazards presented during certain events taking place in Sector Long Island Sound's COTP zone. From time to time, this section requires amendments to properly reflect the recurring safety zones in Table 1. This proposed rule would reduce the number of events listed from in Table 1 from 74 to 29. Most of those removed are events that no longer occur or do not require a safety zone.

The Coast Guard proposes to amend 33 CFR 165.151 Safety Zones; Fireworks Displays, Air Shows, and Swim Events in the Captain of the Port Long Island Sound Zone, by revising § 165.151(a)(2) to note we would use Local Notice to Mariners and Broadcast Notice to Mariners to announce the exact dates and times of the enforcement period of marine events listed in Table 1 to § 165.151. These notifications would be made in advance of the events. This proposed rule would remove the current provision in § 165.151(a)(2) that the Coast Guard will publish notices in the **Federal Register** to announce the exact dates and times of the enforcement period for events that do not have a date for the event listed in the § 165.151. This information would be made solely via Local Notice to Mariners and Broadcast Notice to Mariners.

Our proposed revision of § 165.151(a)(2) and Table 1 to § 165.151 appear in the regulatory text at the end of this document. The purpose of this proposed rule is the same as for the existing regulation, to restrict general navigation in the safety zones during these events. Vessels intending to transit the designated waterway through the safety zones will only be allowed to transit the area when the COTP or a designated representative has deemed it safe to do so or at the completion of the events. The proposed annually recurring safety zones are necessary to provide for the safety of life on navigable waters of the U.S. during the events.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. A summary of our analyses based on these statutes and Executive Orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under 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, and duration of the special local regulations and safety zones. These regulated areas are limited in size and duration and are usually positioned away from high vessel traffic areas. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zones and the rule would allow vessels to seek permission to enter the zones. Vessel traffic would also be able to request permission from the COTP or a designated representative to enter the restricted area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves revising the tables to 33 CFR 100.100 and 33 CFR 165.151. Normally such actions are categorically excluded from further review under paragraph L60a, L60b, and L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0001 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Revise § 100.100 paragraph (a) and Table 1 to § 100.100 to read as follows:

§ 100.100 Special Local Regulations; Regattas and Boat Races in the Coast Guard Sector Long Island Sound Captain of the Port Zone.

(a) The following regulations apply to the marine events listed in the Table 1 to § 100.100. These regulations will be enforced for the duration of each event, on or about the dates indicated in Table 1 to 100.100. Notification of the exact dates and times of the enforcement period would be made to the local maritime community through all appropriate means, such as Local Notice to Mariners and Broadcast Notice to Mariners, in advance of the marine events. The First Coast Guard District Local Notice to Mariners can be found at: *https://www.navcen.uscg.gov.*

* * * * *

TABLE 1 TO § 100.100

5	May
5.1 Harvard-Yale Regatta	• Date: A single day in May or June. • Time: 8 a.m. to 6 p.m. • Location: All waters of the Thames River at New London, Connecticut between the Penn Central Draw Bridge at position 41°21′46.94″ N, 072°05′14.46″ W to Bartlett Cove at position 41°25′35.9″ N, 072°05′42.89″ W (NAD 83). All positions are approximate.
5.2 Bethpage Air Show at Jones Beach	• Date: The Thursday through Sunday before Memorial Day each May. • Time: (1) ''No Entry Area'' will be enforced each day from the start of the air show until 30 minutes after it concludes. Exact time will be determined annually. (2) The ''Slow/No Wake Area'' and the ''No Southbound Traffic Area'' will be enforced each day for six hours after the air show concludes. Exact time will be determined annually. • Locations: (1) ''No Entry Area'': All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY within a 1000-foot radius of the launch platform in approximate position 40°53′42.50″ N, 073°30′04.30″ W (NAD 83). (2) ''Slow/No Wake Area'': All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in position 40°35′49.01″ N, 73°32′33.63″ W; then north along the Meadowbrook State Parkway to its intersection with Merrick Road in position 40°39′14″ N, 73°34′0.76″ W; then east along Merrick Road to its intersection with Wantagh State Parkway in position 40°39′51.32″ N, 73°30′43.36″ W; then south along the Wantagh State Parkway to its intersection with Ocean Parkway in position 40°35′47.30″ N, 073°30′29.17″ W; then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin (NAD 83). All positions are approximate. (3) ''No Southbound Traffic Area'': All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay at position 40°36′29.20″ N, 073°29′22.88″ W and a point near the eastern entrance of Zach's Bay at position 40°36′16.53″ N, 073°28′57.26″ W (NAD 83). All positions are approximate.
6	June
6.1 Swim Across America Greenwich	• Date: A single day in June. • Time: 5:30 a.m. to 12 p.m. • Location: All navigable waters of Stamford Harbor within an area starting at a point in position 41°01′32.03″ N, 073°33′8.93″ W, then southeast to a point in position 41°01′15.01″ N, 073°32′55.58″ W; then southwest to a point in position 41°0′49.25″ N, 073°33′20.36″ W; then northwest to a point in position 41°0′58″ N, 073°33′27″ W; then northeast to a point in position 41°1′15.8″ N, 073°33′9.85″ W, then heading north and ending at point of origin (NAD 83). All positions are approximate.
7	July
7.1 Connecticut River Raft Race, Middletown, CT	• Date: A single day between the last Saturday in July through first Saturday of August. • Time: 10 a.m. to 2 p.m. • Location: All waters of the Connecticut River near Middletown, CT, between Gildersleeve Island (Marker no. 99) at position 41°36′02.13″ N, 072°37′22.71″ W; and Portland Riverside Marina (Marker no. 88) at position 41°33′38.3″ N, 072°37′36.53″ W (NAD 83). All positions are approximate.

TABLE 1 TO § 100.100—Continued

	• Additional Stipulations: Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas unless authorized by COTP or designated representative.
7.2 Dolan Family July 4th Fireworks	• Date: A single day in July. • Time: To be determined annually. • Locations: (1) ''No Entry Area'': All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY, within a 1,000-foot radius of the launch platform in approximate position 40°53′42.50″ N, 073°30′04.30″ W (NAD 83). (2) ''Slow/No Wake Area'': All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY, contained within the following area; beginning at a point on land in position at 40°53′12.43″ N, 073°31′13.05″ W near Moses Point; then east across Oyster Bay Harbor to a point on land in position at 40°53′15.12″ N, 073°30′38.45″ W; then north along the shoreline to a point on land in position at 40°53′34.43″ N, 073°30′33.42″ W near Cove Point; then east along the shoreline to a point on land in position at 40°53′41.67″ N, 073°29′40.74″ W near Cooper Bluff; then south along the shoreline to a point on land in position 40°53′05.09″ N, 073°29′23.32″ W near Eel Creek; then east across Cold Spring Harbor to a point on land in position 40°53′06.69″ N, 073°28′19.9″ W; then north along the shoreline to a point on land in position 40°55′24.09″ N, 073°29′49.09″ W near Whitewood Point; then west across Oyster Bay to a point on land in position 40°55′5.29″ N, 073°31′19.47″ W near Rocky Point; then south along the shoreline to a point on land in position 40°54′04.11″ N, 073°30′29.18″ W near Plum Point; then northwest along the shoreline to a point on land in position 40°54′09.06″ N, 073°30′45.71″ W; then southwest along the shoreline to a point on land in position 40°54′03.2″ N, 073°31′01.29″ W; and then south along the shoreline back to point of origin (NAD 83). All positions are approximate.
7.3 Jones Beach State Park Fireworks	• Date: A single day in July. • Time: To be determined annually. • Locations: (1) ''No Entry Area'': All waters off of Jones Beach State Park, Wantagh, NY, within a 1,000-foot radius of the launch platform in approximate position 40°34′56.68″ N, 073°30′31.19″ W (NAD 83). (2) ''Slow/No Wake Area'': All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in position at 40°35′49.01″ N, 073°32′33.63″ W; then north along the Meadowbrook State Parkway to its intersection with Merrick Road in position at 40°39′14″ N, 073°34′0.76″ W; then east along Merrick Road to its intersection with Wantagh State Parkway in position at 40°39′51.32″ N, 073°30′43.36″ W; then south along the Wantagh State Parkway to its intersection with Ocean Parkway in position at 40°35′47.30″ N, 073°30′29.17″ W; then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin (NAD 83). All positions are approximate. (3) ''No Southbound Traffic Area'': All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay in position at 40°36′29.20″ N, 073°29′22.88″ W and a point near the eastern entrance of Zach's Bay in position at 40°36′16.53″ N, 073°28′57.26″ W (NAD 83). All positions are approximate.
7.4 Maggie Fischer Cross Bay Swim	• Date: A single day in July. • Time: 5 a.m. to noon. • Location: Waters of the Great South Bay, NY, within 100 yards of the race course. Starting Point at the Fire Island Lighthouse Dock in position at 40°38′01″ N, 073°13′07″ W; then north-by-northwest to a point in position at 40°38′52″ N, 073°13′09″ W; then north-by-northwest to a point in position at 40°39′40″ N, 073°13′30″ W; then north-by-northwest to a point in position at 40°40′30″ N, 073°14′00″ W; and then north-by-northwest, finishing at Gilbert Park, Brightwaters, NY at position 40°42′25″ N, 073°14′52″ W (NAD 83). All positions are approximate.
7.5 Mystic Sharkfest Swim	• Date: A single day in July. • Time: 8 a.m. to 9:30 a.m. • Location: All waters of the Mystic River in Mystic, CT from Mystic Seaport, down the Mystic River, under the Bascule Drawbridge at 41°21′17.046″ N, 071° 58′8.742″ W, to finish at the boat launch ramp at the north end of Seaport Marine.

TABLE 1 TO § 100.100—Continued

7.6	Charles Island Music Festival	• Date: A single day in July. • Time: 11 a.m. to 6 p.m. • Location: Waters of The Gulf, Milford, CT. (1) ''Non-Motorized Craft Loitering Area''. Beginning directly in front of the concert barge in position approximately at 41°11′47.2″ N, 073°3′30.6″ W; will cover a 25-yard width by 33-yard length rectangle. (2) ''The No Anchoring or Loitering Area''. A 25-yard width section surrounding the sides of the non-motorized craft loitering area and the sides and back of the concert barge located in a position approximately at 41°11′47.2″ N, 073°3′30.6″ W; then a 25 yard width extending from the south side of the concert barge in a direction northeast for approximately 750 yards. (3) ''Slow-No Wake Area''. Beginning at the point northeast of Charles Island at position 41°11′33.4″ N, 073°03′12.7″ W; then northwest, parallel to The Bar towards Silver Sands State Beach to a point at position 41°11′56.3″ N, 073°03′54.1″ W; then northeast along the coast to Milford Harbor Buoy ''10'' at position 41°12′36.9″ N, 073°02′54.4″ W; then south along the coast of Gulf Beach to Welches Point at position 41°12′06.8″ N, 073°02′16.6″ W; then west-southwest to point of origin on Charles Island at position 41°11′33.4″ N, 073°03′12.7″ W. (4) ''Prohibited Area''. A 10-yard radius surrounding Charles Island. *Regulations.* All persons and vessels are prohibited from anchoring, mooring, or loitering inside the ''No Anchoring and Loitering Area'' described in paragraph (2) of this section and the prohibited area described in paragraph (4) of this section and are subject to a ''Slow-No Wake'' speed limit. Vessels within the regulated area described in paragraph (3) of this section may not produce more than a minimum wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by a vessel within the ''Slow-No Wake'' area be such that it creates a danger of injury to persons or damage to vessels or structures unless specified by the COTP or their designated representative.
7.7	Jamesport Triathlon	• Date: A single day in July. • Time: 5:30 a.m. to 10 a.m. • Location: Waters of the Great Peconic Bay, NY, 1000 feet east of South Jamesport Beach and South Jamesport Park.
8		August
8.1	Riverfront Dragon Boat and Asian Festival	• Dates: A 2-day event in August. • Time: 8 a.m. to 4:30 p.m. each day. • Location: All waters of the Connecticut River in Hartford, CT, between the Bulkeley Bridge at 41°46′10.10″ N, 072°39′56.13″ W and the Wilbur Cross Bridge at 41°45′11.67″ N, 072°39′13.64″ W (NAD 83). All positions are approximate.
8.2	Swim Across the Sound	• Date: A single day in August. • Time: To be determined annually. • Location: Waters of Long Island Sound from Port Jefferson, NY, in approximate position 40°58′11.71″ N, 073°05′51.12″ W; then northwest to Captain's Cove Seaport, Bridgeport, CT, in approximate position 41°09′25.07″ N, 073°12′47.82″ W (NAD 83).
8.3	Island Beach Two Mile Swim	• Date: A single day in August. • Time: To be determined annually. • Location: All waters of Captain Harbor between Little Captain's Island and Bower's Island that are located within the box formed by connecting four points in the following positions. Beginning at 40°59′23.35″ N, 073°36′42.05″ W; then northwest to 40°59′51.04″ N, 073°37′57.32″ W; then southwest to 40°59′45.17″ N, 073°38′01.18″ W; then southeast to 40°59′17.38″ N, 073°36′45.9″ W; then northeast to the point of origin (NAD 83). All positions are approximate.
8.4	Smith Point Triathlon	• Date: A single day in August. • Time: 6 a.m. to 9 a.m. • Location: All waters of Narrow Bay near Smith Point Park in Mastic Beach, NY, within the area bounded by land along its southern edge and points in position at 40°44′14.28″ N, 072°51′40.68″ W; then north to a point at position 40°44′20.83″ N, 072°51′40.68″ W; then east to a point at position 40°44′20.83″ N, 072°51′19.73″ W; then south to a point at position 40°44′14.85″ N, 072°51′19.73″ W; and then southwest along the shoreline back to the point of origin (NAD 83). All positions are approximate.
8.5	Moriches Bay Swim	• Date: A single day in August. • Time: To be determined annually.

TABLE 1 TO § 100.100—Continued

9	• Location: Waters of Moriches Bay in Westhampton, NY; 100-yard width beginning from Speonk Point, NY to Gunning Point, NY.
	September
9.1 Head of the Tomahawk	• Date: A single day in September. • Time: To be determined annually. • Location: All navigable waters of the Connecticut River off South Glastonbury, CT. Beginning at position 41°41′18.88″ N; 072°37′16.26″ W; then downriver along the west bank to a point at position 41°38′49.12″ N, 072°37′32.73″ W; then across the Connecticut River to a point at position 41°38′49.5″ N, 072°37′19.55″ W; then upriver along the east bank to a point at position 41°41′25.82″ N, 072°37′9.08″ W; then across the Connecticut River to the point of origin (NAD 83).
9.2 Huntington Lighthouse Music Festival	• Date: Saturday or Sunday during the first week of September. • Time: 10 a.m. to 8 p.m. • Location: Waters of Huntington Bay, Long Island, NY. (1) ''The Lloyd Harbor Mooring Area''. Beginning at the Huntington Lighthouse, NY in position at 40°54′38″ N, 073°25′52″ W; then southwest to a point in position at 40°54′28.47″ N, 073°26′17.59″ W; then west along the coast of West Neck to a point in position at 40°54′46.32″ N, 073°26′56.25″ W; then north to a point in position at 40°54′56.24″ N, 073°26′56.24″ W; then east along Lloyd Neck to a point in position at 40°54′49.78″ N, 073°26′8.51″ W; then north-northeast along the coast of Lloyd Neck to a point in position at 40°55′5.58″ N, 073°25′50.22″ W; and then to point of origin at Huntington Lighthouse, NY in position at 40°54′38″ N, 073°25′52″ W. (2) ''The East of Channel Mooring Area''. Beginning at the point in position at 40°54′23.21″ N, 073°25′35.55″ W; then west along the coast of Wincoma, NY to a point in position at 40°54′23″ N, 073°25′55.7″ W; then northeast to a point in position at 40°54′37.7″ N, 073°25′42.4″ W; then southeast to a point in position at 40°54′34.4″ N, 073°25′29.4″ W; and then to point of origin in position at 40°54′23.21″ N, 073°25′35.55″ W. (3) ''Slow-No Wake Area''. All waters of Lloyd Harbor and waters of Huntington Bay south of a line from Target Rock National Wildlife Refuge at a point in position at 40°55′38.77″ N, 073°25′45.96″ and the south tip of Eaton's Neck at a point in position 40°54′51.44″ N, 073°24′17.76″ W. All coordinates are approximate and are based on datum NAD 1983. *Regulations.* All persons and vessels are prohibited from anchoring, mooring, or loitering outside the designated mooring areas and are subject to a ''Slow-No Wake'' speed limit. Vessels within the regulated area described in paragraph (3) of this section may not produce more than a minimum wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by a vessel within the ''Slow-No Wake'' area be such that it creates a danger of injury to persons or damage to vessels or structures unless specified by the COTP or their designated representative.
9.3 Dolan Family Labor Day Fireworks	• Date: A single day in September. • Time: To be determined annually. • Locations: (1) ''No Entry Area'': All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY, within a 1,000-foot radius of the launch platform in approximate position 40°53′42.50″ N, 073°30′04.30″ W (NAD 83).

TABLE 1 TO § 100.100—Continued

	(2) "Slow/No Wake Area": All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY, contained within the following area; beginning at a point on land in position at 40°53′12.43″ N, 073°31′13.05″ W near Moses Point; then east across Oyster Bay Harbor to a point on land in position at 40°53′15.12″ N, 073°30′38.45″ W; then north along the shoreline to a point on land in position at 40°53′34.43″ N, 073°30′33.42″ W near Cove Point; then east along the shoreline to a point on land in position at 40°53′41.67″ N, 073°29′40.74″ W near Cooper Bluff; then south along the shoreline to a point on land in position 40°53′05.09″ N, 073°29′23.32″ W near Eel Creek; then east across Cold Spring Harbor to a point on land in position 40°53′06.69″ N, 073°28′19.9″ W; then north along the shoreline to a point on land in position 40°55′24.09″ N, 073°29′49.09″ W near Whitewood Point; then west across Oyster Bay to a point on land in position 40°55′5.29″ N, 073°31′19.47″ W near Rocky Point; then south along the shoreline to a point on land in position 40°54′04.11″ N, 073°30′29.18″ W near Plum Point; then northwest along the shoreline to a point on land in position 40°54′09.06″ N, 073°30′45.71″ W; then southwest along the shoreline to a point on land in position 40°54′03.2″ N, 073°31′01.29″ W; and then south along the shoreline back to point of origin (NAD 83). All positions are approximate.
10.1 Head of the Riverfront Rowing Regatta	Date: A single day in October. Time: 5:30 a.m. to 5:30 p.m. Location: All waters of the Connecticut River, Hartford, CT between at point North of Wethersfield Cove at 41°43′52.17″ N, 072°38′40.38″ W and the Riverside Boat House 41°46′30.98″ N, 072°39′54.35″ W (NAD 83).

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. 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.

■ 4. Revise § 165.151 paragraph (a)(2) and Table 1 to § 165.151 to read as follows:

§ 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.

(a) * * *

(2) These regulations will be enforced for the duration of each event, on or about the dates indicated. In advance of the event, notifications will be made to the local maritime community through all appropriate means such as Local Notice to Mariners and Broadcast Notice to Mariners as to the exact dates and times of the enforcement period for an event. The First Coast Guard District Local Notice to Mariners can be found at: *http://www.navcen.uscg.gov.*

* * * * *

TABLE 1 TO § 165.151

4	April
4.1 Bridgeport Bluefish April Fireworks	• Date: A single day in April. • Time: To be determined annually.
6	June
6.1 Barnum Festival Fireworks	• Date: A single day in June or July. • Time: To be determined annually. • Location: Waters of Bridgeport Harbor, Bridgeport, CT in approximate position 41°9′04″ N, 073°12′49″ W. (NAD 83).
6.2 Salute to Veterans Fireworks	• Date: A single day in June. • Location: Waters of Reynolds Channel off Hempstead, NY in approximate position 40°35′36.62″ N, 073°35′20.72″ W. (NAD 83).
7	July
7.1 Point O'Woods Fire Company Summer Fireworks	• Date: A single day in July. • Time: 9 p.m. to 11 p.m. • Location: Waters of the Great South Bay, Point O'Woods, NY, in approximate position 40°39′18.57″ N, 073°08′5.73″ W (NAD 83).
7.2 City of Norwalk Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Calf Pasture Beach, Norwalk, CT, in approximate position, 41°04′50″ N, 073°23′22″ W (NAD 83).
7.3 Sag Harbor Fireworks	• Date: A single day in July. • Time: 9 p.m. to 10 p.m. • Location: Waters of Sag Harbor Bay off Havens Beach, Sag Harbor, NY, in approximate position 41°00′26″ N, 072°17′9″ W (NAD 83). • Location: Waters of the Thames River, Norwich, CT in approximate position, 41°31′16.835″ N, 072°04′43.327″ W (NAD 83).
7.4 Southampton Fresh Air Home Fireworks	• Date: A single day in July. • Time: 9 p.m. to 10:30 p.m.

TABLE 1 TO § 165.151—Continued

	• Location: Waters of Shinnecock Bay, Southampton, NY, in approximate position, 40°51′48″ N, 072°26′30″ W (NAD 83).
7.5 City of Middletown Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 11:30 p.m. • Location: Waters of the Connecticut River, Middletown Harbor, Middletown, CT, in approximate position 41°33′44.47″ N, 072°38′37.88″ W (NAD 83).
7.6 City of Norwich Fireworks	• Date: A single day in July • Time: 9 p.m. to 11 p.m. • Location: Waters of the Thames River, Norwich, CT, in approximate position, 41°31′16.835″ N, 072°04′43.327″ W (NAD 83).
7.7 City of Stamford Independence Day Celebration	• Date: A single day in July. • Time: 9 p.m. to 11 p.m. • Location: Waters of Fisher's Westcott Cove, Stamford, CT, in approximate position 41°02′09.56″ N, 073°30′57.76″ W (NAD 83).
7.8 CDM Chamber of Commerce Annual Music Fest Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Cedar Beach Town Park, Mount Sinai, NY, in approximate position 40°57′59.58″ N, 073°01′57.87″ W (NAD 83).
7.9 Riverfest Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Connecticut River, Hartford, CT, in approximate positions, 41°45′39.93″ N, 072°39′49.14″ W (NAD 83).
7.10 Village of Asharoken Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Northport Bay, Asharoken, NY, in approximate position, 41°55′54.04″ N, 073°21′27.97″ W (NAD 83).
7.11 Village of Port Jefferson Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Port Jefferson Harbor, Port Jefferson, NY, in approximate position 40°57′10.11″ N, 073°04′28.01″ W (NAD 83).
7.12 Village of Quoque Foundering Anniversary Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Quantuck Bay, Quoque, NY, in approximate position 40°48′42.99″ N, 072°37′20.20″ W (NAD 83).
7.13 Mashantucket Pequot Fireworks (Sailfest)	• Date: A single day in July. • Time: 8:30 p.m. to 11 p.m. • Location: Waters of the Thames River, New London, CT, in approximate positions Barge 1, 41°21′03.03″ N, 072°5′24.5″ W, Barge 2, 41°20′51.75″ N, 072°5′18.90″ W (NAD 83).
7.14 Shelter Island Fireworks	• Date: A single day in July. • Time: 9 p.m. to 11 p.m. • Location: Waters of Gardiner Bay, Shelter Island, NY, in approximate position 41°04′39.11″ N, 072°22′01.07″ W (NAD 83).
7.15 Town of North Hempstead Bar Beach Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Hempstead Harbor, North Hempstead, NY, in approximate position 40°49′54″ N, 073°39′14″ W (NAD 83).
7.16 City of Rowayton Fireworks	• Date: A single day in July. • Time: 9 p.m. to 11 p.m. • Location: Waters of Long Island Sound south of Bayley Beach Park, Rowayton, CT, in approximate position 41°03′11″ N, 073°26′41″ W (NAD 83).
7.17 Connetquot River Summer Fireworks	• Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY, in approximate position 40°43′32.38″ N, 073°9′02.64″ W (NAD 83).
8	August
8.1 Taste of Italy Fireworks	• Date: A single day in August. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Norwich Harbor, off Norwich Marina, Norwich, CT, in approximate position 41°31′17.72″ N, 072°04′43.41″ W (NAD 83).
8.2 City of Stamford Fireworks	• Date: A single day in August. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Stamford Harbor, off Kosciuszco Park, Stamford, CT, in approximate position 41°01′48.46″ N, 073°32′15.32″ W (NAD 83).
9	September
9.1 Village of Island Park Labor Day Celebration Fireworks	• Date: A single day in September. • Time: 8:30 p.m. to 10:30 p.m.

TABLE 1 TO § 165.151—Continued

9.2 Archangel Michael Greek Orthodox Church Fireworks	• Location: Waters off Village of Island Park Fishing Pier, Village Beach, NY, in approximate position 40°36′30.95″ N, 073°39′22.23″ W (NAD 83). • Date: A single day in September or October. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Hempstead Harbor off Bar Beach Town Park, Port Washington, NY, in approximate position 40°49′42″ N, 073°39′07″ W (NAD 83).
9.3 Port Washington Sons of Italy Fireworks	• Date: A single day in September. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Hempstead Harbor off Bar Beach, North Hempstead, NY, in approximate position 40°49′48.04″ N, 073°39′24.32″ W (NAD 83).
9.4 Town of Hempstead "Big Shot" Concert and Fireworks Display	• Date: A single day in September. • Time: 9:30 p.m. to 11:59 p.m. • Location: Waters of Reynolds Channel at Lido Beach in Town of Hempstead, NY, in approximate position 40°35′36.81″ N, 073°35′20.37″ W (NAD 83).
11	November
11.1 Charles W. Morgan Anniversary Fireworks	• Date: A single day in November. • Time: 8 p.m. to 11 p.m. • Location: Waters of the Mystic River, north of the Mystic Seaport Light, Mystic, CT, in approximate position 41°21′56.455″ N, 071°57′58.32″ W (NAD 83).
11.2 Connetquot River Fall Fireworks	• Date: A single day in November. • Time: 8 p.m. to 11 p.m. • Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY, in approximate position 40°43′32.38″ N, 073°09′02.64″ W (NAD 83).

Dated: March 15, 2023.

S.A. Koch,

Commander, U.S. Coast Guard Alternate Captain of the Port Long Island Sound.

[FR Doc. 2023–05955 Filed 3–22–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0428; FRL–9991–01–R4]

Air Plan Approval; North Carolina; Air Quality Control, Revisions to Particulates From Fugitive Dust Emissions Sources Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina through the North Carolina Division of Air Quality (NCDAQ), through a letter dated September 10, 2021. The SIP revision includes changes to the fugitive dust emissions rule in the State's SIP that modify several definitions, clarify its applicability requirements, adjust the requirement for fugitive dust control plan submissions, and make minor language and formatting changes. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before April 24, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0428 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: Pearlene Williams-Miles, 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, North Carolina 30303–8960. The telephone number is (404) 562–9144. Ms. Williams-Miles can also be reached via electronic mail at *WilliamsMiles.Pearlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

North Carolina adopted 15 NCAC 02D .0540, *Particulates from Fugitive Non-Process Dust Emission Sources* (hereinafter Rule 02D .0540), in 1998 to regulate excess non-process fugitive dust emissions generated from activities associated with four specified source categories (*i.e.,* hot mix asphalt plants; mica or feldspar processing plants; sand, gravel, or crushed stone operations; and light weight aggregate processes). On November 10, 1999, EPA incorporated this particulate matter fugitive emission control regulation into the North Carolina SIP at Section .0500—Emission Control Standards under Subchapter 2D—Air Pollution Control Requirements of the North Carolina SIP.[1] *See* 64 FR 61213. Later,

[1] In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as

Continued

on January 31, 2008, North Carolina submitted amendments to EPA that would make the rule applicable to all fugitive dust emissions instead of only non-process fugitive dust emissions. *See* 84 FR 33850 (July 16, 2019). Additionally, 15 NCAC 02D .0540 was renamed *Particulates from Fugitive Dust Emission Sources. Id.* EPA approved the January 31, 2008, SIP submission on July 16, 2019. On September 10, 2021, NCDAQ submitted another revision to Rule 02D .0540 that includes several changes.[2] [3] EPA is proposing to approve these changes because they are consistent with CAA requirements, including the requirement that they would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement. EPA's rationale for proposing approval is described in more detail in Section II of this notice of proposed rulemaking (NPRM).

II. Analysis of the State's Submission

The September 10, 2021, SIP submittal revises Rule 02D .0540 by modifying several definitions, clarifying its applicability requirements, adjusting the requirement for fugitive dust control plan submissions, and making minor language and formatting.

In the September 10, 2021, submission, two definitions in paragraph .0540(a) have been modified substantively. Other definitions have only minor, non-substantive language changes that do not alter the meaning of the rule as well as formatting changes.[4] All definitions have been reorganized in alphabetical order. The first definition with a substantive change is ''Fugitive dust emissions.'' This revised definition removes the phrase ''from process operations'' from the definition to better align the rule with the State's intent to make the rule applicable to all fugitive dust emissions at subject facilities.[5] The removal of this limiting language expands applicability to both process and non-process operations, thus increasing the rule's scope. The revision also substantively modifies the definition of ''Substantive complaints.'' This definition is revised to clarify what kind of physical evidence is necessary to constitute a substantive complaint and to clarify that verification is provided by NCDAQ. The revision now requires physical evidence ''of excess fugitive dust emissions'' and identifies NCDAQ as the verifying entity. EPA finds this change acceptable because it resolves ambiguity by clarifying what evidence is required to develop a substantive complaint.

Paragraph .0540(b) is revised with one substantive change and some minor non-substantive changes. The substantive change addresses the limitation that Rule .0540 does not apply to land disturbing activities generally. The revision cabins that limitation by narrowing the exemption to apply only to those land disturbing activities that are not required to obtain a permit pursuant to 15A NCAC 02Q or that are not subject to a requirement under 15A NCAC 02D.[6] Previously, even those land disturbing activities that did require a permit pursuant to 15 NCAC 02Q or were subject to a requirement pursuant to 15 NCAC 02D were exempt. EPA finds this change acceptable as the language is SIP strengthening since it narrows an exemption to Rule .0540. In addition to this substantive change, the revision includes some minor non-substantive changes to paragraph .0540(b), such as minor language choice modifications and changes to the formatting of rule titles.

Paragraphs .0540(c) and (d) are primarily revised with minor and non-substantive changes, primarily dealing with word choice, such as changing the word ''under'' to the phrase, ''pursuant to.'' One other minor change the revision makes is to add a cross-reference to ''Paragraph (g)'' in Paragraph .0540(d)(3). This cross-reference clarifies when the Director's approval of a fugitive dust control plan is complete and does not substantively change the requirements of the rule. One substantive change in the revision removes the word ''non-process'' from paragraph .0540(d) to increase the rule's scope by making it applicable to both process and non-process operations. Another substantive change removes the word ''immediate'' from Paragraph .0540(d)(1) with respect to the description of ''measures'' used to abate fugitive emissions. Previously, this subparagraph required that owners/operators of applicable sources submit a report to the Director that included what immediate measures could be used to abate fugitive emissions if a substantive complaint was filed. The change makes the term ''measures'' more inclusive as owners/operators will now need to include immediate and non-immediate measures in the report.

Paragraph .0540(e) is revised with two substantive changes.[7] The first change occurs at the beginning of paragraph .0540(e), which now mandates that the Director require the owner or operator of a facility subject to paragraph (c) of the rule to submit a fugitive dust control plan if either ambient air quality measurements or dispersion modeling shows excess fugitive dust emissions cause the ambient air quality standard for particulates to be exceeded, or if NCDAQ observes excess fugitive dust emissions beyond the property boundary. The previous version of paragraph (e) gave the Director the discretion to require such a plan. The revision is SIP strengthening as the Director's ability to require the submittal of a fugitive dust control plan is no longer discretionary. The second change removes the word ''non-process'' from paragraph .0540(e) to increase the rule's scope by making it applicable to both process and non-process operations. Paragraph .0540(e) also includes other minor changes to wording which do not alter the meaning of the provision.

Next, paragraph .0540(g), which identifies the findings that the Director must make to approve a fugitive dust control plan, includes several wording changes. Subparagraph (g)(2) currently requires a finding that the proposed schedule to implement the fugitive dust plan required in subparagraph (f)(3) will reduce fugitive emissions ''in a timely manner.'' The submittal revises this requirement by removing the phrase ''in a timely manner.'' EPA is proposing to approve this change because paragraph .0540(c) continues to prohibit visible emissions in excess of that allowed under paragraph (e) and because the phrase ''in a timely manner'' was discretionary and never defined. Paragraph (e) requires a dust control plan if ambient air quality measurements or dispersion modeling show a violation or potential violation

''Subchapter 2D Air Pollution Control Requirements.''

[2] EPA received the September 10, 2021, submittal on September 14, 2021. For clarity, throughout this notice EPA will refer to the September 14, 2021, submission by its cover letter date of September 10, 2021.

[3] The September 10, 2021, submittal included several changes to other North Carolina SIP-approved rules that are not addressed in this notice. EPA will act on those rule revisions in separate rulemakings.

[4] One example is a modification to the definition ''Production of crops'', which removes the phrase ''them'' and adds ''crops'' in its place, to specify that the protection of ''crops'' from disease is included within the definition.

[5] See the rule applicability exclusions in paragraph .0540(b).

[6] Examples of land disturbing activities include clearing, grading, digging, and related activities such as hauling fill and cut material, building material, or equipment.

[7] NCDAQ submitted a letter to EPA on January 25, 2023, requesting withdrawal of the changes to 15 NCAC 02D .0540(e)(1) from consideration for inclusion in the North Carolina SIP. For this reason, EPA is not proposing to approve the changes to paragraph 02D .0540(e)(1) through this rulemaking.

of the ambient air quality standards for particulates or if NCDAQ observes excess fugitive dust emissions from the facility beyond the property boundary for six minutes in any one hour using Reference Method 22 in 40 CFR part 60, Appendix A–7. Pursuant to paragraph (g), the Director must approve the plan if, among other things, the methods used to control fugitive dust emissions prevent fugitive dust emissions from causing or contributing to a violation of the ambient air quality standards for particulates. Paragraph (g) also includes non-substantive wording changes.

EPA has preliminarily determined that the changes to the regulations above are consistent with CAA requirements, including the requirement that they would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement. Therefore, EPA is proposing approval of the changes to these regulations.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 15A NCAC Subchapter 02D .0540, *Particulates from Fugitive Dust Emission Sources,* state effective on September 1, 2019, as discussed in sections I. and II. of this preamble. 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).

IV. Proposed Action

EPA is proposing to approve the September 10, 2021, SIP revision to incorporate various changes to Rule 02D .0540, *Particulates from Fugitive Dust Emission Sources.* EPA is proposing to approve these changes for the reasons discussed above.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *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 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 3, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2023–05238 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2022–0731, FRL–10545–01–Region 10]

Air Plan Approval; WA; Smoke Management Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Washington State Implementation Plan (SIP) revisions submitted on August 10, 2022. The submitted revisions incorporate the most recent updates to Washington's Smoke Management Plan and reflect state legislative and regulatory changes. The revisions include earlier notification of burn decisions, revise the burn approval criteria to better align with state law, remove the prohibition against summer weekend burning; and allow previously prohibited burning in urban growth areas subject to an approval process that requires consideration of the impact of the approval on air quality. EPA is proposing to approve the revisions based our determination that the revisions are consistent with Clean Air Act requirements.

DATES: Comments must be received on or before April 24, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2022–0731 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For

additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Randall Ruddick, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–1999, or *ruddick.randall@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

I. Background

Each state has a State Implementation Plan (SIP) containing the control measures and strategies to attain and maintain the national ambient air quality standards (NAAQS) established by the Environmental Protection Agency (EPA) for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms.

Washington adopted a Smoke Management Plan as part of the Washington SIP to reduce emissions that contribute to visibility impairment. Wildfire has had a serious impact on Washington during the past decade with many large-scale wildfires impacting air quality. Prescribed fires [1] have been increasingly used as a land management tool to reduce the likelihood of catastrophic wildfires by reducing the buildup of unwanted fuels and strengthening an area's ecosystems. This controlled application of fire to wildland fuels, is done under specific environmental conditions and protocols that typically call for a prescribed fire to be confined to a predetermined area and limit the fire to an intensity and scale required to attain planned forestland management objectives. The State anticipates increasing the application of prescribed fire in response to the increasing threat of wildfires in Washington. The state intends to balance the need to increase the use of prescribed fire as a forest management tool while minimizing smoke impacts through the implementation of policies and processes outlined in Washington's Smoke Management Plan (SMP).

EPA first approved Washington's SMP into the Washington SIP in 1987 (52 FR 16243, May 4, 1987) as part of Washington's visibility protection plan. Washington updated and EPA approved the SMP in 1998 (1998 SMP) and 2003 respectively (68 FR 34821, June 11, 2003). In 2016, the Washington State Legislature provided funding to update the 1998 SMP and the Legislature made changes to statutes affecting the SMP in 2019 and 2021. After revising rules to reflect the updated legislation, Washington updated the SMP to reflect the statutory and regulatory changes. On August 10, 2022, following a state public comment process, the Washington State Department of Ecology (Ecology) submitted the updated SMP, including the statutes and regulations relied on in the Plan, to EPA for approval (2022 SMP).

II. Washington's Smoke Management Plan

Washington's SMP establishes a program to allow silvicultural burning on forestland while protecting air quality. Although Ecology is the primary delegated air quality agency for the state and submitted the Washington SMP to EPA for approval, Washington's Department of Natural Resources (DNR) has been and continues to be the state agency with the responsibility for regulating smoke from silvicultural burning on forestland. See Revised Code of Washington (RCW) 70A.15.5120 and RCW 70A.15.5130. The Washington SMP is therefore primarily implemented by DNR with assistance from Ecology.

DNR oversees prescribed silvicultural burning in Washington to improve fire dependent ecosystems, mitigate wildfire potential, decrease forest susceptibility to insects or disease, and otherwise enhance forest resiliency to fire. The purpose of the SMP is to coordinate and facilitate the statewide regulation of prescribed, silvicultural (forestland) burning on lands under the authority of DNR, and on unimproved, federally managed forestlands and participating tribal lands. The SMP applies to all persons, landowners, companies, state and Federal land management agencies, and others who conduct silvicultural burning in Washington State. The SMP does not apply to agricultural burning, outdoor burning that occurs on improved property, or tribal lands described in Section VI of this document.

For purposes of discussing the Washington SMP, prescribed fires fall into three main categories based on the size of the burn: ''rule burns,'' ''small burns,'' and ''large burns.'' The approval process for burns under the SMP [2] also varies based on whether the burn is a ''multiple day burn'' and whether the burn is conducted in an urban growth area.

''Rule burns'' are generally no more than ten feet in diameter and are always limited to one fire at a time. They include burning of hand-built piles for recreational purposes, as well as fuels reduction, or other silvicultural purposes. Rule burns may also be restricted to no more than 4 feet in diameter depending on time of year and the county within which the burning occurs.[3] DNR has authority over rule burns, but no written permit or site-specific burn approval or decision is required under either the 1998 SMP or 2022 SMP for rule burns, provided the burns comply with minimum requirements for all burns listed in WAC 332–24–205 [4] and the specific provisions for rule burns in WAC 332–24–211. No changes have been made to WAC 332–24–211, since EPA approved it into the Washington SIP in 2003. The ''Scope'' sections in both the 1998 SMP and 2022 SMP state that the SMP does not apply to burning done ''by rule'' (''rule burns'').

''Small burns'' require site-specific written permits and are defined under the 2022 SMP as fires that will consume less than 100 tons of forest debris [5] in a 24-hour period. The size threshold is extended to 300 tons in ''low-risk areas.'' ''Low risk areas'' are generally remote areas and are defined by DNR using the criteria described in Appendix 10 of the 2022 SMP. Burners intending to conduct small burns are required to

[1] Prescribed fires, also known as prescribed burns, refer to the controlled application of fire by a team of fire experts under specified weather conditions to restore health to ecosystems that depend on fire.

Source: *https://www.fs.usda.gov/managing-land/prescribed-fire.*

[2] Commonly referred to as ''Go/No-Go'' and ''Go/No-Go Decision'' in the 2022 SMP.

[3] Size limits, including seasonal and county specific limitations, are described in Washington Administrative Code 332–24–211.

[4] WAC 332–24–205 applies to ''all burning regulated by the department'' and WAC 332–24–211 *Specific rules for small fires not requiring a written burning permit.* WAC 332–24–211 clarifies that the requirements contained therein are ''[i]n addition to WAC 332–24–205'' and sets forth the diameter and seasonal restrictions for so called ''rule burns.''

[5] ''Forest debris'' includes forest slash, chips, and any other vegetative residue resulting from activities on forestland. This definition is from RCW 76.04.005(9), which is included in Appendix 7 of the 2022 SMP.

obtain a site-specific written permit.[6] DNR conditions such permits based on the proposed locations and may include specific instructions in the permits, such as limits on wind directions under which the burns may be conducted. Burners are required to follow all conditions in their burn permits. Prior to igniting a small burn, the burner must also call 1–800–323 BURN and follow the instructions that apply for the day and location of the burn being conducted. Burners cannot ignite small burns if an air quality episode is declared, or conditions of impaired air have been declared by Ecology or the local clean air authority as provided under RCW 70A.15.5140 and WAC 332–24–205(5). DNR may also suspend small burns on private and state lands due to high fire danger (Federal officials manage fire danger on Federal lands). In contrast to large burns, small burns conducted outside of urban growth areas do not require a site-specific burn decision just prior to the burn. Small burns within urban growth areas are not treated the same as other small burns but instead must undergo the same permitting process as large burns.

''Large burns'' are defined as fires that will consume 100 tons or more in a 24-hour period (300 tons or more in low risk areas). Like small burns, large burns require site-specific permits; burners must follow all conditions in their burn permits; ignition is prohibited if an air quality episode is declared or conditions of impaired air have been declared by Ecology or the local clear air authority as provided under RCW 70A.15.5140 and WAC 332–24–205(5); and DNR may suspend large burns on private and state lands due to high fire danger (Federal officials manage fire danger on Federal lands). The distinction here from small burns outside of UGA's is that prior to igniting a large burn outside of UGA's, the burner must contact DNR directly and request authorization to ignite the large burn on a particular day. The SMP identifies eight specific burn approval criteria to be met before DNR decides whether ignition will be authorized for large burns (and small burns inside urban growth areas) and tasks DNR wildland fire management division managers with assessing the potential for smoke intrusions. To inform decisions, DNR utilizes numerous tools as well as site- and temporal-specific considerations, including, but not limited to, current and forecasted weather conditions, air quality, fuel moisture, firing techniques, and availability of suppression forces.

''Multiple day burns'' are subject to the same approval criteria used to approve large burns, regardless of burn size. Additional information and actions are required from burners before DNR will approve a multiple day burn. Those additional requirements are in the SMP in the *Approval Process for Multiple Day Burns* section and include, but are not limited to, notifying DNR at least three months before the proposed start of the burn, providing a rationale for why the burn cannot be accomplished in single day increments, providing communication and public notification plans, obtaining spot forecasts for each day of the burn, identifying what monitoring resources will be utilized, and participating in daily coordination calls.

Although the 2022 SMP burn approval criteria prohibit authorizing burns that would cause an exceedance of air quality standards, DNR's goal as stated in the SMP is based on levels below the 35 μg/m^3 24-hour NAAQS for $PM_{2.5}$.[7] This is a new element of the 2022 SMP. Under the 2022 SMP, DNR now considers exceeding a $PM_{2.5}$ level of 20.5 μg/m^3 (on a 3-hour rolling average) a smoke ''intrusion'' and unacceptable for purposes of the SMP.[8] The 2022 SMP sets forth new procedures to avoid, detect, and respond to smoke intrusions. These procedures include, but are not limited to:

- Incorporating consideration of potential intrusions when making burn decisions;
- Using available resources such as monitors and webcams to assess the level of smoke in potentially impacted communities;
- Reporting and documenting where and when smoke intrusions occur;
- Issuing health advisories as needed and collaborating with Ecology, Washington Department of Health, and local clean air authorities;
- Requiring burners to submit intrusion reports when DNR determines one has occurred; and
- Sharing all data and final intrusion reports with applicable partners and regulators, including Ecology, local clean air authorities, state and local health departments, and EPA.

In the 2022 SMP, DNR commits to reviewing the SMP every five years and revising the plan or procedures as necessary as a result of that review. The SMP specifies that plan revisions will adopt the same review procedures used for the original adoption. The EPA notes that any revision to the SMP would not be part of the Washington SIP unless submitted to and approved by the EPA as provided in 42 U.S.C. 7410.

III. Evaluation of Washington's SIP Submittal

As with its previous SMP, Washington's 2022 SMP submittal includes an extensive discussion of how the state implements its smoke management program as well as the statutes and regulations that apply to prescribed burning on forest land in Washington. Washington states that it revised its SMP to better regulate burning while reducing fuel loading, restore forest ecosystems, and reduce the risk of catastrophic wildfire while continuing to protect air quality. The revisions include changes to both the main body of the SMP as well as state statutes and regulations that apply to prescribed burning and are included in Appendix 7 of the submittal.[9]

The bulk of revisions in the 2022 SMP are non-substantive from a SIP approvability perspective and include reorganizing the order of SMP sections and content; updating wording for consistency and more current vernacular; and updating citations to reflect recodification of applicable statutes and rules. Washington also revised the SMP to add or clarify recordkeeping, reporting, and notification requirements for prescribed fires that may later qualify as an ''exceptional event'' under 40 CFR 50.14. This is also a non-substantive change to Washington's SMP because EPA is not approving or disapproving this SMP as meeting the requirements of EPA's exceptional event guidance.[10]

The 2022 SMP also contains several substantive revisions to the SMP. Those revisions affect burn decision timing, burn approval criteria, summer weekend burning, and burning in urban growth areas. Washington included in the submittal information to demonstrate that these revisions to the SMP will not interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of Title I of the CAA. See 42 U.S.C. 7410(l). The most relevant

[6] WAC 332–24–201(4) requires a written permit for all burning other than ''rule burns'' which are outside the scope of the SMP. ''Rule Burns'' must meet all general rules in WAC 332–24–205 as well as specific additional conditions in WAC 332–24–211.

[7] $PM_{2.5}$ is fine inhalable particles, with diameters that are generally 2.5 micrometers and smaller.

[8] See 2022 SMP, page 11, *Smoke Intrusions caused by any silvicultural burning* section, which is included in the docket for this action.

[9] The 1998 SMP included the applicable statutes and regulations in Appendix 15.

[10] See EPA's 2019 *Exceptional Events Guidance: Prescribed Fire on Wildland that May Influence Ozone and Particulate Matter Concentrations,* page 20.

pollutants for Washington's analysis of visibility and interference with NAAQS attainment are $PM_{2.5}$, PM_{10}, and ozone due to the nature of prescribed fire emissions and because EPA revised the $PM_{2.5}$ and ozone NAAQS resulting in more stringent standards (78 FR 3085, January 15, 2013, and 80 FR 65292, October 26, 2015) since EPA last approved Washington's SMP.[11] The substantive changes to the 2022 SMP and the demonstration supporting the changes are discussed below.

Burn Decision Timing

Under the current approved 1998 SMP, ''large burns'' require that DNR issue a site-specific smoke management decision (permission to ignite) the morning of the day the fire is to be ignited. Under the 2022 SMP, if a burner submits a request to DNR by noon the ''day prior'' to the planned ignition, DNR must issue a decision by 4:00 p.m. that same day—about 15 hours earlier than what would be expected under the 1998 SMP. The result of this change is reliance on products, primarily meteorological forecasts and models that are produced earlier and, due to advances in science and technology, are more reliable than what would have been available when the 1998 SMP was created.

Washington's demonstration included a technical analysis [12] of forecast models used for day of versus day prior to ignition in the 2022 SMP. The technical analysis of the revised protocols shows no appreciable loss in forecast accuracy and indicates DNR would likely make the same operational burn decision regardless of whether the decision is rendered by 4:30 p.m. on the day prior to ignition or 8:00 a.m. on the day of ignition. The analysis also shows that, in the season when most burn decisions are made (fall), model runs the day prior to a burn have slightly smaller wind speed forecast errors than the day-of-burn model runs (wind speed is a significant factor for burn decisions). This lends confidence that a status-quo or better burn decision will be made.

In addition, this burn decision timing change is not a complete departure from the procedure under the 1998 SMP. Burners seeking day prior burn decision approval under the 2022 SMP must submit their request by noon the day prior to ignition. Failure to do so may result in a burn decision on the day of ignition, instead of by 4:30 p.m. on the day prior to ignition. Burners may still request a burn decision on the planned day of ignition.

More importantly, there are protections in the burn approval process in the 2022 SMP based on air quality on the morning of ignition.[13] Specifically, the 2022 SMP states that on the day of the burn ''If the burn was approved, the Smoke Management Section will verify weather conditions have not changed so much as to result in a violation of the Approval Criteria, by 7:30 a.m. If weather conditions have unexpectedly changed burners will be notified and advised that they may have to extinguish, and therefore are advised to not burn that location.'' This 2022 SMP weather verification requirement applies to large burns and all burns in urban growth areas, regardless of size.

For these reasons, including the technical demonstration supporting this change, we are proposing to find that attainment and maintenance of the NAAQS are unlikely to be affected by changes to the burn decision timing.

Burn Approval Criteria

As under the 1998 SMP, the 2022 SMP has eight approval criteria. All eight were updated to include state or Federal air quality regulation citations, which improve clarity for both regulators and the regulated community as compared to the 1998 SMP, which did not include citations. There are no substantive changes to approval criteria 3, 4, 6, and 7. Washington revised approval criteria 2 to reflect the specific statutory language authorizing the condition and the corresponding citation.[14]

The most substantive changes are to approval criteria 1, 5, and 8. Under the 1998 SMP, approval criteria 1 considered whether there was a likelihood of an ''intrusion'' of visible smoke, whereas under the 2022 SMP, this criterion was revised to the likelihood of an exceedance of state air quality standards, which include the NAAQS, based on the requirement in RCW 70A.15.5140. The 2022 SMP also includes a new requirement for DNR and burners to monitor for and address intrusions of smoke due to silvicultural burning above 22.5 ug/m3 of $PM_{2.5}$, a level significantly below the 35 ug/m3 $PM_{2.5}$ NAAQS exceedance level. With this new requirement, combined with the revision to rely on the NAAQS exceedance level, criteria 1 is more protective in the 2022 SMP than the 1998 SMP. Approval criteria 5, previously a non-air quality specific reference to endangered species protections already in Washington State's Forest Practices Rule and Regulations, now prohibits burning in areas where Federal or State air quality standards are exceeded for any criteria pollutant, with limited exceptions for silvicultural burning to improve or maintain fire dependent ecosystems for rare plants or animals in specified areas. This is more protective than the existing criteria. Approval criteria 8 was revised by replacing language regarding smoke dispersion thresholds with criteria based on whether a declared stage of impaired air quality has been called or is likely to be called in the next 24 hours, based on coordination among DNR, Ecology, and local air agencies.[15] DNR still evaluates smoke dispersion under the 2022 SMP when assessing meteorological data, forecasting models, and permitting data to evaluate whether approval criteria 1, 2, and 3 have been met.[16] For these reasons, we are proposing to find that attainment and maintenance of the NAAQS are unlikely to be affected by the revisions to the eight approval criteria.

Summer Weekend Burning

The 1998 SMP contains a statewide prohibition on large burns from midnight Thursday through midnight Sunday between June 15 and October 1 and on the holidays of July Fourth and Labor Day. This prohibition is commonly referred to as the ''summer weekend burning prohibition.'' The summer weekend burning prohibition only applies to large burns under the 1998 SMP. Moreover, all prescribed burns are, and will continue to be, severely limited for much of the period covered by the 1998 SMP summer weekend burning prohibition regardless of size. This is because prescribed burns during this period are frequently limited due to high occurrences of inconducive

[11] Washington states, and EPA agrees, that attainment and maintenance related to criteria pollutants other than PM and ozone are unlikely to be impacted by the changes to Washington's SMP. There are no nonattainment areas in Washington except for one sulfur dioxide nonattainment area that is small in area and encompasses an aluminum smelter facility and the area immediately adjacent to this facility. No discernible sulfur contributions to that area are expected to result from prescribed fire due to the low levels of sulfur in the woody biomass being burned.

[12] For more information see Appendix 1 of Washington's *2022 Smoke Management Plan Demonstration, 7.Appendix b.3 Appendices 1-4wTOC.pdf,* which is included in the docket for this action.

[13] See Appendix 1, Section 1.C. of the 2022 SMP which is included in the docket for this action.

[14] For a detailed analysis of the 1998 comparison to the 2022 approval criteria, see Appendix 3 of Washington's *2022 Smoke Management Plan Demonstration* which is included in the docket for this action.

[15] Ibid.

[16] Ibid.

weather, fuel conditions, preparedness levels and other safety constraints.[17]

Although the 2022 SMP does not retain the summer weekend burning prohibition, air quality protections are in place for the newly allowed burning because removing the prohibition only affects large burns, which require site-specific DNR smoke management decisions before ignition may occur.[18] The 2022 SMP requires DNR's smoke management decisions to be protective of air quality through the inclusion of the *Approval Criteria for Large Burns and All Burns within UGAs.* For these reasons, we are proposing to find that attainment and maintenance of the NAAQS are unlikely to be affected by removal of the summer weekend burning prohibition.

Burning in Urban Growth Areas

In 2019, the Washington State Legislature amended state law [19] to allow previously prohibited prescribed burning in urban growth areas. Unlike the summer weekend prohibition, the newly allowed burning is not burn size specific. The 2022 SMP includes allowances for prescribed ''Urban Growth Area (UGA) Burns'' and defines them as any ''fire that takes place wholly or in part within a UGA as defined by the county.'' [20] Regardless of consumable tonnage, urban growth area burns require a site-specific DNR smoke management decision, a documented test fire and a spot weather forecast.[21] This site-specific decision follows the same approval criteria used for making site-specific decisions for large burns. The criteria include requirements that approval to ignite be denied if there is a likelihood of an air quality standard exceedance, as well as other air quality considerations.[22] For these reasons, we are proposing to find that attainment and maintenance of the NAAQS are unlikely to be affected by the newly allowed urban growth area burning.

Regional Haze and Visibility

As discussed above, the 1998 SMP that is currently approved in the Washington SIP was approved as part of Washington's regional haze and visibility protection plan. 68 FR 34821 (June 11, 2003). EPA has recognized that prescribed fires conducted for the purpose of ecosystem health and public safety in accordance with basic smoke management practices are generally consistent with the goal of making reasonable progress toward natural visibility in mandatory class I areas because prescribed fires are most often conducted to improve ecosystem health and to reduce the risk of catastrophic wildfires, both of which can result in net beneficial impacts on visibility.[23] EPA proposes to find that none of the substantive changes to Washington's SMP discussed above interfere with reasonable progress towards natural visibility in mandatory class I areas, as laid out in Washington's regional haze and visibility SIP. As under the 1998 SMP, approval to burn will be denied if burning will not protect the public welfare, preserve visibility, protect scenic, aesthetic, historic, and cultural values, and prevent air pollution problems that interfere with the enjoyment of life, property, or cultural attractions or if burning will not comply with the Federal Clean Air Act regarding visibility protection of Federal Class I Areas.

IV. EPA's Proposed Action

We have reviewed the submitted SIP revisions and propose to find that the revisions meet the requirements of the CAA for approval. Based on our review of Washington's demonstration, we propose to conclude that the revisions to Washington's SIP will not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the CAA. Under CAA section 110(k), EPA is proposing to approve, and incorporate by reference, into the Washington SIP at 40 CFR part 52, subpart WW the following statutes and regulations in Appendix 7 to the 2022 SMP that provide the authority for implementation and enforcement of the plan, as well as the permits that authorize burning under the 2022 SMP:

- RCW 52.12.103, Burning Permits—Issuance—Contents (state effective March 27, 1984);
- RCW 52.12.104, Burning Permits—Duties of permittee (state effective March 27, 1984);
- RCW 76.04.005, Definitions. (1) ''Additional fire hazard'' (5) ''Department protected lands'' (9) ''Forest debris'' (11) ''Forestland'' (12) ''Forestland owner,'' ''owner of forestland,'' ''landowner,'' or ''owner'' (13) ''Forest material'' (15) ''Landowner operation'' (18) ''Participating landowner'' (20) ''Slash'' (21) ''Slash burning'' (23) ''Unimproved lands'' (state effective July 24, 2015);
- RCW 76.04.205, Burning Permits—Civil Penalty (state effective July 25, 2021);
- RCW 70A.15.1030, Definitions. (21) ''Silvicultural burning'' (state effective June 11, 2020);
- RCW 70A.15.5000, Definition of ''outdoor burning'' (state effective July 26, 2020);
- RCW 70A.15.5010, (2) Outdoor burning—Fires prohibited—Exceptions (state effective June 11, 2020);
- RCW 70A.15.5020, Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning, except (3) (state effective June 11, 2020);
- RCW 70A.15.5120, Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction on silvicultural operations—Issuance—Fees (state effective June 11, 2020);
- RCW 70A.15.5130, Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program (state effective July 28, 2019);
- RCW 70A.15.5140, Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction on silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris (state effective June 11, 2020);
- RCW 70A.15.5150, Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits (state effective June 11, 2020);
- RCW 70A.15.5190, Outdoor burning allowed for managing storm or flood related debris (state effective June 11, 2020);
- WAC 332–24–201, Burning Permit Program—Requirements and Exceptions (state effective June 30, 1992);
- WAC 332–24–205, General rules—minimum requirements for all burning, except (13) (state effective November 22, 2019);

[17] See Appendix 2 of Washington's *2022 Smoke Management Plan Demonstration,* which is included in the docket for this action in *7.Appendix b.3 Appendices 1–4 wTOC.pdf.*

[18] See the subsection ''Large burns and all burns in Urban Growth Areas'' of the General Burning Requirements section in the 2022 SMP, which is included in the docket for this action in *5. Appendix B.2.DNR SMP with Cover.pdf.*

[19] The Washington Legislature amended RCW 70.94.6514, subsequently recodified as RCW 70A.15.5020.

[20] As defined in the General Burning Requirements section in the 2022 SMP, which is included in the docket for this action in *5. Appendix B.2.DNR SMP with Cover.pdf.*

[21] See the subsection ''Urban Growth Area (UGA) Burns'' of the General Burning Requirements section in the 2022 SMP, which is included in the docket for this action in *5. Appendix B.2.DNR SMP with Cover.pdf.*

[22] EPA also notes that these burns would be subject to the limitations on ''intrusion'' of smoke exceeding a $PM_{2.5}$ level of 20.5 μg/m³ (on a 3-hour rolling average), discussed in more detail above.

[23] See additional discussion in Protection of Visibility: Amendments to Requirements for State Plans, 82 FR 3078 (January 10, 2017).

• WAC 332–24–211, Specific rules for small fires not requiring a written burning permit (solely for the purpose of establishing the size threshold for burns covered by the Smoke Management Plan) (state effective June 30, 1992);

• WAC 332–24–217, Burning permit—penalty (state effective June 30, 1992);

• WAC 332–24–221, Specific rules for burning that requires a written burning permit (state effective February 1, 2012).

In addition, the EPA is proposing to approve, but not incorporate by reference, into the Washington SIP at 40 CFR part 52, subpart WW the Department of Natural Resources Smoke Management Plan, state effective May 10, 2022 (including all Appendices to such plan), as such plan applies to silvicultural burning regulated by DNR.

We note that, as provided in 40 CFR 52.2476 of the Washington SIP, any variance or exception to the 2022 SMP granted by DNR or Ecology must be submitted by Washington for approval to EPA in accordance with the requirements for revising SIPs in 40 CFR 51.104 and any such variance or exception does not modify the requirements of the federally approved Washington SIP until approved by EPA as a SIP revision.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the provisions described in Section IV of this preamble. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply 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 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. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to potentially affected tribes in a letter dated May 24, 2022.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 13, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2023–05462 Filed 3–22–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0529; EPA–R05–OAR–2022–0685; FRL–10638–01–R5]

Air Plan Approval; Wisconsin; Emissions Reporting and Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin state implementation plan (SIP) revising air emissions reporting requirements codified in Chapter 438 of the Wisconsin Administrative Code. Additionally, EPA is proposing to approve a related infrastructure requirement under section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter ($PM_{2.5}$) and 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before April 24, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0529 or EPA–R05–OAR–2022–0685 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.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*. For either manner of submission, 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, 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://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0266, *davidson.olivia@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What is the background of this SIP submission?

The Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision on July 13, 2015, addressing infrastructure SIP requirements for the 2012 $PM_{2.5}$ NAAQS. EPA proposed approval of most elements of the submission on February 19, 2016 (81 FR 8460). The public comment period for our proposed rulemaking closed on March 21, 2016. EPA received two adverse comment letters.

One commenter stated that ''Compounding the issue of insufficient monitoring is the fact that the WDNR does not require industrial facilities to provide and report their annual $PM_{2.5}$ emissions like they do for PM and PM_{10}. Each facility is in the best position to know their actual emissions from the previous year, so not requiring a report at the end of the year makes it even more difficult to identify any violations. The information needed to make that assessment would need to be sought out independently for each facility in the entire state, which requires a great deal more work than reading a report and comparing it to the limit.'' EPA agreed that 110(a)(2)(F) was not satisfied in the proposed rule.

Once the final approval of most elements and deferred action of element F was published, WDNR began the rule making process to update NR 400.03, 438, and 484.06(4) Wis. Adm. Code and establish $PM_{2.5}$ reporting requirements that satisfy the Federal Air Emissions Reporting Requirements (AERR) rule. WDNR held a public comment period on the revised rules from September 27, 2021, through November 5, 2021, and held a public hearing on October 29, 2021. Several adverse comments were received on the additional costs that would be incurred by sources to report annual emissions from units, operations and activities with *de minimus* emissions that are not required to be reported for permitting, and concerns with the specificity of the record-keeping requirements. As discussed further below, WDNR broadened language on record-keeping requirements and included exemptions for *de minimus* reporting requirements in the final rule submitted to EPA in response to comments received.

WDNR made submissions on July 13, 2015, August 8, 2016, and November 26, 2018, to address infrastructure SIP requirements for the 2012 $PM_{2.5}$ NAAQS [1] and EPA finalized approval of most elements for the 2012 $PM_{2.5}$ NAAQS on December 27, 2016 (81 FR 95043). Further, EPA proposed approval of most elements for the 2015 ozone NAAQS on September 30, 2020 (85 FR 61673). EPA did not take action on Wisconsin's satisfaction of the infrastructure requirements of CAA section 110(a)(2)(F) for the 2012 $PM_{2.5}$ or 2015 ozone NAAQS. This action addresses section 110(a)(2)(F), also referred to as ''element F'', which pertains to stationary source monitoring and reporting requirements for the 2012 $PM_{2.5}$ and 2015 ozone NAAQS. Approving this element would lead to full approval of Wisconsin's 2012 $PM_{2.5}$ NAAQS infrastructure SIP.

A. Revisions to Emission Reporting Requirements

On August 3, 2022, WDNR submitted to EPA Board Order AM–31–19 (Rule AM–31–19), effective in the Wisconsin Administrative Register on August 1, 2022. The submission addresses the identified reporting requirement deficiencies in NR 438 Wis. Adm. Code and updates administrative language in NR 400.03 and 484.06(4) Wis. Adm. Code.

To satisfy the AERR rule, major sources in nonattainment areas and sources with the potential to emit equal to or greater than 100 tons per year (tpy) of criteria air pollutants [2] or ammonia are required to report annual emissions, and sources with actual emissions of equal to or greater than 0.5 tpy of lead are required to report annual emissions of all criteria air pollutants and ammonia regardless of the magnitude of emissions. The revision of NR 438 ensures compliance with the AERR rule. More specifically, the revision adds the requirement that any source directly emitting $PM_{2.5}$ report annual emissions, and the reported particulate emissions (including PM_{10} and $PM_{2.5}$) must distinguish between filterable and condensable particulate matter,[3] and include fugitive emissions.[4] While these reporting requirement thresholds, established based off the AERR rule,[5] are determined by the potential to emit, the revised rule 438 adds the annual reporting requirement of 5 tpy of actual emissions of primary $PM_{2.5}$, adding to the existing actual emission reporting requirements for PM_{10}, Carbon Monoxide, Lead, Ammonia, Nitrogen Oxides, Sulfur Dioxide, and Volatile Organic Carbons.

To address the comments received regarding emission reporting exemptions, NR 438.03(1)(am)3–4 have been created to list emission units, operations, or activities that have *de minimus* emissions and are therefore not required to be reported in the annual emissions inventory report. Further, NR 438.03(4) was revised based on comments received to broaden the required recordkeeping documents from specifically stated safety data sheets, technical data sheets, and lab testing results to records that include information on the composition and

[1] The 2016 submission addressed Prevention of Significant Deterioration (PSD) of section 110(a)(2)(C), 110(a)(2)(D), and 110(a)(2)(J), and was approved on February 7, 2017 (82 FR 9515). The 2018 submission addressed section 110(a)(2)(D)(i)(I) Prong's 1 and 2 Transport requirements and was approved on October 4, 2019 (84 FR 53061).

[2] The six criteria pollutants are carbon monoxide, ground-level ozone, lead, nitrogen dioxide, particulate matter, and sulfur dioxide.

[3] Filterable particulate matter are particles that are directly emitted by a source as a solid or liquid at stack or releasee conditions and captured on the filter of a stack test train, while condensable particulate matter are emissions that are vapor phase at stack conditions, but which condense and/or react upon cooling and dilution in the ambient air to form solid or liquid PM after discharging from the stack. Direct (or primary) particulate matter is the sum of the filterable and condensable particulate matter emissions.

[4] *See* NR 438.04(5) in the docket of this rulemaking.

[5] *See* 40 CFR 51, subpart A, and 40 CFR 51.122.

quantity of raw materials and waste, including continuous emissions monitoring data and audits, and results of stack or performance tests.

Updates to NR 400.03 and 484.06(4) were included to align with Federal emissions reporting terminology and the updated emissions inventory process. The update to NR 400.03 incorporates an acronym definition used in the revision of NR 438, while the update to NR 484.06 corrected citations amended in NR 438 to reflect EPA's updated emissions factor database.

B. Section 110(a)(2)(F)—Stationary Source Monitoring System

Section 110(a)(2)(F) contains several requirements, each of which are described below.

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

WDNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. Basic authority for Wisconsin's Federally mandated Compliance Assurance Monitoring reporting structure is provided in *Wis. Stats.* 285.65. NR 438 and NR 439 set forth the minimum emissions reporting requirements that must be reported to EPA annually, and monitoring and testing requirements, respectively, for applicable facilities. Considering the proposed revisions to NR 438, EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2012 $PM_{2.5}$ and 2015 ozone NAAQS.

II. What action is EPA taking?

EPA is proposing to approve WDNR's request to incorporate by reference the revisions to NR 400.03, 484.06(4), and 438 contained in Rule AM–31–19 into Wisconsin's SIP in order to update the emission reporting requirements. Further, EPA is proposing to approve 110(a)(2)(F) of Wisconsin's infrastructure SIP submission, required under the 2012 $PM_{2.5}$ and 2015 ozone NAAQS, based on the updated rule submission. Approving this element would lead to full approval of Wisconsin's 2012 $PM_{2.5}$ infrastructure SIP.

III. Incorporation by Reference

In this rule, 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, EPA is proposing to incorporate by reference revisions to Wisconsin Administrative Code rules NR 400.03, NR 438, and NR 484.06(4) Table 4D Row (a), as published in the Wisconsin Register July 2022 No. 799, effective August 1, 2022, discussed in section I of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: March 9, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–05281 Filed 3–22–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0976; FRL–10788–01–R5]

Air Plan Approval; Michigan; Conditional Approval of the Detroit Sulfur Dioxide Nonattainment Area Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the State Implementation Plan (SIP) revision

submitted by Michigan on December 20, 2022, and supplemented on February 21, 2023, which amends a SIP submission previously submitted to EPA on May 31, 2016 and June 30, 2016, for attaining the 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) for the Detroit SO_2 nonattainment area. If this action is finalized, EPA will propose to convert the conditional approval of the SIP revision to a full approval upon Michigan timely meeting its commitment to submit the issued permits.

DATES: Comments must be received on or before April 24, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0976 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.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*. For either manner of submission, 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, 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://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7314, *teener.abigail@epa.gov*. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Why was Michigan required to submit an SO_2 plan for the Detroit area?

On June 22, 2010, EPA published a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. *See* 75 FR 35520, codified at 40 CFR 50.17(a)–(b). On August 5, 2013, EPA designated 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Detroit area within the State of Michigan. *See* 78 FR 47191, codified at 40 CFR part 81, subpart C. These area designations became effective on October 4, 2013. Section 191 of the Clean Air Act (CAA) directs states to submit SIPs for areas designated as nonattainment for the SO_2 NAAQS to EPA within 18 months of the effective date of the designation, *i.e.,* by no later than April 4, 2015, in this case. These SIPs were required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which was October 4, 2018.

For a number of nonattainment areas, including the Detroit area, EPA published an action on March 18, 2016 (effective April 18, 2016), finding that Michigan and other pertinent states had failed to submit the required SO_2 nonattainment plan by the submittal deadline (81 FR 14736). Michigan submitted an attainment plan for the Detroit SO_2 area on May 31, 2016, and submitted associated final enforceable measures on June 30, 2016. As part of its 2016 plan, Michigan imposed emission limits for U.S. Steel it concluded were necessary to bring the Detroit area into attainment via Michigan Administrative Code (MAC) 336.1430 (''Rule 430''). Michigan submitted Rule 430 to EPA as an enforceable limitation element for approval as part of its SO_2 plan. Subsequently, U.S. Steel challenged Rule 430 under state law in the Michigan Court of Claims. The decision invalidated Rule 430 on October 4, 2017. *United States Steel Corp.* v. *Dept. of Environmental Quality,* No. 16–000202–MZ, 2017 WL 5974195 (Mich. Ct. Cl. Oct. 4, 2017). Because the State's submitted attainment demonstration relied on a limitation that had become unenforceable and, therefore, could not meet the requirements of CAA sections 110 and 172, EPA could not fully approve Michigan's 2016 plan.

On March 19, 2021, EPA partially approved and partially disapproved Michigan's SO_2 plan as submitted in 2016 (86 FR 14827) (effective April 19, 2021). EPA approved the base-year emissions inventory and affirmed that the new source review (NSR) requirements for the area had previously been met on December 16, 2013 (78 FR 76064). EPA also approved the enforceable control measures for two facilities as SIP strengthening. At that time, EPA disapproved the attainment demonstration, as well as the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACM/RACT), and contingency measures. Additionally, EPA disapproved the plan's control measures for two facilities as not demonstrating attainment. EPA's March 19, 2021, partial disapproval started a sanctions clock which is permanently stopped only by meeting the conditions of EPA's regulations at 40 CFR 52.31(d).

On October 12, 2022, EPA promulgated a Federal Implementation Plan (FIP) for the Detroit SO_2 nonattainment area (87 FR 61514), which satisfied EPA's duty to promulgate a FIP for the area under CAA section 110(c) that resulted from the previous finding of failure to submit. However, it did not affect the sanctions clock started under CAA section 179 resulting from EPA's partial disapproval of the prior SIP, which would be permanently stopped only by meeting the conditions of EPA's regulations at 40 CFR 52.31(d)(5).

While EPA's FIP for the Detroit area meets the requirements for SO_2 nonattainment area plans, the FIP does not relieve Michigan of the requirement under Section 191 of the CAA to submit a plan that provides for attainment of the SO_2 NAAQS for the Detroit nonattainment area. On December 20, 2022, Michigan submitted a revised attainment plan for the Detroit SO_2 nonattainment area mirroring EPA's FIP in order to remedy Michigan's 2016 plan deficiencies specified in EPA's

March 19, 2021 rulemaking. Michigan's December 20, 2022, plan depends, in part, on permits that have not yet been issued but will include limits and associated requirements for the U.S. Steel and Dearborn Industrial Generation (DIG) facilities that are no less stringent than those set forth in EPA's FIP, codified at 40 CFR 52.1189.

Under section 110(k)(4) of the CAA, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within one year from the date of approval. EPA's October 28, 1992, memorandum, entitled ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' states that such commitments should include a formal request that EPA approve the commitment, be subject to public hearing pursuant of 40 CFR 51.102, and include a schedule for the adoption of the required measures. Therefore, Michigan included in its December 20, 2022, submittal, which was subject to public hearing, a request that EPA conditionally approve its revised plan for the Detroit area, conditional upon the issuance and submission for incorporation into the SIP of the NSR permits for the U.S. Steel and DIG facilities, as well as a commitment to submit the permits to EPA within one year of a conditional approval. On February 21, 2023, Michigan submitted a letter clarifying the schedule for the conditional approval, including Michigan's commitment to submit the necessary permits by April 30, 2024, and the schedule Michigan expects to follow to meet that commitment. Michigan's expected schedule includes ensuring all necessary permit applications are submitted by March 31, 2023, beginning the 240-day permit review process by April 1, 2023, issuing permits by December 1, 2023, and submitting permits to EPA by December 31, 2023. Michigan's expected date of submittal provides some cushion to ensure the State is able to meet its commitment to submit the permits by April 30, 2024, and EPA finds that Michigan's schedule is reasonable.

If EPA finalizes this conditional approval, the State must meet its commitment to submit the necessary permits by April 30, 2024. If the State fails to do so, the action will become a disapproval. In such case, EPA will notify the State by letter of the disapproval and subsequently publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval.

If the State meets its commitment within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, Michigan's conditionally approved Detroit SO_2 plan will also be disapproved at that time. If EPA approves the submittal, Michigan's Detroit SO_2 plan will be fully approved in its entirety and replace the conditionally approved element in the SIP.

Under 40 CFR 52.31(d)(2)(ii), if the State has submitted a revised plan to correct the deficiency, and EPA proposes to conditionally approve the plan and issues an interim final determination that the revised plan corrects the deficiency, application of the new source offset sanction shall be stayed and application of the highway sanction shall be deferred. However, if the State does not meet its commitment and the plan is disapproved, the new source offset sanction shall reapply and the highway sanction shall apply on the date of proposed or final disapproval. In the Detroit SO_2 nonattainment area, the two-to-one new source offset sanction took effect on October 19, 2022 (18 months following the effective date of March 19, 2021, rulemaking that triggered the sanctions clock), and the highway funding sanction was scheduled to take effect on April 19, 2023 (6 months after the date of the offset sanctions), as the result of the March 19, 2021, partial disapproval.

The remainder of this action describes the requirements that SO_2 nonattainment plans must meet in order to obtain EPA approval, provides a review of Michigan's revised plan with respect to these requirements, and describes EPA's proposed conditional approval of the plan.

II. Requirements for SO_2 Nonattainment Area Plans

Nonattainment SIPs must meet the applicable requirements of the CAA, and specifically CAA sections 110, 172, 191 and 192. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled the ''General Preamble for the Implementation of Title I of the CAA Amendments of 1990,'' published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO_2 SIPs and fundamental principles for SIP control strategies. *Id.,* at 13545–49, 13567–68. On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO_2 SIPs, in a document entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf*. In this guidance EPA described the statutory requirements for a complete nonattainment area SIP, which includes: An accurate emissions inventory of current emissions for all sources of SO_2 within the nonattainment area; an attainment demonstration; demonstration of RFP; implementation of RACM (including RACT); NSR; emissions limitations and control measures as necessary to attain the NAAQS; and adequate contingency measures for the affected area. EPA already concluded in its March 19, 2021, rulemaking that Michigan has met the emissions inventory and NSR requirements.

In order for EPA to approve a SIP as meeting the requirements of CAA sections 110, 172 and 191–192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(l) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G, further delineates the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble at 13567–68. SO_2 attainment plans must consist of two components: (1) Emission limits and other control measures that ensure implementation of permanent, enforceable and necessary emission

controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, appendix W, which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's *Guideline on Air Quality Models* (40 CFR part 51, appendix W). In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A to the April 23, 2014, SO_2 nonattainment area SIP guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor). This is demonstrated by using air quality dispersion modeling (*see* appendix W to 40 CFR part 51) that shows that the mix of sources, enforceable control measures, and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For a short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010, clarification memo on ''Applicability of Appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (U.S. EPA, 2010).

For a more in-depth discussion on the requirements of SO_2 nonattainment plans, including the use of longer-term average limits, *see* EPA's proposed FIP (87 FR 33095).

III. Review of Michigan's Attainment Plan

Michigan's plan for the Detroit nonattainment area mirrors EPA's promulgated FIP for the area. Therefore, Michigan's plan relies on the modeling analysis EPA used to support its FIP, which is attached as appendix B of Michigan's December 20, 2022, submittal, to demonstrate attainment of the 2010 SO_2 NAAQS in the Detroit area. A more in-depth discussion of the modeling analysis may be found in EPA's proposed FIP (87 FR 33095) and the associated technical support document, which is included in the docket for this action as appendix B of Michigan's December 20, 2022, submittal.

An important aspect of an attainment plan is that the emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable. *See* General Preamble at 13567–68. Michigan's attainment plan includes the same limits for the U.S. Steel, EES Coke, Cleveland-Cliffs Steel Corporation, DIG, Carmeuse Lime, and DTE Trenton Channel facilities that are included in EPA's FIP, and which are all shown below in Table 1. The plan also includes the same requirement that a 170-foot stack be constructed at U.S. Steel Boilerhouse 2 by November 14, 2024, as set forth in EPA's FIP. The FIP made all of these limits and requirements federally enforceable, via either incorporation of permits containing the limits and requirements into Michigan's SIP or inclusion in the FIP regulatory language, codified at 40 CFR 52.1189. As Michigan's plan cannot rely on the FIP regulatory language, the enforceability mechanisms of all the limits relied upon by Michigan's plan are described in the remainder of this section.

In preparing its 2016 plan, Michigan adopted Permit to Install 193–14A, governing the Carmeuse Lime SO_2 emissions, and Permit to Install 125–11C, governing the DTE Trenton Channel SO_2 emissions. These construction permit revisions were adopted by Michigan following established, appropriate public review procedures. The permit compliance dates were October 1, 2018 for Carmeuse Lime and January 1, 2017 for DTE Trenton Channel. Both of these permits were incorporated into Michigan's SIP as part of EPA's March 19, 2021, action partially approving and partially disapproving Michigan's SO_2 plan (86 FR 14827). DTE Trenton Channel has since permanently shut down as of June 19, 2022, under court order.[1] However, the DTE Trenton Channel permitted limit was included in the FIP analysis and included in Michigan's revised plan as a precautionary measure. The Carmeuse Lime and DTE Trenton Channel permits were incorporated into Michigan's SIP as part of EPA's March 19, 2021, action, so EPA is not proposing to re-incorporate them into 40 CFR part 52 in this action.

Emission limits and associated requirements for EES Coke and Cleveland-Cliffs Steel Corporation are contained in permits Permit to Install 51–08C, effective November 21, 2014, and Permit MI–ROP–A8640–2016a, modified January 19, 2017, respectively. These limits and associated monitoring requirements were also included in EPA's FIP, codified at 40 CFR 52.1189. The permit revisions were adopted by Michigan following established, appropriate public review procedures. EPA finds that these permit revisions provide for permanent enforceability and is proposing to incorporate these permits into Michigan's SIP in this action.

[1] *See https://earthjustice.org/sites/default/files/files/267-1_-_sierra_club_-_dte_separate_agreement.pdf.*

Michigan has committed to issue permits for the emission limits and associated construction, monitoring, recordkeeping, and reporting requirements for the U.S. Steel and DIG units, including the construction of a new 170-foot stack for U.S. Steel Boilerhouse 2 by November 14, 2024, that are no less stringent than those specified in 40 CFR 52. 1189. These enforceable requirements will be contained in permits or permit revisions that have not yet been issued, but that Michigan has committed to submit to EPA by April 30, 2024. While EPA cannot incorporate permits containing emission limits for the U.S. Steel and DIG unit limits into Michigan's SIP at this time, these limits were previously adopted into EPA's FIP and will continue to remain federally enforceable as part of the regulatory text of EPA's FIP, codified at 40 CFR 52.1189. Therefore, EPA is proposing to conditionally approve Michigan's plan, pending the issuance and timely submission of the appropriate permits to EPA for incorporation into the SIP.

TABLE 1—EMISSION LIMITS INCLUDED IN MICHIGAN'S DETROIT SO_2 NONATTAINMENT AREA PLAN

Unit	SO_2 emission limit (lb/hr)	Permit No. or status	SIP status
U.S. Steel—Zug Island			
Boilerhouse 1 (all stacks combined)	55.00	Permit issuance in progress	If this action is finalized, approval of Michigan's plan will be conditional upon the timely submission of these permits for incorporation into the SIP.
A1 Blast Furnace	0.00		
B2 Blast Furnace	40.18		
D4 Blast Furnace	40.18		
A/B Blas Furnace Flares	60.19		
D Furnace Flare	60.19		
Boilerhouse 2	*750.00/81.00	Permit issuance in progress.	
U.S. Steel—Ecorse			
Hot Strip Mill—Slab Reheat Furnace 1	0.31	Permit issuance in progress	If this action is finalized, approval of Michigan's plan will be conditional upon the timely submission of this permit for incorporation into the SIP.
Hot Strip Mill—Slab Reheat Furnace 2	0.31		
Hot Strip Mill—Slab Reheat Furnace 3	0.31		
Hot Strip Mill—Slab Reheat Furnace 4	0.31		
Hot Strip Mill—Slab Reheat Furnace 5	0.31		
No. 2 Baghouse	3.30		
Main Plant Boiler No. 8	0.07		
Main Plant Boiler No. 9	0.07		
EES Coke			
Combustion Stack	544.6	Permit to Install 51–08C	EPA is proposing to incorporate this permit into Michigan's SIP.
DTE Trenton Channel **			
Trenton Channel Unit 9	5,907	Permit to Install 125–11C	Incorporated into Michigan's SIP as part of March 19, 2021 action (86 FR 14827). However, the source has since shut down.
Carmeuse Lime			
Carmeuse Lime Stack	470	Permit to Install 193–14A	Incorporated into Michigan's SIP as part of March 19, 2021 action (86 FR 14827).
Cleveland-Cliffs Steel Corporation **			
Furnace B Baghouse Stack	71.9	Permit MI–ROP–A8640–2016a	EPA is proposing to incorporate this permit into Michigan's SIP.
Furnace B Stove Stack	38.75		
Furnace B Baghouse and Stove Stacks (combined).	77.8		
Furnace C Baghouse Stack	179.65		
Furnace C Stove Stack	193.6		
Furnace C Baghouse and Stove Stacks (combined).	271.4		

TABLE 1—EMISSION LIMITS INCLUDED IN MICHIGAN'S DETROIT SO_2 NONATTAINMENT AREA PLAN—Continued

Unit	SO_2 emission limit (lb/hr)	Permit No. or status	SIP status
DIG **			
Boilers 1, 2, and 3 (combined)	420	Permit issuance in progress	If this action is finalized, approval of Michigan's plan will be conditional upon the timely submission of this permit for incorporation into the SIP.
Boilers 1, 2, and 3 and Flares 1 and 2 (combined).	840		

* U.S. Steel—Zug Island Boilerhouse 2 shall emit less than 750.00 lbs/hr unless Boilerhouse 1, A1 Blast Furnace, B2 Blast Furnace, D4 Blast Furnace, A/B Blast Furnace Flares, or D Furnace Flare is operating, in which case it shall emit less than 81.00 lbs/hr. In addition to the limit, this permit will also require a new 170-foot stack to be constructed for Boilerhouse 2 by November 14, 2024.

** The limit for Trenton Channel is expressed as a 30-day average limit, and the limits for Cleveland-Cliffs Steel Corporation and DIG are expressed as daily average limits. EPA's FIP proposal addresses the use of these longer-term average limits, both with respect to the general suitability of using such limits for demonstrating attainment and with respect to whether the particular limits included in the plan have been suitably demonstrated to provide for attainment.

If this action is finalized and Michigan fails to submit the permits containing the necessary requirements for the U.S. Steel and DIG units, the action will become a disapproval one year from the date of final conditional approval. If EPA disapproves the new submittal, Michigan's conditionally approved Detroit SO_2 plan will also be disapproved at that time. Additionally, the new source offset sanction shall reapply and the highway sanction shall apply on the date of proposed or final disapproval.

Michigan commits to issue permits that contain requirements that are no less stringent than EPA's FIP, codified at 40 CFR 52.1189. Because Michigan's commitment relies on the same modeling analysis that supports EPA's FIP and will contain emission limits and associated requirements that are no less stringent that EPA's FIP, EPA is proposing to conditionally approve Michigan's plan, conditional upon the timely submission of permits containing the necessary SO_2 emission limits and associated requirements for the U.S. Steel and DIG units.

IV. Review of Other Plan Requirements

A. RACM/RACT

CAA section 172(c)(1) states that nonattainment plans shall provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the NAAQS. For most criteria pollutants, RACT is control technology as needed to meet the NAAQS that is reasonably available considering technological and economic feasibility. However, the definition of RACT for SO_2 is, simply, that control technology which is necessary to achieve the NAAQS (*see* 40 CFR 51.100(o)). CAA section 172(c)(6) requires plans to include enforceable emissions limitations, and such other control measures as may be necessary or appropriate to provide for attainment of the NAAQS.

In its March 19, 2021, rulemaking, EPA disapproved Michigan's 2016 attainment plan because it relied on Rule 430, which was invalidated and so was no longer an enforceable mechanism. Therefore, the plan could not be considered to provide an appropriate attainment demonstration, and it did not demonstrate RACM/RACT or meet the requirement for necessary emissions limitations or control measures.

EPA's FIP for attaining the 1-hour SO_2 NAAQS in the Detroit area is based on a variety of measures, including permits for Carmeuse Lime (effective date of October 1, 2018) and DTE Trenton Channel (effective date of January 1, 2017) that have been incorporated into Michigan's SIP, as well as the FIP regulatory language, codified at 40 CFR 52.1189, regarding U.S. Steel, EES Coke, Cleveland-Cliffs Steel Corporation, and DIG emissions. The FIP requires compliance by November 14, 2024, for U.S. Steel Boilerhouse 2 and November 14, 2022, for all other units. The compliance schedule for U.S. Steel Boilerhouse 2 allows time for the owner or operator to submit a construction permit application to the State of Michigan (required by February 12, 2023), as well as time for the State of Michigan to issue the permit, the owner or operator to send out requests for proposal and award a construction contract and procure materials, and for completion of construction. Since Michigan's plan follows the same compliance schedule by requiring compliance on the same dates as the FIP, EPA proposes to determine that these measures suffice to provide for attainment and proposes to conclude that the Michigan's plan satisfies the requirement in sections 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standards as expeditiously as practicable.

B. Reasonable Further Progress (RFP)

Section 171(1) of the CAA defines RFP as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date. This definition is most appropriate for pollutants that are emitted by numerous and diverse sources, where the relationship between any individual source and the overall air quality is not explicitly quantified, and where the emission reductions necessary to attain the NAAQS are inventory-wide. (*See* EPA's April 2014 SO_2 nonattainment planning guidance, page 40.) For SO_2, there is usually a single ''step'' between pre-control nonattainment and post-control attainment. Therefore, for SO_2, with its discernible relationship between emissions and air quality, and significant and immediate air quality improvements, RFP is best construed as adherence to an ambitious compliance schedule. (*See* General Preamble at 74 FR 13547 (April 16, 1992)).

In its March 19, 2021, rulemaking, EPA concluded that Michigan had not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment. Michigan's 2016 attainment plan did not demonstrate that the implementation of the control measures required under the plan were sufficient to provide for attainment of the NAAQS in the Detroit SO_2 nonattainment area, as some control measures were not enforceable due to the invalidation of Rule 430. Therefore, a compliance

schedule to implement those controls was not sufficient to provide for RFP. EPA's FIP requires compliance by November 14, 2024, for U.S. Steel Boilerhouse 2 and November 14, 2022, for all other units. As described in section V.B above, the 2-year compliance schedule for U.S. Steel Boilerhouse 2 allows 90 days for the owner or operator to submit a construction permit application to the State of Michigan, as well as time for the State of Michigan to issue the permit, the owner or operator to send out requests for proposal and award a construction contract and procure materials, and for completion of construction. For DTE Trenton Channel and Carmeuse lime, compliance was required by January 1, 2017, and October 1, 2018, respectively. EPA concluded in the FIP that this is an ambitious compliance schedule, as that term is used in the April 2014 guidance for SO_2 nonattainment plans. As Michigan's plan follows the same compliance schedule as the FIP, EPA concludes that this plan therefore provides for RFP in accordance with the approach to RFP described in EPA's 2014 guidance.

C. Contingency Measures

EPA guidance describes special features of SO_2 planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures for SO_2, such that in particular an appropriate means of satisfying this requirement is for the air agency to have a comprehensive enforcement program that identifies sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement. (*See* EPA's April 2014 SO_2 nonattainment planning guidance, page 41.) Michigan has such an enforcement program, pursuant to section 5526 of part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Compiled Laws 324.5526. Michigan enforcement and compliance authority is furthered by the State's title V program, which includes a compliance monitoring program, periodic inspections, review of company monitoring records, reporting, and issuance of violation notices for all violations shown from inspections or data. In addition, Michigan stated that it responds promptly to citizen complaints, reports all high priority violations to EPA, and puts all inspection reports and violation notices on Michigan's website. Therefore, EPA proposes that Michigan's plan satisfies the contingency measure requirement in accordance with the approach to contingency measures described in EPA's 2014 guidance.

V. What action is EPA taking?

EPA is proposing to conditionally approve Michigan's revised SIP submission, which the State submitted to EPA on December 20, 2022, for attaining the 2010 1-hour SO_2 NAAQS for the Detroit area and for meeting other nonattainment area planning requirements, pending the timely submission of permits containing emission limits for the U.S. Steel and DIG facilities. This SO_2 attainment plan includes Michigan's attainment demonstration for the Detroit area. The plan also addresses requirements for RFP, RACT/RACM, and contingency measures. EPA previously concluded that Michigan has addressed the requirements for emissions inventories for the Detroit area and nonattainment area NSR. EPA has determined that Michigan's Detroit SO_2 plan meets applicable requirements of section 172 of the CAA, conditioned upon the timely submission of the appropriate permits.

Michigan's Detroit SO_2 plan is based on the Carmeuse Lime emission limits specified in Permit to Install 193–14A, the DTE Trenton Channel emission limits specified in Permit to Install 125–11C, the EES Coke limits specified in Permit to Install 51–08C, Cleveland-Cliffs Steel Corporation emission limits specified in Permit MI–ROP–A8640–2016a, and U.S. Steel and DIG limits that will be included in permits that Michigan has committed to submit for incorporation into Michigan's SIP by April 30, 2024. Regardless of whether these permits are incorporated into Michigan's SIP, the U.S. Steel and DIG limits will remain federally enforceable in EPA's FIP, codified at 40 CFR 52.1189, until further action. The Carmeuse Lime and DTE Trenton Channel permits have already been incorporated into Michigan's SIP and EPA is not proposing to re-incorporate them into 40 CFR part 52 here. EPA is proposing to incorporate Permit to Install 51–08C, governing EES Coke SO_2 emissions and Permit MI–ROP–A8640–2016a, governing Cleveland-Cliffs Steel Corporation SO_2 emissions into Michigan's SIP in this action.

If EPA finalizes this conditional approval, the State must meet its commitment to submit the necessary permits by April 30, 2024. If the State fails to do so, the action will become a disapproval one year from the date of final conditional approval. In such case, EPA will notify the State by letter of the disapproval and subsequently publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval.

If the State meets its commitment within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new permits. If EPA disapproves the new submittal, Michigan's conditionally approved Detroit SO_2 plan will also be disapproved at that time. If EPA approves the submittal, Michigan's Detroit SO_2 plan will be approved in its entirety and replace the conditionally approved element in the SIP.

Under 40 CFR 52.31(d)(2)(ii), if the State has submitted a revised plan to correct the deficiency, and EPA proposes to conditionally approve the plan and issues an interim final determination that the revised plan corrects the deficiency, application of the new source offset sanction shall be stayed and application of the highway sanction shall be deferred. However, if the State does not meet its commitment and the plan is disapproved, the new source offset sanction shall reapply and the highway sanction shall apply on the date of proposed or final disapproval. In the Detroit area, the offset sanction was imposed on October 19, 2022, and the highway sanction, if not deferred, would be imposed on April 19, 2022.

EPA is taking public comments for thirty days following the publication of this proposed action in the **Federal Register**. EPA will take all comments into consideration in the final action.

VI. Incorporation by Reference

In this rule, 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, EPA is proposing to incorporate by reference Permit to Install 51–08C, effective November 21, 2014, governing EES Coke SO_2 emissions and Permit MI–ROP–A8640–2016a, modified January 19, 2017, governing Cleveland-Cliffs Steel Corporation SO_2 emissions, as discussed in Section III of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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

CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 16, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–05819 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17–310; FCC No. 23–6; FR ID 129966]

Promoting Telehealth in Rural America

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) continues its efforts to improve the Rural Health Care (RHC) Program. The RHC Program seeks to support rural health care providers with the costs of broadband and other communications services for patients in rural areas that may have limited resources, fewer doctors, and higher rates than urban areas.

DATES: Comments are due on or before April 24, 2023, and reply comments are due on or before May 22, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed as soon as possible.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments. You may submit comments, identified by WC Docket No. 17–310, by any of the following methods:

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

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Bryan P. Boyle *Bryan.Boyle@fcc.gov,*

Wireline Competition Bureau, 202–418–7400 or TTY: 202–418–0484. Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Promoting Telehealth in Rural America; Second Further Notice of Proposed Rulemaking (Second FNPRM) in WC Docket No. 17–310; FCC No. 23–6, adopted January 26, 2023 and released January 27, 2023. The full text of this document is available for public inspection during regular business hours at Commission's headquarters 45 L Street NE, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-23-6A1.pdf.* The Order on Reconsideration, Second Report and Order and Order (Orders) that was adopted concurrently with the Second Further Notice of Proposed Rulemaking is to be published elsewhere in the **Federal Register**.

Introduction

The Second Further Notice of Proposed Rulemaking (Second FNPRM), continues the Commission's efforts to improve the Rural Health Care (RHC) Program. The RHC Program supports rural health care providers with the costs of broadband and other communications services so that they can serve patients in rural areas that may have limited resources, fewer doctors, and higher rates for broadband and communications services than urban areas. Telehealth and telemedicine services, which expanded considerably during the COVID–19 pandemic, have also become essential tools for the delivery of health care to millions of rural Americans. These services bridge the vast geographic distances that separate health care facilities, enabling patients to receive high-quality medical care without sometimes lengthy or burdensome travel. The RHC Program promotes telehealth by providing financial support to eligible health care providers for broadband and telecommunications services.

The Second FNPRM proposes revisions to the rate determination rules, seeks comment on to reinstating the cap on support for satellite services, proposes to make it easier for health care providers to receive RHC Program funding as soon as they become eligible, propose to align the deadline to request a Service Provider Identification Number (SPIN) change with the invoice filling deadline, and seeks comment on revisions to data collected in the Telecom Program.

Second Further Notice of Proposed Rulemaking

The Second FNPRM proposes modifications to the three rural rate determination methods in the Telecom Program, including changes to the market-based approach of Methods 1 and 2 and new evidentiary requirements for justifying cost-based rates under Method 3. The Commission also proposes to simplify urban rate rules by eliminating the ''standard urban distance'' distinction and seeks specific comment on sources for urban rates as well as general comment on the urban rate rules. Next, the Commission seeks comment on reinstating the cap on support for satellite services that the Commission eliminated when it adopted the Rates Database and on amending Health Care Connect Fund (HCF) Program rules to make equipment supporting Telecom Program services eligible. In addition, to make it easier for health care providers to receive RHC Program funding as soon as they become eligible entities, the Commission proposes a conditional eligibility process to allow entities that will be eligible health care providers in the future to engage in competitive bidding and file Requests for Funding before they become eligible. The Commission also proposes to align the deadline to request a Service Provider Identification Number (SPIN) change with the invoice filing deadline and seek comment on a post-commitment process to amend evergreen contract dates. The Commission concludes by seeking comment on proposed revisions to FCC Form 466 intended to improve the quality of Telecom Program data.

Rural Rates. In the Order on Reconsideration published elsewhere in the **Federal Register**, the Commission grants the petitions seeking reconsideration of the Telecom Program Rates Database and restore Methods 1, 2, and 3 for calculating rural rates in the Telecom Program effective for funding year 2024. Although the Commission believes restoring Methods 1, 2, and 3 is the best of the currently available options to ensure that healthcare providers have adequate, predictable support in the short term, the Commission also recognizes that improvements to these methods may be necessary for the long term given the issues that the Commission has previously cited with respect to these rate calculation methodologies. Therefore, in the following sections, the Commission proposes modifications to the three methods to improve the overall calculation of rural rates, make rate calculations simpler to administer, and reduce waste, fraud, and abuse in the Telecom Program for funding year 2024 and beyond. The Commission proposals are similar to the now-reinstated Methods 1 through 3 in that they contain multiple ways to calculate rural rates that are applied sequentially. While the Commission seeks comment specifically on the proposed modification to the methods, at the outset the Commission seeks comment generally on alternative rural rate calculation methods. In proposing alternative rate methodologies, commenters should be specific, point the Commission to available data sources to support any alternative methodology, and explain how any alternative methodology would be more advantageous in protecting the Fund against waste, fraud, and abuse.

As an initial matter, the Commission addresses several matters applicable to rural rates regardless of the method used. For both market-based calculations and cost-based rates, the Commission proposes that the rural rate not exceed the monthly rate in the contract or other applicable agreement between the service provider and health care provider. This safeguard exists in the rules related to the Rates Database and ensures that rural rates will drop if market prices drop. The Commission seeks comment on this proposal. Are there situations in which it would be appropriate to base support on an amount higher than the monthly rate in the contract or other applicable agreement?

Additionally, the Commission proposes that service providers with multi-year contracts, including evergreen contracts, continue to be required to justify rural rates only in the first year of the contract. Given that service providers would not be expected to submit additional bids within the duration of the multi-year contract, the Commission believes it would be reasonable to exempt such contracts from requiring additional rural rates justifications during the duration of the contract. The Commission seeks comment on this proposal. The Commission also seeks comment on whether a rural rate approval for a single year contract for the same health care provider for the same service should be effective for multiple funding years to reduce administrative burdens associated with filing rural rate justifications every year. If so, for how

many years should an approval be effective?

The Commission seeks comment on whether the Commission should offer guidance on which point in the procurement and funding cycle service providers should determine rural rates. The Bureau previously advised that service providers should determine the rural rate before responding to a health care provider's request for bids. If the Commission offers further guidance, should it alter the guidance the Bureau previously offered? The Commission also seeks comment on whether additional clarification is needed regarding what constitutes ''comparable rural areas'' for determining rural rates. Are health care providers and service providers currently able to determine what constitute a ''comparable rural area?'' If the Commission were to offer a clarification on what constitutes ''comparable rural areas,'' what should the clarification state?

Market-Based Calculations. The rules that the Commission reinstate in the Order on Reconsideration published elsewhere in the **Federal Register** require health care and service providers to first calculate the rural rate by averaging rates offered by the service provider for an identical or similar service in the rural area in which the health care provider was located (Method 1), and in the event the service provider does not provide such a service, the average of rates offered by carriers other than the service provider (Method 2). The Commission now proposes alternative sequential methods for determining rural rates, which are called ''Method A'' and ''Method B'' for purposes of the Second FNPRM:

Method A: The rural rate shall be the median of publicly available rates charged by other service providers for the same or similar services over the same distance in the rural area where the health care provider is located.

Method B: If there are no publicly available rates charged by other service providers for the same or similar services (that is, rates that can be used under Method A), the rural rate shall be the median of the rates that the carrier actually charges to non-health care provider commercial customers for the same or similar services provided in the rural area where the health care provider is located.

This proposal differs from Methods 1 and 2 in two primary respects. First, the new proposed calculations would be based on the median of inputs, rather than their average. Calculating rural rates using the median will mute the effect that a small number of abnormally high or low inputs would have on the calculated rural rate. The Commission seeks comment on the methodology. Would calculating rural rates using averages be preferable to using medians? If so, why? Are there other ways that the Commission should consider calculating rural rates?

The second major way that the proposal varies from Methods 1 and 2 is that the default calculation in the proposal is based on rates charged by other service providers, meaning that a service provider would only be able to use its own rates to calculate the rural rate if there are no applicable rates from other service providers. This change could improve program integrity and provide administrative benefits. As to program integrity, shifting the default rural rates calculation to rates from other service providers could ensure that rural rates in the Telecom Program better reflect market conditions. A service provider would not enjoy inflated rural rates simply because it charges inflated rates to customers outside of the Telecom Program. The Commission seeks stakeholder feedback on program integrity implications of the proposal to use rates charged by other service providers as the default for calculating rural rates. Are there any concerns with service providers using competitor's rates to determine rural rates instead of using their own rates? What are the benefits? Are there benefits to using the service provider's own rates as the default as Method 1 does?

As to administration, the availability of rural rates on the Open Data platform on the Administrator's website could simplify the rates determination process if the Administrator were to build a tool that allows the filer of a Request for Funding to select the specific funding requests, *i.e.,* prices from past request that would be used as inputs to Method A. The tool would then determine the rural rate under Method A on behalf of the health care provider before it certifies its Request for Funding. The automated process would not pre-determine which health care provider is in a similar rural area as the health care provider applicant. That would be left to the service provider to determine. During application review, the Administrator would verify that the sites from the inputs are in a similar rural area to the health care provider, just as it has done under the now reinstated Methods 1 and 2.

The Commission seeks comment on developing an automated process to calculate rural rates, to the extent possible, by having USAC's website auto-generate the rural rate after the health care and/or service provider selects sites that are in the same rural area as the HCP. Would this help alleviate administrative burdens associated with calculating rural rates? Should filers be permitted to add rural rates outside of Open Data to be included in the calculation? Are there any circumstances in which a filer should be permitted to exclude a rate even if the rate is for the same or similar services over the same distance in the rural area where the health care provider is located? Are there any disadvantages to automating the rate calculation process in this way? Would a challenge process outside of the normal appeals process be necessary? If so, how should such a challenge process operate? Do commenters have any alternative methods of administering these proposed rate methodology changes that would increase efficiency and transparency? Commenters are encouraged to provide specific suggestions and feedback on how to best administer changes to the rates determination process.

The Commission seeks comment on other iterations of the proposed Methods A and B. For instance, one alternative to the proposal would be to use the lower of the rural rates calculated under Methods A and B. This alternative would ensure that the Fund reaps the benefits of reductions in pricing from the service provider for the applicable funding request or in the overall market. The Commission seeks comment on the advantages and disadvantages of the approach.

The Commission also seeks comment on the rates that should be used for Methods A and B under the proposal. For Method A, are there other sources of publicly available rate information to be considered, such as tariffed rates? Should Method A inputs be limited to data available in Open Data? Do commenters agree that the data available in Open Data would be sufficient for Program participants to determine a rural rate under Method A? If not, what additional information would be required in Open Data to make such a rate determination? For the proposed Method B, the Commission seeks comment on whether to include the median of all of the service provider's own rates for the same or similar services, including rates for USF-supported services, which are currently excluded from Method 1 calculations either in situations where there are no publicly available rates or tariffed rates outside of the service provider's own rates or in all situations. For Method B, should service providers use additional information available in their own records to make a more granular similarity determination?

For both proposed Methods A and B, the Commission seeks comment on whether to include both healthcare provider and non-healthcare provider commercial customers in the rural area in which the healthcare provider is located to calculate the rural rate. Do commenters have any concerns with allowing service providers to rely on all of their own rates, including health care provider rates? How should Methods A and B account for the potential price variations caused by term and volume discounts? Do commenters have any concerns that the proposed Methods would not be suitable for health care providers in Alaska? Commenters are encouraged to be specific with their concerns.

Cost-Based Rates. The Commission proposes that service providers continue to have the option to submit a cost-based rate if they cannot calculate a rural rate using Methods A or B. Under the rate determination rules the Commission reinstates, service providers may request approval of a cost-based rate under Method 3 from the Commission (for interstate services) or a state commission (for intrastate services) if there are no rates for the same or similar services in the rural area in which the health care provider is located, or the service provider reasonably determines that the calculated rural rate would not be compensatory. The Commission's rules require the service provider to submit a justification of its requested rural rate, including an itemization of the costs of providing the service requested by the eligible health care provider. To comply with the requirement, the request for approval of a cost-based rural rate requires service providers to include a cost study that demonstrates how the costs of providing services were allocated to RHC Program customers.

In the Promoting Telehealth Report and Order (2019 R&O) (FCC 19–78 rel. August 20, 2019 (84 FR 54952, October 11, 2019)), the Commission eliminated the cost-based method of determining rates and instead concluded that submitting a cost-based rate should serve only as a safety valve for service providers that have no other means of determining a rural rate. The Commission reasoned that implementation of the Rates Database made it unlikely that service providers would be unable to determine a rural rate with the data provided in the database. The Commission established a waiver process that allowed service providers to use a cost-based rate mechanism in ''extreme cases'' where the provider could show that the applicable rural rate from the Rates Database ''would result in objective, measurable economic injury.'' Now that the Rates Database has been eliminated and the previous rate determination rules have been reinstated, the Commission proposes to modify the cost-based rate-determination method to include specific evidentiary requirements to increase transparency in how service providers calculate cost-based rates when a rural rate cannot be calculated under Methods A or B or the carrier reasonably determines that the rural rate calculated under Methods A or B would not generate a reasonably compensatory rate.

The Commission proposes a revised cost-based method that will require service providers seeking approval of a cost-based rate to satisfy the same evidentiary requirements that the Commission adopted as required for waiver of the Rates Database rules in the 2019 R&O. When service providers submit a cost-based rate, the Commission proposes to require service providers to include all financial data and other information to verify the service provider's assertions, including, at a minimum, the following information:

- Company-wide and rural health care service gross investment, accumulated depreciation, deferred state and Federal income taxes, and net investment; capital costs by category expressed as annual figures (*e.g.,* depreciation expense, state and Federal income tax expense, return on net investment); operating expenses by category (*e.g.,* maintenance expense, administrative and other overhead expenses, and tax expense other than income tax expense); the applicable state and Federal income tax rates; fixed charges (*e.g.,* interest expense); and any income tax adjustments;
- An explanation and a set of detailed spreadsheets showing the direct assignment of costs to the rural health care service and how company-wide common costs are allocated among the company's services, including the rural health care service, and the result of these direct assignments and allocations as necessary to develop a rate for the rural health care service;
- The company-wide and rural health care service costs for the most recent calendar year for which full-time actual, historical cost data are available;
- Projections of the company-wide and rural health care service costs for the funding year in question and an explanation of these projections;
- Actual monthly demand data for the rural health care service for the most recent three calendar years (if applicable);
- Projections of the monthly demand for the rural health care service for the funding year in question, and the data and details on the methodology used to make that projection;
- The annual revenue requirement (capital costs and operating expenses expressed as an annual number plus a return on net investment) and the rate for the funded service (annual revenue requirement divided by annual demand divided by 12 equals the monthly rate for the service), assuming one rate element for the service, based on the projected rural health care service costs and demands;
- Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years, specifically, the cash flow statement, income statement, and balance sheets. Such statements shall include information regarding costs and revenues associated with, or used as a starting point to develop, the rural health care service rate; and
- Density characteristics of the rural area or other relevant geographical areas including square miles, road miles, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season, or any other characteristics that contribute to the high cost of servicing the health care providers.

The Commission understands that stakeholders generally disfavored the evidentiary requirements for the cost-based waiver for determining rural rates because of the burdensome nature of the information requested, the possibility that the cost-based method would not provide sufficient support for those that could not calculate their rates using the Rates Database and the fact that these evidentiary requirements go far beyond the evidentiary requirements for Method 3. However, the Commission adopted the waiver process as a safety valve given how infrequently the cost-based method has been used in the Telecom Program's history and the small likelihood that providers could not determine the rural rate using the Rates Database. The Commission believes that such a comprehensive cost-based process would likely incentivize service providers to make every effort to justify their rates under Methods A or B, which would be much simpler for both the Administrator and service providers. Nonetheless, in addition to the proposal, the Commission seeks comment on alternative evidentiary requirements that can assist the Bureau

and Administrator in evaluating cost-based rates in the event that service providers have no other way of determining rates. Do commenters have any recommendations that would increase transparency and efficiency in submitting and reviewing cost-based rates? How common would it be for service providers to have to use this cost-based rates process? Are there changes that the Commission can make to the proposed cost-based rates submission process that would mitigate administrative burdens on service providers without compromising Program integrity? How should service providers and the Bureau use the cost data to determine a cost-based rate to be charged to an individual customer? Should there be a deadline by which the Bureau must complete its cost-based rate review and issue a rate determination? If so, how would such a deadline operate in the event that a service provider submitted incomplete or inaccurate information that required additional submissions to the Bureau? Would the use of cost studies to determine maximum rural rates decrease incentives for new infrastructure investment in hard to serve areas? Do commenters have any concerns that the proposed cost-based rate would not be suitable for health care providers in Alaska? Commenters are strongly encouraged to share specific recommendations.

Urban Rates. The Commission next proposes to simplify and seek further comment on future urban rate determination rules for the Telecom Program. The Telecom Program subsidizes the difference between the urban rate for a service in the health care provider's State, which must be ''reasonably comparable to the rates charged for similar services in urban areas in that State,'' and the rural rate, which is ''the rate for similar services provided to other customers in comparable rural areas'' in the State. The rules that the Commission restores on reconsideration elsewhere in the **Federal Register** state that urban rates ''shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state.'' Following the decision in the Order on Reconsideration published elsewhere in the **Federal Register** to eliminate the Rates Database and restore the previous rules for determining urban rates effective funding year 2024, the Commission proposes to simplify the urban rate rule by eliminating the ''standard urban distance'' distinction from it and now seek comment on whether any additional changes to those rules are warranted.

Standard Urban Distance. The rules that the Commission reinstates published elsewhere in the **Federal Register** provide that, if the service is provided over a distance greater than the standard urban distance, which is the average of the longest diameters of all cities with a population of 50,000 or more within a state, the urban rate is the rate no higher than the highest tariffed or publicly-available rate provided over the standard urban distance. The 2019 R&O eliminated the standard urban distance distinction in adopting the Rates Database. The Commission proposes to eliminate this distinction between services provided over and within the standard urban distance and to base all urban rates calculations on rates provided in a city, rather than over the standard urban distance. The Commission expects that eliminating this distinction will simplify the process for determining an urban rate and will not adversely impact most health care providers because few Telecom Program participants calculate urban rates using the standard urban distance. The Commission seeks comment on the impact that this would have on urban rates and administrative burdens. Before the adoption of the Rates Database, how common was it to base urban rates calculations on services in a city (rather than services over the standard urban distance)? Would urban rates increase unduly if the Commission makes this change? The Commission seeks comment on whether to change the standard for ''urban'' from a city with a population of at least 50,000. Will changes to the standard for ''urban'' in conjunction with the elimination of the standard urban distance cause an increase in urban rates?

Sources of Urban Rates. Under the pre-funding year 2020 urban rate rules that the Commission reinstates in the Order on Reconsideration published elsewhere in the **Federal Register**, documentation may be required to substantiate the applicable urban rate. The urban rate is determined by the health care provider, often with the assistance of a consultant or carrier, and reported on the FCC Form 466. To document the urban rate, health care providers may use ''tariff pages, contracts, a letter on company letterhead from the urban service provider, rate pricing information printed from the urban service provider's website or similar documentation showing how the urban rate was obtained.'' In the alternative, health care providers have historically utilized the urban rates listed on the Administrator's website for certain services in certain states. These urban rates are determined by reviewing tariff information on file with the Commission. One advantage of utilizing the urban rates posted to the Administrator's website is that health care providers did not need to provide additional documentation on their FCC Form 466. With the Commission's decision to eliminate the Rates Database, should the Administrator post urban rates as it did prior to the 2019 R&O or is the posting of urban rates of limited utility and unnecessary? Are there changes or updates the Administrator should make to the urban rates it posts on its website? While the Commission has made the decision to eliminate the Rates Database, the database contains urban rates that were collected as part of the database creation process. If the Administrator resumes posting urban rates, should the urban rates currently found in the Rates Database be included in the posted list, or have too many anomalies been identified that will preclude the use of those rates by participants in the Telecom Program?

On a forward going basis, should there be any changes to the now-reinstated urban rate rules? When exploring additional sources of urban rates, should the Commission allow health care providers to use the median of urban rates in the Rates Database as the urban rate? Parties lodging complaints about the use of the Rates Database to determine rural rates had relatively few complaints about its use to determine urban rates. Should the Commission require the Administrator to maintain a Rates Database for urban rates and require that urban rates be calculated utilizing the Rates Database? Alternatively, should a rate survey be used to determine current urban rates instead of relying on the Administrator to determine and post rates? If so, after the initial compilation of the survey, how often should it be updated? Are there any additional factors that the Commission should take into account for calculating urban rates in the Telecom Program?

Threshold for ''Urban.'' The standard for ''urban'' of being ''functionally similar service in any city with a population of 50,000 or more in that state'' that the Commission reinstates published elsewhere in the **Federal Register** was originally adopted in 2003. Should the Commission maintain 50,000 as the population threshold for determining an urban area? Is there another population number that better captures the full spectrum of urban

areas or is there a value collected by a different agency that better captures the picture of an urban area?

Network Function. The Commission seeks comment on two matters related to how networks function. First, the Commission seeks comment on reinstating the cap on support for satellite services that was in place before the adoption of the Rates Database. The Commission then seeks comment on the eligibility in the HCF Program of equipment that supports services funded in the Telecom Program.

Satellite Services. The Commission seeks comment on reinstating the cap on support for satellite services in the Telecom Program at the amount of support the health care provider would have received for similar terrestrial-based services. When the Commission established the RHC Program, satellite service was the only available telecommunications service available in some rural areas. However, rural health care providers in those areas generally did not receive Telecom Program discounts because satellite service rates typically did not vary between urban and rural areas. In 2003, the Commission revised its rules to allow eligible rural health care providers to base Telecom Program support for satellite services on urban rates for functionally similar wireline services. However, because satellite services were often significantly more expensive than terrestrial-based services, in rural areas where a functionally similar terrestrial-based service was available the Commission capped support for satellite service at the amount that the health care provider would receive had it chosen the terrestrial-based service. If an eligible rural health care provider chose a satellite-based service that was more expensive than the available equivalent terrestrial-base service, the health care provider was responsible for the additional cost. In the 2019 R&O, the Commission eliminated the cap, effective for funding year 2020, explaining that the limitation on support for satellite services was no longer necessary because rural rates would be determined by the Rates Database and costs for satellite services were decreasing, while also acknowledging that eliminating the cap furthered technological neutrality and that improvements to competitive bidding rules would reduce the need for the cap.

The Commission seeks comment on reinstating the cap on satellite services at the lower of the satellite service rate or the terrestrial service rate and allow rural health care providers to receive discounts for satellite service up to the amount providers would have received if they purchased functionally similar terrestrial-based alternatives, even where terrestrial-based services are available. It appears that the constraints on the price of satellite services that the Commission predicted when it eliminated the cap on satellite services did not come into fruition. Since the elimination of the cap and the waiver of the rates database, Telecom Program support for satellite services has increased significantly. The Commitments for Satellite Services dipped slightly in funding year 2020 but increased significantly after that. Funding Year Amounts: 2019—$28,726,457; 2020—$26,583,278; 2021—$39,487,136; and 2022—$60,098,460.

The steady growth in demand for satellite services may demonstrate the need to reinstitute the satellite funding cap. Without the constraints on support for satellite services imposed by the Rates Database, it appears that commitments for satellite services could increase to an unsustainable level. As an initial matter, the Commission seeks comment on the significance of the increase in commitments for satellite services. Does the increase reflect that the prices charged for satellite services in the Telecom Program increased after the cap was eliminated or are health care providers selecting satellite services because those services are now more competitive with terrestrial-based services? Are service providers less likely to bid on or upgrade networks for terrestrial services because the cap was lifted? Have rates for satellite services due to the availability of low Earth orbit (LEO) satellites dropped enough to make the cap no longer necessary? If that is the case, why did demand for satellite services increase so significantly in recent years? Are there other factors the Commission should consider in determining whether to retain the cap on support for satellite services? For example, is it appropriate to apply the cap in cases where satellite service provides redundancy in the absence of alternative terrestrial-based route diversity? Could reinstatement of the cap discourage investment in LEO satellites? What impact should the RHC Program's historical preference for technological neutrality and the fact that there previously was a cap on satellite services have on this determination? If the Commission reinstitutes the cap, are there other changes that should be made to it? Should the Commission not apply the cap to funding requests supported by satellite service contracts that were entered into before reinstatement of the cap? Do commenters in Alaska have any concerns with reinstating the cap, given the importance of satellite service in Alaska?

HCF Program Eligible Equipment. The Commission also seeks comment on whether to amend HCF Program rules to make eligible network equipment necessary to make functional an eligible service supported under the Telecom Program. Current HCF Program rules restrict the eligibility of network equipment for individual applicants to equipment necessary to make functional an eligible service supported under the HCF Program. There is no analogous rule in the Telecom Program that provides support for network equipment. Should the Commission consider allowing HCF-eligible equipment to support both HCF and Telecom Program services? Would such a change improve the reliability of Telecom Program supported services? If the Commission were to make network equipment for Telecom Program supported services eligible, what would the financial impact be on the RHC Program? Would HCF Program funding for equipment supporting Telecom Program services reduce Telecom Program expenditures? Expanding the universe of supported equipment would make it more likely that the internal cap would be exceeded. Given the significantly higher discount rates already offered in the Telecom Program, would it be sensible to increase the likelihood of exceeding the internal cap to provide HCF Program funding to support networks that traditionally have been supported in the Telecom Program only? If the Commission implements the change, are there additional safeguards to consider?

Conditional Approval of Eligibility for Future Eligible Health Care Providers. The Commission proposes to amend RHC Program rules for determining eligibility to allow entities that are not yet but will become eligible health care providers in the near future to begin receiving RHC Program funding shortly after they become eligible. Under the Bureau-level Hope Community Order (DA 16–855 rel. July 28, 2016), entities that are not yet eligible health care providers cannot receive an eligibility approval, which is a prerequisite to initiating competitive bidding and filing a Request for Funding, until they are eligible health care providers. As a result of the restriction, if a health care provider does not receive an eligibility approval in time to complete competitive bidding and file a Request for Funding by the close of the application filing window on April 1, the health care provider would have to

wait until a subsequent funding year to receive RHC Program funding, which could result in a delay of a full calendar year.

In order to address the delay in funding, the Commission proposes to amend §§ 54.601 and 54.622 of its rules to allow entities that will soon be eligible health care providers to request and receive a ''conditional approval of eligibility.'' Once the Administrator approves an applicant's conditional eligibility, the applicant could proceed to conduct competitive bidding and submit a Request for Funding during the application filing window. To ensure that no funding is disbursed for entities that are not yet eligible, the Administrator would not issue a funding decision for the funding request until the entity updates its eligibility request by providing documentation showing that it is an eligible health care provider and the Administrator issues a final eligibility approval. The conditional approval of eligibility process would use the same forms used to request eligibility approvals, which are the FCC Form 460 (Eligibility and Registration Form) in the HCF Program and the FCC Form 465 (Description of Services Requested and Certification Form) in the Telecom Program.

The Commission seeks comment on the potential impact of and mechanics of the proposed rule changes. How many entities would be impacted by the change? Are there any potential problems associated with the proposal or any potential negative impact on the overall RHC Program? Are any additional safeguards necessary beyond the restriction against the Administrator issuing funding commitments before an entity receives a final eligibility approval? Are there alternatives to the conditional eligibility proposal that would more effectively allow entities that are not yet eligible health care providers to receive RHC Program funding? Finally, are there any RHC Program rule changes beyond those that the Commission proposes that would be needed to implement the conditional eligibility proposal?

Administrative Deadlines. The Commission addresses two matters involving RHC Program deadlines. The Commission proposes to push back the deadline for requesting Service Provider Identification Number (SPIN) changes to align with the invoice deadline. The Commission also seeks comment on whether a mechanism to allow post-commitment changes to evergreen contract dates is necessary.

Service Provider Identification Number Change Deadlines. The Commission proposes to revise the current deadline for requesting Service Provider Identification Number (SPIN) changes from the service delivery deadline to the invoice filing deadline. A SPIN is a unique number that the Administrator assigns to an eligible service provider seeking to participate in the universal service support programs. An applicant under the HCF Program or Telecom Program may request either a ''corrective SPIN change'' (in cases not involving a change to the service provider associated with the applicant's funding request number) or ''operational SPIN change'' (in cases involving a change to the service provider associated with the applicant's funding request number). The current filing deadline to submit a SPIN change request is no later than the service delivery deadline, which, with limited exceptions, is June 30 of the funding year for which program support is sought. The Commission established a SPIN change deadline aligned with the service delivery deadline to ensure consistency with the E-Rate Program and reduce the number of requests for extension of the invoice deadline.

The Schools, Health and Libraries Broadband Coalition (SHLB) request that the Commission change the current deadline to make a corrective SPIN change from the service delivery deadline to the invoice filing deadline, which typically falls on October 28. SHLB maintains that the nature of corrective SPIN changes creates a ''recurring hardship for applicants'' unable to meet the deadline which, in turn, results in deadline waiver requests filed with the Commission. According to SHLB, two commonly recurring situations support a change to the corrective SPIN change deadline: (1) mergers and acquisitions that can occur at any time during the funding year and (2) a service provider that assigns one of its multiple SPINs to a funding request without advising the healthcare provider as to the correct SPIN before invoicing begins, a situation that, in many instances, occurs after the service delivery deadline has passed. SHLB maintains that changing the deadline to request a corrective SPIN change to October 28 will provide the Administrator with sufficient time to process the change request without the need for applicants to request deadline waivers from the Commission.

The Commission tentatively agrees with SHLB that the current deadline for requesting corrective SPIN changes imposes unnecessary burdens that a later-in-time deadline will largely eliminate. Delaying the deadline by 120 days (from June 30 to October 28 in most cases) would reduce the need for applicants to seek, and for the Commission to address, waivers of the current corrective SPIN change deadline that result from the types of situations described by SHLB, while still maintaining an administratively reasonable date by which such change requests must be made. Although SHLB focused its request on corrective SPIN changes only, the Commission concludes that it may be needlessly confusing to establish two different SPIN change request deadlines depending on whether the request is corrective or operational in nature. Accordingly, the Commission proposes to change the deadline for requesting both corrective and operational SPIN changes from the current service delivery deadline to the invoicing filing deadline. The Commission seeks comment on the proposal. Are there other benefits to the change? The Commission anticipates that one potentially undesirable consequence of the change is that it may cause Program participants to delay in filing SPIN change requests, which could result in Program participants missing the invoice deadline. If the SPIN change deadline is moved to the invoice deadline and the health care provider files a SPIN change request so close to the deadline that the Administrator cannot process the request before the invoice deadline, the health care provider will not be able to submit invoices. Does the flexibility this change would offer to health care providers justify the disadvantage to health care providers who are unable to invoice because they filed a SPIN change request too close to the deadline? Parties often indicate that alignment between RHC Program rules and E-Rate Program rules eliminates confusion. Would bringing these deadlines out of alignment create confusion? Are there other reasons not to adopt the same deadline for both corrective and operational SPIN changes?

Evergreen Contract Date Changes. The Commission seeks comment on whether there should be a process for health care providers to change evergreen contract dates following a funding commitment. Evergreen contracts are multi-year agreements under which covered services are exempt from the competitive bidding requirements for the life of the contract. When the Administrator issues a funding commitment letter, it sets the period for an evergreen contract based on the estimated service start and end dates provided by the health care provider on the FCC Form 462. However, services sometimes start after the estimated

service start date, which means that the evergreen status of the contract expires before it would have if the evergreen designation period was based on the actual service start date. The Commission seeks comment on whether there should be a means for a healthcare provider to change evergreen contract dates. Is such an alternative necessary and, if so, how could it be accomplished? Would an alternative means require a change in the Commission's rules or could the current rules be interpreted to allow for evergreen contract date changes? What would be the impact of such a change on the duration of evergreen contracts? Would allowing program participants to change evergreen contract dates make it more difficult for the Administrator to process funding requests submitted pursuant to such contracts?

FCC From 466. The Commission seeks comment on proposed revisions to the Funding Request and Certification Form (FCC Form 466), including service-specific details that could both improve the accuracy of similar service categorizations under the existing Method 1 and Method 2, or the alternatives the Commission proposes in the Second FNPRM, and also result in more accurate cost-based rates. To ensure the reporting of accurate data, the Commission proposes to begin collecting the data from service providers because they are in the best position to furnish it.

In the Promoting Telehealth in Rural America FNPRM (2022 FNPRM) (FCC 22–15 rel. February 22, 2022 (87 FR 14421, March 15, 2022)), the Commission sought general comment on both existing Telecom Program data collected through current program forms as well as potential changes to the categorization and details of Telecom Program services and data reported on the FCC Form 466. Certain data currently collected appears to be too vague and fails to capture details of the purchased services, resulting in significantly different monthly rates for services broadly categorized that report comparable bandwidths but likely vary significantly. The Commission requested feedback on updating the Telecom Program's categorization of services to more accurately reflect the functionality and cost of services purchased by incorporating data points such as details of service level agreements (SLAs). The Commission also sought comment on collecting data that would classify services based upon functionality, regardless of the commercial name used by the service provider to describe the service. The Commission then sought general comment on revisions to the FCC Form 466 and other Telecom Program forms and corresponding USAC online portals that would improve the accuracy of urban and rural rate determinations and ensure program integrity.

Commenters agreed that collecting more detailed data would result in more accurate categorization of services purchased by health care providers and improve program transparency. Alaska Communications agreed that service categorizations should be more granular and explained that services broadly categorized as ''dedicated'' include a range of services and features, particularly security and reliability, that significantly impact rates. Alaska Communications also noted that the factors identified in the 2022 FNPRM ''can have a profound effect on the functionality of the service from the perspective of the end user.'' GCI suggested that the Commission could collect data on network type, prioritization, and term and volume discounts. GCI also argued that the Commission should collect data on services purchased rather than requiring healthcare providers to submit highly detailed forms when requesting service.

The Commission proposes revisions to the FCC Form 466 to improve the quality, consistency, and level of detail of RHC Program data. Improved data will also increase the accuracy of rural rates calculated through the current three rate determination methods or through any rate determination process that is established in the future. Through continued review of data currently collected on the FCC Form 466, the Commission has identified five primary issues impacting the ability to calculate rates: (1) services reported by healthcare providers are not defined by a single factor such as technology or speed; (2) some reported rates are based on distance whereas others are not; (3) value-added services beyond data transmission are not reported; (4) bundled prices offered by service providers make ''apples-to-apples'' rate comparisons difficult; and (5) the form does not measure the impact of SLAs on the rates offered.

To address these issues and collect more detailed, accurate data, the Commission proposes to revise the FCC Form 466 to collect more granular information about the services purchased by health care providers. The Commission proposes to collect the following service details for each connection endpoint. The Commission seeks comment on collecting the data on the FCC Form 466 and welcome comments on additional or alternative service data that could improve the accuracy and fairness of Telecom Program rates. The Commission especially request recommendations for additional individual descriptors for the following items being considered:

Contract Type. In many instances services reimbursed under the RHC Program are often part of a contract that bundles many services together. The Commission proposes adding a field that would indicate if the underlying contract includes a bundle and what services the bundle covers. Data collected would include the total number of end points serviced, an indicator of the geographic region of coverage, the contract's duration, discounts and service level agreements that apply to the contract, and the contract's total price including RHC supported services.

Service Details—Connection Endpoint Information. There would be one entry for each endpoint.

Location of Endpoint—Geographically identifiable latitude and longitude.

Distance (If Applicable)—The distance would be in line miles from this endpoint to the far termination endpoint of the link or the central server node. This would be reported if the service provider uses it in the price calculation for this item. This field would be reported in line miles and not straight-line or ''crow fly'' miles.

Connectivity—Point-to-Point, Point-to-Multipoint, Multipoint-to-Multipoint

Application—Voice, Data, or Both

Service or Product—This is the service at the Endpoint. The user would select from the following options: Link (a point-to-point transmission), Device (at an endpoint for a link, such as a router or switch other network-supporting equipment), or Service (provided capabilities using the Links and Devices).

Equipment Vendor/Model—If a device or other equipment is used to extend the eligible service to the endpoint, the user would list it here. All devices would be required to be listed.

Technology—The user would report the technology at the endpoint selecting from items such as: DSL (Digital Subscriber Line), DOCSIS (Data Over Cable Service Interface Specifications), PON (Passive Optimal Network), GPON (Gigabit Passive Optical Network and its variants), and similar, as well as Other (Describe) and N/A.

Bandwidth (Down/Up)—This would be expressed in Mbps.

SLA Coverage—The user would select ''Yes'' or ''No'' to indicate if this endpoint is covered.

Access Media—The user would describe the transmission media that is present at the termination of the

endpoint at each individual facility. This can often, but not always, be considered the last mile. The user would select from: copper, cable, microwave, fiber, high Earth orbit satellite, LEO satellite, power line, other, and N/A.

Monthly Price—This field contains the monthly price in dollars and cents. This price would not include any uplift for SLA coverage, which will be collected elsewhere in the form. If the overall contract price is for a service such as MPLS, the price for each endpoint would be a pro-rated amount associated with each endpoint. Any service portion that cannot be associated with an endpoint, such as MPLS management, would be separately reported as an individual line item(s) in the ''Additional Services and Differentiators'' section. MPLS and similar multi-point solutions would not be reported as a single item. These services would be pro-rated to individual endpoints.

Additional Services and Differentiators—This question would only be used if the service cannot be described in the ''Service Details'' question.

Service Name—This would be a free text descriptor for the provider's name of this item.

Class—This would be a product, service, or differentiator not listed in the ''Service Details'' section because it is not associated with a single endpoint.

Coverage Scope—This field would refer to the scope of the network and contract that this item covers.

Period—This field would indicate the period length in months over which this item will occur. For example, if an ''Installation'' service is provided for the first year and one-half is part of the contract, ''18'' months would be shown.

SLA Coverage—The user would provide a ''Yes'' or ''No'' answer to indicate if this service/differentiator is covered under an SLA.

Monthly Price—This would be expressed in dollars and cents. The provider would pro-rate the monthly average cost for each item if the overall contract price is a single number.

The Commission also proposes to collect SLA details on the FCC Form 466, which currently captures whether there is an SLA, but does not collect specific details about it. The specifics of an SLA appear to significantly impact telecommunications service rates and therefore are likely to be a key factor when determining whether services are similar. SLAs are typically sold at varying levels (sometimes with descriptors such as Gold, Silver, or Bronze) and include availability and reliability metrics, service maintenance and management, delineations of service provider and customer responsibilities, and penalties for non-performance. The Commission seeks comment on adding the following fields to the FCC Form 466 and also seek comment on any additional SLA data that could improve the accuracy and fairness of Telecom Program rural rates, with one line for each SLA coverage area or item:

Target Measurement—The user would report the item or class of items to be measured such as Availability (Network Level Outage), Availability (Link or Endpoint Level Outage), Repair/Restore Times (MTTR—Mean Time To Repair), or On Site Spares (Response Time for Equipment Under Contract).

SLA Level—High, Medium, or Low that may correspond to individual provider schemes, such as Bronze, Silver, Gold.

Basic, Standard, Premium.

As classified by any system the service provider may use.

What functions are covered?

The user selects between Operations, Performance, Maintenance, Install, Administration, and Compliance.

Period—The user would indicate the period length in months over which this item will occur. For example, if an ''Installation'' service is provided for 18 months, then ''18 months'' would be shown.

Penalties For Non-Performance? (Yes/No)—The user would indicate whether there are specific monetary or other penalties for carrier non-performance of specific SLA requirements written in the contract. The user would select from a drop-down menu. General statements of intent would not constitute a penalty.

SLA Scope—The user would report the scope of the contract that this item covers. Examples of options filers would select from include: Performance (what is delivered), Operations (how it is managed), and Maintenance (how it is repaired).

Description of Target SLA Measurement—An optional free text field the provider could use to enter further clarification for the specific SLA item.

Price Uplift—The user would report the increase to the contract service price (usually represented as a percentage) that the SLA impacts. If it is not a separate line item in the contract, then the price would be estimated and/or pro-rated by the provider over the period and scope of SLA coverage.

The Commission seeks comment on whether to apply the proposed revisions to FCC Form 466 to the HCF Funding Request Form (FCC Form 462) for consistency. What are the benefits and/or drawbacks of revising FCC Form 462 to collect more granular service data?

Service Provider Filing. The Commission proposes to require service providers to report the technical service details on the FCC Form 466. In the 2022 FNPRM, the Commission sought comment on whether service providers should report certain technical information about services purchased that rural health care providers either cannot access or lack the technical expertise to report. Commenters expressed concerns about increasing technical reporting burdens on healthcare providers. GCI argued that any new collection process should not burden rural health care providers, who are often ''not well positioned to supply technical and granular details about the services they need,'' and suggested collecting additional data through the FCC Form 466. Alaska Communications acknowledged that reporting technical service data would be complicated for health care providers. The Alaska Native Health Board (ANHB) and the Alaska Native Tribal Health Consortium (ANTHC) both supported increased data collection but cautioned against increasing reporting burdens on Tribal and other health care providers.

The Commission agrees with commenters that proposed increases in the level of detailed technical data required on the FCC Form 466 would likely exceed the technical expertise of most health care providers. The service providers are in the best position to understand the difference between a commercial term and a functional capability as well as the difference between a capability and the underlying technology. The Commission therefore proposes that service providers input service information into the FCC Form 466. The Commission tentatively concludes that shifting the responsibility for providing technical details to the service provider would reduce burdens on healthcare providers and improve data quality and consistency. The Commission proposes that service providers provide the technical connection endpoint data as well as any other technical service data that is recommended by commenters and ultimately adopted by the Commission as part of the proceeding. Additionally, the Commission proposes that the service providers include the actual contract as an attachment to the FCC Form 466. This would be treated confidentially and would document the carrier's answers in an official company document. To ensure the accuracy of the information provided, the Commission

proposes that the service provider certify to the accuracy of service provider-supplied information. The Commission seeks comment on these proposals.

The Commission also seeks comment on the logistics of service providers filling out portions of the FCC Form 466. The Commission proposes that the FCC Form 466 be transferred to the service provider after the health care provider completes the certifications on its portion of the FCC Form 466. The Commission seeks comment on how service providers completing part of the FCC Form 466 would impact program deadlines. Should the filing window close denote the health care provider's deadline for completing its portion of the FCC Form 466? If so, how much time should service providers have to complete their portion of it? Finally, the Commission seeks comment on the extent to which there might be a miscommunication between health care and service providers about the requested services. In limited circumstances, service providers may be selected to provide RHC Program supported services without submitting a bid in response to an RFP. If there is no contract, how can the Commission ensure that health care providers and service providers agree as to the specific services that will be provided?

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

Procedural Matters

Paperwork Reduction Act. The document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in the document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how to further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Second FNPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments. The Commission will send a copy of the Second FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

Through the Second FNPRM, the Commission seeks to further improve the Rural Health Care (RHC) Program's capacity to distribute telecommunications and broadband support to health care providers—especially small, rural healthcare providers (HCPs)—in the most equitable and efficient manner as possible. Over the years, telehealth has become an increasingly vital component of healthcare delivery to rural Americans. Rural healthcare facilities are typically limited by the equipment and supplies they have and the scope of services they can offer which ultimately can have an impact on the availability of high-quality health care. Therefore, the RHC Program plays a critical role in overcoming some of the obstacles healthcare providers face in healthcare delivery in rural communities. Considering the significance of RHC Program support, the Commission proposes and seeks comment on several measures to most effectively meet HCPs' needs while responsibly distributing the RHC Program's limited funds.

In the Second FNPRM, the Commission seeks comment on proposed revisions to rate determination rules, the cap on support for satellite services, and revisions to data collected in the Telecom Program. The Commission also proposes changes to allow health care providers to receive funding shortly after they become eligible, allow participants with multi-year and evergreen contracts to only justify rural rates in the first year of the contract, and proposes changes to administrative deadlines such as changes to amend program rules to align the deadline for filing a Service Provider Identification Number (SPIN) change with the invoice deadline.

Legal Basis

The legal basis for the Second FNPRM is contained in sections 1 through 4(g)(D)(i)–(j), 201–205, 254, 303I, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154(i), (j), 201 through 205, 254, 303(r), and 403.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The reporting, recordkeeping, and other compliance requirements proposed in the Second FNPRM likely would positively and negatively financially impact both large and small entities, including healthcare providers and service providers, and any resulting financial burdens may disproportionately impact small entities given their typically more limited resources. In weighing the likely financial benefits and burdens of the proposed requirements, however, the Commission has determined that the proposed changes would result in more equitable, effective, efficient, clear, and predictable distribution of RHC support, far outweighing any resultant financial burdens on small entity participants.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

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

Small Businesses, Small Organizations, Small Governmental Jurisdictions. The Commission actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 31.7 million businesses.

Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicates that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 39, 931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments (independent school districts) with populations of less than 50,000. Based on the 2017 U.S. Census Bureau data we estimate that at least 48, 971 entities fall in the category of ''small governmental jurisdictions.''

Small entities potentially affected by the proposals herein include eligible rural non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, internet Service Providers (ISPs), and vendors of the services and equipment used for dedicated broadband networks.

Healthcare Providers

Offices of Physicians (except Mental Health Specialists). This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of $12 million or less. According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry. Of that number, 147,718 had annual receipts of less than $10 million, while 3,108 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms operating in this industry are small under the applicable size standard.

Offices of Dentists. This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry. The SBA has established a size standard for that industry of annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year. Of that number 114,417 had annual receipts of less than $5 million, while 651 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of business in the dental industry are small under the applicable standard.

Offices of Chiropractors. This U.S. industry comprises establishments of health practitioners having the degree of DC (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census statistics show that in 2012, 33,940 firms operated throughout the entire year. Of that number 33,910 operated with annual receipts of less than $5 million per year, while 26 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of chiropractors are small.

Offices of Optometrists. This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of

optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses. The SBA has established a size standard for businesses operating in this industry, which is annual receipts of $8 million or less. The 2012 Economic Census indicates that 18,050 firms operated the entire year. Of that number, 17,951 had annual receipts of less than $5 million, while 70 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of optometrists in this industry are small.

Offices of Mental Health Practitioners (except Physicians). This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year. Of that number, 15,894 firms received annual receipts of less than $5 million, while 111 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of mental health practitioners who do not employ physicians are small.

Offices of Physical, Occupational and Speech Therapists and Audiologists. This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year. Of this number, 20,047 had annual receipts of less than $5 million, while 270 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of businesses in this industry are small.

Offices of Podiatrists. This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year. Of that number, 7,545 firms had annual receipts of less than $5 million, while 22 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

Offices of All Other Miscellaneous Health Practitioners. This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8 million or less. The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year. Of that number, 11,374 firms had annual receipts of less than $5 million, while 48 firms had annual receipts between $5 million and $9,999,999. Based on the data, the Commission concludes the majority of firms in this industry are small.

Family Planning Centers. This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy. The SBA has established a size standard for this industry, which is annual receipts of $12 million or less. The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year. Of that number 1,237 had annual receipts of less than $10 million, while 36 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that the majority of firms in this industry is small.

Outpatient Mental Health and Substance Abuse Centers. This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary. The SBA has established a size standard for this industry, which is $16.5 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year. Of that number, 4,069 had annual receipts of less than $10 million while 286 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

HMO Medical Centers. This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO

establishments that both provide health care services and underwrite health and medical insurance policies. The SBA has established a size standard for this industry, which is $35 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year. Of that number, 5 firms had annual receipts of less than $25 million, while 1 firm had annual receipts between $25 million and $99,999,999. Based on the data, the Commission concludes that approximately one-third of the firms in this industry are small.

Freestanding Ambulatory Surgical and Emergency Centers. This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (*e.g.,* orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (*e.g.,* setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year. Of that number, 3,222 firms had annual receipts of less than $10 million, while 289 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

All Other Outpatient Care Centers. This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (*i.e.,* Doctor of Medicine and Doctor of Dental Medicine) are included in this industry. The SBA has established a size standard for this industry, which is annual receipts of $22 million or less. The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year. Of this number, 4,269 firms had annual receipts of less than $10 million, while 389 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

Blood and Organ Banks. This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs. The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year. Of that number, 235 operated with annual receipts of less than $25 million, while 41 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that approximately three-quarters of firms that operate in this industry are small.

All Other Miscellaneous Ambulatory Health Care Services. This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks). The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year. Of that number, 2,318 had annual receipts of less than $10 million, while 56 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of the firms in this industry is small.

Medical Laboratories. This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner. The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year. Of this number, 2,465 had annual receipts of less than $25 million, while 60 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that a majority of firms that operate in this industry are small.

Diagnostic Imaging Centers. This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner. The SBA has established size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 4,209 firms operated in this industry throughout the entire year. Of that number, 3,876 firms had annual receipts of less than $10 million, while 228 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms that operate in this industry are small.

Home Health Care Services. This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year. Of that number, 16,822 had annual receipts of less than $10 million, while 590 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms that operate in this industry are small.

Ambulance Services. This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year. Of that number, 2,926 had annual receipts of less than $15 million, while 133 firms had annual receipts between $10 million and $24,999,999. Based on the data, the Commission concludes that a majority of firms in this industry is small.

Kidney Dialysis Centers. This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services. The SBA has established assize standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year. Of that number, 379 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

General Medical and Surgical Hospitals. This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year. Of that number, 877 has annual receipts of less than $25 million, while 400 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that approximately one-quarter of firms in this industry are small.

Psychiatric and Substance Abuse Hospitals. This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year. Of that number, 185 had annual receipts of less than $25 million, while 107 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that more than one-half of the firms in this industry are small.

Specialty (Except Psychiatric and Substance Abuse) Hospitals. This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year. Of that number, 146 firms had annual receipts of less than $25 million, while 79 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that more than one-half of the firms in this industry are small.

Emergency and Other Relief Services. This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (*e.g.,* wars). The SBA has established a size standard for this industry which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year. Of that number, 509 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999. Based on the data, the Commission concludes that a majority of firms in this industry are small.

Providers of Telecommunications and Other Services

Telecommunications Service Providers—Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

Competitive Access Providers. Neither the Commission nor the SBA

has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers and under the size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most competitive access providers are small businesses that may be affected by the actions. According to Commission data the 2010 Trends in Telephone Report (rel. September 30, 2010), 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or few employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

Wireline Providers, Wireless Carriers and Service Providers, and internet Service Providers. The small entities that may be affected by the reforms include eligible nonprofit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, internet Service Providers, and service providers of the services and equipment used for dedicated broadband networks.

Vendors and Equipment Manufactures—Vendors of Infrastructure Development or ''Network Buildout.'' The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are ''Radio and Television Broadcasting and Wireless Communications Equipment'' with a size standard of 1,250 employees or less and ''Other Communications Equipment Manufacturing'' with a size standard of 750 employees or less.'' U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year. Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012, show that 383 establishments operated for the year. Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on the data, the Commission concludes that the majority of Vendors of Infrastructure Development or ''Network Buildout'' are small.

Telephone Apparatus Manufacturing. This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under the size standard, the majority of firms in this industry can be considered small.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on the data, the Commission concludes that a majority of manufacturers in this industry are small.

Other Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (*e.g.,* highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on the data, the Commission concludes that the majority of Other Communications Equipment Manufacturers are small.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' We expect to consider all of these factors when we have received substantive comment from the public and potentially affected entities.

Largely, the proposals in the Second FNPRM if adopted would have no impact on or would reduce the economic impact of current regulations on small entities. Certain proposals could have a positive economic impact on small entities. In the instances in which a proposed change would increase the financial burden on small entities, the Commission has determined that the net financial and other benefits from such changes would outweigh the increased burdens on small entities.

Determining Accurate Rates in the Telecom Program. The Commission proposes modifications to the three rural rate determination methods in the Telecom Program, including changes to the market-based approach of Methods

1 and 2 and new evidentiary requirements for justifying cost-based rates under Method 3. The Commission also proposes that participants with multi-year contracts and evergreen contracts would only have to justify rural rates in the first year of the contract. The Commission also proposes to simplify the calculation of urban rate rules by eliminating the ''standard urban distance'' requirement and seek specific comment on sources of urban rates as well as general comment on the urban rate rules. The Commission proposes to keep the cap on support for satellite services reinstated and seek comment on potential changes to it. Lastly, the Commission seeks comment on proposed revisions to FCC Form 466 intended to improve the quality of Telecom Program data.

Administrative Deadlines. The Commission also proposes to amend program rules align the deadline for filing a SPIN change with the invoice deadline. If implemented, the proposal would have a positive impact on small health care providers because it would reduce the need for them to seek waivers of the current SPIN change deadline. The Commission also seeks comment on whether a mechanism to allow post-commitment changes to evergreen contract dates is necessary.

Future Eligibility. The Commission also proposes a mechanism whereby entities that are not yet eligible health care providers can engage in competitive bidding and file requests for funding, which would allow them to receive RHC Program funding shortly after they become eligible. If implemented, the proposal would have a positive economic impact on small health care providers because it would allow them to receive RHC Program funding shortly after they become eligible.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Accordingly, it is ordered, pursuant to the authority contained in sections 1, 4(j), 214, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(j), 214, 254, and 405 and §§ 1.115 and 1.429 of the Commission's rules, 47 CFR 1.115, 1.429, that the Second FNPRM *is adopted*.

It is further ordered that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Second FNPRM on or before April 24, 2023, and reply comments on or before May 22, 2023.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, internet, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Amend § 54.601 by adding paragraph (c) to read as follows:

§ 54.601 Health care provider eligibility.

* * * * *

(c) *Conditional approval of eligibility.* (1) An entity that is not a public or non-profit health care provider may request and receive a conditional approval of eligibility from the Administrator if the entity satisfies the following requirements:

(i) The entity is or will be physically located in a rural area defined in § 54.600(e) by an estimated eligibility date or, for the HCF Program only, is not located in a rural area but is or will be a member of a majority-rural Healthcare Connect Fund Program consortium that satisfies the eligible rural health care provider composition requirement set forth in § 54.607(b) by the estimated eligibility date;

(ii) The entity must provide documentation showing that it will qualify as a public or non-profit health care provider as defined in § 54.600(b) by the estimated eligibility date; and

(iii) The estimated eligibility date must be in the same funding year as or in the next funding year of the date that the entity requests the conditional approval of eligibility.

(2) An entity that receives conditional approval of eligibility may conduct competitive bidding for the site. An entity engaging in competitive bidding with conditional approval of eligibility must provide a written notification to potential bidders that the entity's eligibility is conditional and specify the estimated eligibility date.

(3) An entity that receives conditional approval of eligibility may file a request for funding for the site during an application filing window opened for a funding year that ends after the estimated eligibility date. The Administrator shall not issue any funding commitments to applicants that have received conditional approval of eligibility only. Funding commitments may be issued only after such applicants receive formal approval of eligibility as described in paragraph (c)(4) of this section.

(4) An entity that receives conditional approval of eligibility is expected to notify the Administrator, along with supporting documentation for the eligibility, within 30 days of its actual eligibility date. The actual eligibility date is the date that the entity qualifies as a public or non-profit health care provider as defined in § 54.600(b) and may be a different date from the estimated eligibility date. The Administrator shall formally approve the entity's eligibility if the entity meets the requirements for a public or non-profit health care provider defined in § 54.600(b), provided that the entity still satisfies the requirement under paragraph (c)(1)(i) of this section. Upon the entity receiving a formal approval of eligibility, the Administrator may issue funding commitments covering a time period that starts no earlier than the entity's actual eligibility date and that is within the funding year for which support was requested.

■ 3. Revise § 54.604 to read as follows:

§ 54.604 Determining the urban rate.

If a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program the ''urban rate'' for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

■ 4. Revise § 54.605 to read as follows:

§ 54.605 Determining the rural rate.

(a) The rural rate shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.

(1) The rural rate shall be the median of publicly available rates charged by other service providers for the same or functionally similar services over the same distance in the rural area where

the health care provider is located (Method A).

(2) If there are no publicly available rates charged by other service providers for the same or functionally similar services, the rural rate shall be the median of the rates that the carrier actually charges to non-health care provider commercial customers for the same or functionally similar services provided in the rural area where the health care provider is located (Method B).

(3) If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area or it reasonably determines that the rural rate calculated under paragraph (a)(1) or (2) of this section would not generate a reasonably compensatory rate, then the carrier shall submit to a state commission, for intrastate rates, or the Commission, for interstate rates, a cost-based rate for the provision of the service.

(i) The carrier must provide to the state commission, for intrastate rates, or the Commission, for interstate rates, a justification of the proposed rural rate, which must include all financial data and other information to verify the service provider's assertions, including at a minimum, the following information:

(A) Company-wide and rural health care service gross investment, accumulated depreciation, deferred state and Federal income taxes, and net investment; capital costs by category expressed as annual figures (*e.g.,* depreciation expense, state and Federal income tax expense, return on net investment); operating expenses by category (*e.g.,* maintenance expense, administrative and other overhead expenses, and tax expense other than income tax expense); the applicable state and Federal income tax rates; fixed charges (*e.g.,* interest expense); and any income tax adjustments;

(B) An explanation and a set of detailed spreadsheets showing the direct assignment of costs to the rural health care service and how company-wide common costs are allocated among the company's services, including the rural health care service, and the result of these direct assignments and allocations as necessary to develop a rate for the rural health care service;

(C) The company-wide and rural health care service costs for the most recent calendar year for which full-time actual, historical cost data are available;

(D) Projections of the company-wide and rural health care service costs for the funding year in question and an explanation of those projections;

(E) Actual monthly demand data for the rural health care service for the most recent three calendar years (if applicable);

(F) Projections of the monthly demand for the rural health care service for the funding year in question, and the data and details on the methodology used to make those projections;

(G) The annual revenue requirement (capital costs and operating expenses expressed as an annual number plus a return on net investment) and the rate for the funded service (annual revenue requirement divided by annual demand divided by twelve equals the monthly rate for the service), assuming one rate element for the service), based on the projected rural health care service costs and demands;

(H) Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years, specifically, the cash flow statement, income statement, and balance sheets. Such statements shall include information regarding costs and revenues associated with, or used as a starting point to develop, the rural health care service rate; and

(I) Density characteristics of the rural area or other relevant geographical areas including square miles, road miles, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the high cost of servicing the health care providers.

(ii) [Reserved]

(4) The carrier must provide such information periodically thereafter as required by the state commission, for intrastate rates, or the Commission, for interstate rates. In doing so, the carrier must take into account anticipated and actual demand for telecommunications services by all customers who will use the facilities over which services are being provided to eligible health care providers.

(b) The rural rate shall not exceed the monthly rate in the service agreement that the health care provider enters into with the service provider when requesting funding.

(c) Service providers engaged in multi-year or evergreen contracts are required to justify the rural rate only in the first year of the contract.

■ 5. Amend § 54.622 by revising paragraph (e)(1)(i) to read as follows:

§ 54.622 Competitive bidding requirements and exemptions.

* * * * *

(e) * * *

(1) * * *

(i) The entity seeking supported services is a public or nonprofit health care provider that falls within one of the categories set forth in the definition of health care provider listed in § 54.600, or will be such a public or nonprofit health care provider before the end of the funding year for which the supported services are requested provided that the entity is requesting or has received a conditional approval of eligibility pursuant to § 54.601(c);

* * * * *

■ 6. Amend § 54.625 by revising paragraph (c) to read as follows:

§ 54.625 Service Provider Identification Number (SPIN) changes.

* * * * *

(c) *Filing deadline.* An applicant must file its request for a corrective or operational SPIN change with the Administrator no later than the invoice filing deadline as defined by § 54.627.

[FR Doc. 2023–04990 Filed 3–22–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2022–0090; FF09M30000–234–FXMB1231099BPP0]

RIN 1018–BF64

Migratory Bird Hunting; Migratory Game Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: As part of the rulemaking process for the 2023–2024 season, the U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes a revised process for establishing special regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for migratory bird hunting seasons. We are proposing no longer to require that Tribes annually submit a proposal to the Service for our review and approval and no longer to publish in the **Federal Register** the annual Tribal migratory bird hunting regulations, and instead to adopt as regulations elements of our current guidelines for establishing special

migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The Service recognizes the reserved hunting rights and management authority of Indian Tribes. Since the 1985–86 hunting season, we have successfully employed guidelines to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands. We conclude that Tribal migratory bird harvest has been small with negligible impact to bird population status. We anticipate that Tribal hunting of migratory birds will continue to have similar negligible impacts to bird populations in the future. By proposing these regulations, the Service seeks to strengthen Tribal sovereignty and to reduce administrative burdens on both the Tribes and the Service while continuing to sustain healthy migratory game bird populations for future generations.

DATES: Submit comments by May 8, 2023.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2022–0090.
- *U.S. mail:* Public Comments Processing, Attn: FWS–HQ–MB–2022–0090, U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Document availability: Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, 5275 Leesburg Pike, MS–MB, Falls Church, VA 22041–3803; (703) 358–2506.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg'' of migratory game birds can take place and to adopt regulations for this purpose. These regulations must give due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds (16 U.S.C. 704(a)). The Secretary of the Interior has delegated to the Service the lead Federal responsibility for managing and conserving migratory birds in the United States; however, migratory bird management is a cooperative effort of Federal, Tribal, and State governments. Federal regulations pertaining to migratory bird hunting are located in title 50 of the Code of Federal Regulations in part 20.

Acknowledging regional differences in hunting conditions, the Service has administratively divided the United States into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State within the Flyway, as well as Provinces in Canada that share migratory bird populations with the Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, assist in researching and providing migratory game bird management information for Federal, Tribal, State, and Provincial governments, as well as private conservation entities and the general public.

The Service annually develops migratory game bird hunting frameworks, or outside limits, for season dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur (50 CFR part 20, subpart K). Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes several surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, Tribes, and State and Provincial wildlife management agencies. For each annual regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information through a series of published status reports and presentations to the Flyway Councils and other interested parties. The August 6, 2015, **Federal Register** at 80 FR 47388 provides a detailed overview of this process.

The Federal frameworks are necessary to allow harvest at levels compatible with migratory game bird population status and habitat conditions. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After frameworks are established, States may select migratory game bird hunting seasons within these frameworks. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

On November 3, 2022, we published proposed hunting regulations for certain migratory game birds for the 2023–24 hunting season (87 FR 66247). In that proposed rule, we stated that we would handle Tribal regulations via a separate rulemaking process in later **Federal Register** documents. Accordingly, this document begins the process for developing migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands for the 2023–24 hunting season and beyond.

Current Tribal Rulemaking Process

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations (independent from the State or States where the reservation is located) on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to Tribal requests for our recognition of their reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members throughout their reservations. The guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while also ensuring that the migratory

game bird resource receives necessary protection. The Service adopted the 1985 guidelines as final in 1988 (53 FR 31612, August 18, 1988).

From the 1985 through 2022 hunting seasons, as part of our preliminary proposed rule to annually promulgate Federal migratory bird hunting regulations, we asked Tribes to submit their proposed migratory bird hunting regulations. Proposals were to include season dates and other regulations, methods to monitor harvest, anticipated harvest, steps taken to limit harvest levels, and capabilities to establish and enforce migratory bird hunting regulations.

Each year, upon receipt of information on the status of migratory bird populations and expected migratory bird harvest provided by the Tribes, we evaluated the potential impact of special Tribal hunting regulations on the migratory bird resource. We have always concluded that this harvest is small and, therefore, would have a negligible impact to the bird population status. Annually, we published in the **Federal Register** the special Tribal migratory bird hunting regulations as a proposed rule and, following review and consideration of any public comments, published a final rule setting forth these regulations.

Proposed New Process for Managing Tribal Migratory Bird Hunting

We anticipate that Tribal hunting will continue to have similar minimal impact to the migratory bird resource in the future due to declining trends in active hunters for some Tribes and also increasing population trends for many migratory game birds (as identified in the 2022 State of the Birds Report; *see state-of-the-birds-2022-spreads.pdf* at *stateofthebirds.org*.). Based on the historical and future expected minimal impacts to migratory game bird resources, we are proposing to simplify the process for special Tribal migratory game bird hunting regulations for the upcoming season (2023–2024) and afterwards. We propose to remove the requirement that Tribes annually submit their proposed migratory game bird hunting regulations (and associated monitoring, anticipated harvest, and capabilities for regulation development and enforcement) for our review and approval. We also propose no longer to publish special Tribal migratory game bird hunting regulations in the **Federal Register** (*i.e.,* a proposed and final rule). We further propose to adopt as regulations elements of our current guidelines for establishing special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. Tribes that comply with these regulations will be authorized to independently establish special Tribal migratory bird hunting regulations.

By allowing Tribes to independently establish special migratory bird hunting regulations, the Service recognizes Tribal sovereignty to exercise reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members on their reservation. As an alternative to promulgating special Tribal migratory game bird hunting regulations, Tribes may choose to observe the hunting regulations established by the State or States in which the reservation is located. We have been coordinating with Tribes on this proposed regulatory approach for Tribal self-management of the harvest, and we have received positive feedback thus far. The proposed action will reduce the annual administrative burden on both the Tribes and the Service to propose, review, and publish special migratory game bird hunting regulations while continuing to sustain healthy migratory game bird populations for future generations.

As with the current process, these proposed regulations will be applicable to those Tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. These proposed regulations also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the reservations where Tribes have full wildlife-management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands within the reservation. Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory game bird hunting by non-Indians on these lands. In those cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with Tribal and State officials in the affected States where Tribes may wish to establish special migratory game bird hunting regulations for Tribal members on ceded lands. It is incumbent upon the Tribe and/or the State to request consultation. We will not presume to make a determination, without being advised by either a Tribe or a State, that any issue is or is not worthy of formal consultation.

In the rule portion of this document, we have included the requirements for Tribes to follow if they establish special Tribal migratory bird hunting regulations, based on elements from the 1985 guidelines. In addition, we encourage Tribes wanting to establish special migratory game bird hunting regulations to consider the elements we previously required in their proposals: (1) Season dates and other regulations; (2) anticipated harvest; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit the level of harvest, where it could be shown that failure to limit such harvest would have serious impacts on the migratory bird resource; and (5) Tribal capabilities to establish and enforce migratory bird hunting regulations. We recommend that Tribes allowing swan hunting require all swan hunters to successfully complete a course on swan identification and conservation to minimize take of trumpeter swans during the swan season.

The proposed regulations provide for the continuation of Tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We are supportive of this harvest provided it does not take place during the closed season required by the Convention and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of the guidelines, we have reached annual agreement with Tribes for migratory game bird hunting by Tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with Tribes that wish to reach a mutual agreement (memorandum of understanding (MOU) or something similar) on conducting short-term (possibly several years) experimental hunting using methods outside of the Federal hunting methods at § 20.21 for on-reservation hunting by Tribal members.

The experimental hunting period by a Tribe will provide data to the Service for future consideration if a Tribe would like to make the additional hunting method permanent. Tribes should send such requests for consultation to the Service's Assistant Director for the Migratory Bird Program at least 9 months before the season or ceremony

regarding hunting methods outside of these proposed Federal regulations (see **FOR FURTHER INFORMATION CONTACT**). We intend to make any proposed MOU or other agreement available through a notice of availability to allow for public comment; however, we may not use the public process for very minor or nonsignificant MOUs or agreements. The Service will make all signed MOUs or agreements public. If any individual Tribe wishes to make these additional experimental hunting methods permanent and the Service agrees, the Service will conduct rulemaking (using any data from the experimental hunt) to amend 50 CFR part 20 to allow Tribal members to use these additional hunting methods.

If this proposed rule is finalized, starting with the 2023–2024 hunting season, annual Tribal hunting season regulations will no longer be published in the **Federal Register**, alleviating the administrative burden to both the Service and the Tribes of developing special Tribal migratory bird hunting regulation proposals, reviewing proposals, and publishing Tribal regulations as Federal regulations. This proposed process would not apply to seasons for subsistence take of migratory birds in Alaska.

Public Comments

We invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations for the 2023–2024 season and beyond. Before finalizing this proposed rule, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from this proposal.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax. We will not consider mailed comments that are not postmarked by the date specified in **DATES**. We will post all comments in their entirety—including your personal identifying information—on *https://www.regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the November 3, 2022, proposed rule (87 FR 66247); please see that document for descriptions of our actions to ensure compliance with the following statutes and Executive Orders:

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act of 1995;
- Unfunded Mandates Reform Act; and
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, for the reasons described in the preamble, we propose to amend title 50, chapter I, subchapter B, of the Code of Federal Regulations as follows:

PART 20—MIGRATORY BIRD HUNTING

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703 *et seq.,* and 16 U.S.C. 742a–j.

■ 2. Revise § 20.110, including the section heading, to read as follows:

§ 20.110 Regulations for certain Federal Indian reservations and ceded lands.

(a) *Tribal sovereignty.* The Service recognizes Tribal sovereignty to exercise reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members on their reservation. Accordingly, Tribes may independently (separate from the State or States in which the reservation is located) establish special migratory game bird hunting regulations. Migratory birds may be taken if the take is consistent with the regulations in this section and applicable Tribal hunting regulations.

(b) *Applicability.* Special Tribal migratory game bird hunting regulations may be established by Tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. These regulations also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the reservations where Tribes have full wildlife-management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands within the reservation.

(c) *Special regulations.* Special Tribal migratory game bird hunting regulations must be consistent with the annual March 11 to August 31 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds, as amended by the Protocol Between the Government of Canada and the Government of the United States of America Amending the 1916 Convention Between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States, and with these provisions:

(1) Tribes may establish on-reservation hunting regulations, for both Tribal and nontribal members, with hunting seasons that may differ from those in the State(s) in which the reservations are located.

(i) *Regulations for both Tribal and nontribal members:* Opening and closing dates, season length, and daily bag and possession limits for nontribal members on the reservations must be within the annual frameworks for migratory bird hunting seasons established by the Service, and all Federal hunting regulations in this part also apply to nontribal hunters. Tribes may choose to set the same opening and closing dates, season length, and daily bag and possession limits for hunting by Tribal members and nontribal members on their reservations, or, in accordance with the provisions in paragraph (c)(1)(ii) of this section, Tribes may choose to establish regulations for Tribal members only.

(ii) *Regulations for Tribal members only:* Tribes may establish on-reservation hunting regulations by Tribal members only, with hunting seasons that may be outside of annual frameworks for season dates, season length, and daily bag and possession limits. All Federal hunting regulations in this part apply. For a short-term experimental hunt, a Tribe and the Service may formally agree on allowed methods of take, notwithstanding the regulations in § 20.21. The Service will make public any such formal agreement.

(2) Tribes may establish off-reservation hunting regulations by Tribal members on ceded lands, with hunting seasons that may be outside of annual frameworks for season dates, season length, and daily bag and possession limits.

(d) *Provisions for ceded lands.* Tribes that have special migratory game bird

hunting regulations for Tribal members on ceded lands must send a copy of the Tribal regulations to officials in the affected State(s) prior to the season opening.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–05959 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BM14

Fisheries Off West Coast States; Pelagic Species Fisheries; Amendment 20 to the Coastal Pelagic Species Fishery Management Plan

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 20 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) for review by the Secretary of Commerce. The intent of Amendment 20 is to improve clarity in the management framework for CPS stocks. This action is administrative in nature and does not change management for CPS stocks, just certain nomenclature in the FMP. This proposed Amendment is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the CPS FMP, and other applicable laws.

DATES: Comments on the proposed rule must be received by May 22, 2023 to be considered in the decision whether to approve, disapprove, or partially approve Amendment 20.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0035, by the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0035 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments must be submitted by the above method to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the draft Amendment 20 and other supporting documents are available via the Federal eRulemaking Portal: *https://www.regulations.gov,* docket NOAA–NMFS–2023–0035.

FOR FURTHER INFORMATION CONTACT: Taylor Debevec at (562) 980–4066 or *taylor.debevec@noaa.gov.*

SUPPLEMENTARY INFORMATION: The CPS FMP has used the terms ''Active'' and ''Monitored'' since Amendment 8 to the FMP to categorize how the various CPS stocks are managed and to direct management and research efforts where they were most needed. However, in 2018 the Council initiated an effort to address a perceived lack of clarity regarding the meaning and use of these terms. The Council directed its CPS Management Team to explore ways to remove the naming distinction of management categories, while maintaining existing management. The Council subsequently considered the issue at its June 2019 and November 2021 meetings, with final action taking place at its April 2022 meeting.

Amendment 20 to the CPS FMP would remove ''Active'' and ''Monitored'' terms from the FMP and incorporate additional modifications in place of those terms to ensure flow and readability of the FMP. The proposed changes to the CPS FMP are described in further detail below.

In Section 1.1 of the FMP, a description of Amendment 20 would be added to the list of amendments to the FMP.

In Section 1.3, the title would be changed to remove reference to categories and the categorical terms, and category descriptions would be removed and replaced with generalized descriptions of how CPS stocks are managed. Additional details would be added to distinguish krill from these categorical descriptions as fishing for krill is prohibited.

In section 1.5, the definitions for ''Actively Managed Species'' and ''Monitored Species'' would be removed and the definition of ''Prohibited Harvest Species'' would be updated to further distinguish it from categorical management.

In section 2.1.2, a reference example regarding switching a ''monitored species'' to an ''actively managed species'' would be removed.

In sections 4.6 and 4.6.1, the harvest control rules would remain unchanged, but instead of being associated with ''active'' and ''monitored'' categories, there would be new descriptions for the types of species for which each harvest control rule is best suited.

In section 4.6.4, ''Monitored Stocks'' would be removed from the title and replaced with the individual names to which ''monitored stocks'' referred: northern anchovy, jack mackerel, and market squid.

There would be additional minor changes scattered in chapters 1 and 4, and no changes to chapters 3 and 5.

All comments received by the end of the comment period on the Amendment (see **DATES** and **ADDRESSES** above) will be considered in the Secretary's decision to approve, disapprove, or partially approve this Amendment. To be considered in this decision, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: March 17, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–05885 Filed 3–22–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 56
Thursday, March 23, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 24, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Fertilizer Production Expansion Program.

OMB Control Number: 0570–0081.

Summary of Collection: On July 9, 2021, Executive Order (E.O.) 14036, ''Promoting Competition in the American Economy'' was issued, which created a White House Competition Council and directed federal agencies to enhance fairness and competition. In response, the United States Department of Agriculture (USDA) announced on March 11, 2022, that it would support additional fertilizer production to help American farmers address rising costs and spur competition as part of the whole-of-government effort to enhance fair and competitive markets along the same lines as the independent food processing investments being made as part of the Food System Transformation Effort.

The Fertilizer Production Expansion Program (FPEP) is authorized by the Commodity Credit Corporation (CCC) Charter Act to assist agricultural producers through grants, purchases, payments, and other operations, and makes available materials and facilities required in the production and marketing of agricultural commodities. Through FPEP, USDA is supporting new and expanded supplies of fertilizer and alternatives that play the same role as fertilizer to United States farmers as a key input necessary for production of agricultural commodities. The FPEP Program will be administered by the USDA, Rural Development (RD) Rural Business Cooperative Service (RBCS). RBCS has developed requirements for FPEP, prepared a Request for Applications (RFA) and up to $500 million will be made available in competitive grants.

The purpose of FPEP is to expand capacity, improve competition, and increase supply chain resilience within the agricultural fertilizer and nutrient management sector, in connection with the production of agricultural commodities.

Need and Use of the Information: The information collected will be used to determine applicant and project eligibility, conduct technical evaluations, calculate a priority score, rank and compete the application, as applicable, in order to be considered. Lack of adequate information to make the determination could result in the improper administration and appropriation of Federal grant funds.

Description of Respondents: State, Local, and Tribal Governments.

Number of Respondents: 2,241.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 26,372.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–05985 Filed 3–22–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by April 24, 2023. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Field Crops Objective Yield.

OMB Control Number: 0535–0088.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. The Objective Yield Surveys objectively predict yields for corn, cotton, potatoes, soybeans, wheat, citrus, almonds, walnuts, and hazelnuts. Sample fields are randomly selected for these crops, plots are laid out, and periodic counts and measurements are taken and then used to forecast production during the growing season. Production forecasts are published in USDA crop reports.

The fruit and nut objective yield surveys are conducted under cooperative agreements with several State Departments of Agriculture. The individual States will be reimbursing NASS for the costs associated with these additional surveys. The surveys will include: California citrus, almonds and walnuts; Florida citrus; and Oregon hazelnuts.

Need and Use of the Information: NASS will collect information on sample fields of, corn, cotton, potatoes, soybeans, and winter wheat. The information will be used by USDA to anticipate loan receipts and pricing of loan stocks for grains. Farmers and businesses use the production estimates in marketing decisions to evaluate expected prices and to determine when to sell. The fruit and nut data will be used by the State Departments of Agriculture and commodity marketing boards to make informed decisions concerning the stocks and marketing of these commodities.

Description of Respondents: Farms and businesses or other for-profit.

Number of Respondents: 13,550.

Frequency of Responses: Reporting: Monthly; Annually.

Total Burden Hours: 4,410.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–05977 Filed 3–22–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Land Between the Lakes Advisory Board

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Land Between the Lakes Advisory Board will hold a public meeting according to the details shown below. The committee is authorized under the Charter for the Land Between the Lakes (LBL) Advisory Board (Board) and managed in accordance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to advise the Secretary of Agriculture on (1) means of promoting public participation for the Land and Resource Management Plan, and (2) environmental education.

General information can be found at the following website: *https://landbetweenthelakes.us/about/working-together/.*

DATES: The meeting will be held on April 11, 2023, 9 a.m.–4 p.m., Central Daylight Time.

Written Comments: Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff by Friday, April 7, 2023, or after the meeting by Thursday, April 27, 2023. Written comments and requests for time for oral comments must be sent to Christine Bombard, 100 Van Morgan Drive, Golden Pond, Kentucky 42211 or by email to *SM.FS.LBL_AdBoard@usda.gov.*

Oral Comments: The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by Friday, April 7, 2023, to be scheduled on the agenda.

All commmittee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the Land Between the Lakes National Recreation Area Administration Building, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under the **DATES** section. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Leisa Cook, Designated Federal Officer (DFO), by phone at 270–924–2001 or email at *leisa.cook@usda.gov* or Christine Bombard, Committee Coordinator, at 270–924–2002 or email at *christine.bombard@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The committee is authorized under the Charter for the Land Between the Lakes (LBL) Advisory Board (Board), established pursuant to Section 460 of the Land Between the Lakes Protection Act of 1998 (Act) (16 U.S.C. 460 iii *et seq.*) and managed in accordance with the Federal Advisory Committee Act (FACA) as amended, (5 U.S.C. App. 10).

The meeting agenda will include:

1. An overview and discussion of the impacts of the Land Between the Lakes Recreation and Heritage Act, and

2. An overview and discussion of a proposal regarding how to increase/improve user diversity in recreation.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: March 20, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–06015 Filed 3–22–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefings of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual briefings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold briefings via web conference. The purpose of these briefings is to hear testimony on the New York child welfare system and its impact on Black children and families.

DATES:

Panel V (Advocates): Friday, April 21, 2023, from 1 p.m.–3 p.m. Eastern Time.

Panel VI (Government Officials): Friday, May 19, 2023, from 1 p.m.–3 p.m. Eastern Time.

ADDRESSES: These briefings will be held via Zoom.

Panel V (Advocates):

—*Registration Link (Audio/Visual): https://tinyurl.com/y3w5sxx8*

—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll-Free; Meeting ID: 161 119 5762#

Panel VI (Government Officials):

—*Registration Link (Audio/Visual): https://tinyurl.com/8pkedp64*

—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll-Free; Meeting ID: 160 225 8882#

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 1–202–809–9618.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Malloy Trachtenberg at *mtrachtenberg@usccr.gov.*

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

Agenda

I. Welcome Remarks
II. Panelist Presentations
III. Committee Q&A
IV. Public Comment
V. Closing Remarks
VI. Adjournment

Dated: March 17, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05931 Filed 3–22–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Connecticut Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene a business meeting on Thursday, April 6, 2023, 12 p.m. Eastern Time. The purpose of the meeting is to plan next steps on its report on civil rights implications of algorithms.

DATES: April 6, 2023, Thursday; 12 p.m. (ET).

ADDRESSES: Meeting will be held via Zoom.

Zoom Link (Audio/Visual): https://tinyurl.com/kk5bv2ak; passcode: USCCR–CT.

Join by Phone (Audio Only): 1–551–285–1373; Meeting ID: 160 693 2292#.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ebohor@usccr.gov* or 202–381–8915.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from the meetings may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights,

Connecticut Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Plan Next Steps on the Committee's Report on Civil Rights Implications of Algorithms
III. Public Comment
IV. Discuss Next Steps
V. Adjournment

Dated: March 17, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05932 Filed 3–22–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual forum.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a forum via web conference on the New York child welfare system and its impact on Black children and families. The purpose of the forum is to hear testimony from impacted individuals regarding their experiences with the New York child welfare system. If you are an impacted individual who wishes to offer a comment at this forum, please complete the following form by Tuesday, April 18, 2023, to ensure you are added to the list of individuals who are interested in speaking: *https://www.surveymonkey.com/r/9TPBK63.*

DATES: Wednesday, April 19, 2023, from 1 p.m.–3 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://tinyurl.com/2b2h43ny.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 161 071 0272#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 1–202–809–9618.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.*

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

Agenda

I. Welcome Remarks
II. Forum of Impacted Individuals
Please see the times listed to know when to join to share comments:
1:10 p.m.–1:55 p.m. Children/Youth
1:55 p.m.–2:40 p.m. Parents/Family Members
2:40 p.m.–2:55 p.m. Caseworkers, Foster or Adoptive Parents, and other interested individuals
III. Closing Remarks
IV. Adjournment

Dated: March 17, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05930 Filed 3–22–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual briefings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a series of virtual briefings via ZoomGov on the dates and times listed below. The purpose of these briefings is to hear testimony from panelists regarding Teacher and Professional Staff Shortages and Equity in Education.

DATES: These meetings will take place on:

- PANEL 1 Thursday, April 6, 2023, from 11 a.m.–1 p.m. PT.
- PANEL 2 Thursday, April 13, 2023, from 2 p.m.–4 p.m. PT.

ADDRESSES:

Zoom Link:

PANEL 1: https://www.zoomgov.com/meeting/register/vJItdO-hqTooGCw3Oa-fj4Weav2USqtlXQM.

PANEL 2: https://www.zoomgov.com/meeting/register/vJItduysrTkiHiiQ90ESySakiE2wXD2EoIw.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *dbarreras@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments;

the comments must be received within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 656–8937.

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

Agenda

I. Welcome & Roll Call
II. Panelists Remarks
III. Committee Q&A
IV. Public Comment
V. Adjournment

Dated: March 19, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05942 Filed 3–22–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–853]

Certain Crystalline Silicon Photovoltaic Products From Taiwan: Notice of Court Decision Not in Harmony With the Final Results in the Antidumping Duty Administrative Review; Notice of Amended Final Results

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

SUMMARY: On March 10, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *JA Solar International Limited and JA Solar USA Inc.* v. *United States,* Court No. 21–00514, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the fifth administrative review of the antidumping duty order on crystalline silicon photovoltaic products (solar products) from Taiwan covering the period of review (POR), February 1, 2019, through January 31, 2020. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results in the administrative review and that Commerce is amending the final results. with respect to dumping margins assigned to Inventec Solar Energy Corporation (ISEC) and E–TON Solar Tech Co., Ltd. (E–TON).

DATES: Applicable March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, 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) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2021, Commerce published the final results of the antidumping administrative review on solar products from Taiwan, covering the period February 1, 2019, through January 31, 2020.[1]

JA Solar International Limited and JA Solar USA Inc., (together, JA Solar) appealed Commerce's *Final Results* to the CIT. On December 19, 2022, the CIT remanded the *Final Results* to Commerce to reconsider: (1) its determination that ISEC lacked actual knowledge of the U.S. destination of certain sales, based on the parties' change to the final contract language in light of record evidence suggesting that before the adoption of the final contract, sales were made with an express understanding that the final destination was the United States; (2) the reasonableness of its inference that ISEC lacked actual knowledge of the U.S. destination at the adoption of the final contract because the contract price did not change; and (3) whether ISEC had reason to know of the U.S. destination (*i.e.,* ''constructive knowledge'') should Commerce continue to find lack of actual knowledge for any of the sales at issue.

In its final remand redetermination, issued on March 2, 2023, Commerce determined: (1) to include ISEC's sales to JA Solar in our analysis of ISEC's U.S. sales; (2) to recalculate ISEC's weighted-average dumping margin for the 2019–2020 review period; and (3) to calculate an assessment rate applicable to solar products imports by JA Solar into the United States produced by ISEC.[2] As a result, Commerce calculated a revised weighted-average dumping margin for ISEC and E–TON of 7.42 percent and assigned an importer-specific assessment rate to JA Solar. On March 10, 2023, the CIT sustained Commerce's remand redetermination.[3]

Timken Notice

In its decision in *Timken,*[4] as clarified by *Diamond Sawblades,*[5] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's March 10, 2023, judgment in this case constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to ISEC and E–TON as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Inventec Solar Energy Corporation and E–TON Solar Tech Co., Ltd	7.42

[1] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; Partial Rescission of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2019–2020,* 86 FR 49509 (September 3, 2021) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See Final Results of Redetermination Pursuant to Court Remand, JA Solar International Limited and JA Solar USA Inc.* v. *United States,* Court No. 21–00514 (CIT 2022), dated March 2, 2023.

[3] *See JA Solar International Limited and JA Solar USA Inc.* v. *United States,* Slip Op. 23–30, Court No. 21–00514 (CIT 2023).

[4] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[5] *See Diamond Sawblades Mfrs. Coal.* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Cash Deposit Requirements

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP) for ISEC. In the *Final Results,* Commerce determined to treat ISEC and E–TON as a single entity for the purposes of this administrative review, in accordance with 19 CFR 351.401(f).[6] However, the cash deposit will remain specific to ISEC, given the fact that E–TON ceased to exist during the POR.[7]

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT order from liquidating entries that were produced and/or exported by ISEC and E–TON, and imported by JA Solar, that were entered, or withdrawn from warehouse, for consumption during the period February 1, 2019, through January 31, 2020. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event that the CIT's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by ISEC and E–TON, and imported by JA Solar, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[8] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: March 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–06093 Filed 3–21–23; 4:15 pm]

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[6] *See Final Results* IDM at Comment 3.

[7] *Id.*

[8] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–815]

Oil Country Tubular Goods From Ukraine: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that oil country tubular goods (OCTG) from Ukraine were sold at prices below normal value during the period of review (POR) July 1, 2020, through June 30, 2021.

DATES: Applicable March 23, 2023.

FOR FURTHER INFORMATION CONTACT: Toni Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1398.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2022, Commerce published the *Preliminary Results* of this administrative review.[1] Interpipe,[2] the sole mandatory respondent, was the only interested party to comment on the *Preliminary Results.* For a description of the events since the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, *see* the Issues and Decision Memorandum.[3] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[4]

The products covered by the *Order* are OCTG from Ukraine. For a full description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in Interpipe's case brief are addressed in the Issues and Decision Memorandum. A list of these issues is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received from Interpipe regarding our *Preliminary Results,* we made certain changes to the calculation of the weighted-average dumping margin for Interpipe in these final results.[5]

Final Results of Review

We have calculated the following weighted-average dumping margin for Interpipe for the period July 1, 2020, through June 30, 2021:

Exporter or producer	Weighted-average dumping margin (percent)
Interpipe Europe S.A./Interpipe Ukraine LLC/PJSC Interpipe Niznedneprovsky Tube Rolling Plant/LLC Interpipe Niko Tube	1.55

Disclosure

We intend to disclose the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[6] For

[1] *See Oil Country Tubular Goods from Ukraine: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 57176 (September 19, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] Commerce has previously determined that Interpipe Europe S.A.; Interpipe Ukraine LLC; PJSC Interpipe Niznedneprovsky Tube Rolling Plant; and LLC Interpipe Niko Tube are affiliated and treated as a single entity (*i.e.,* Interpipe). *See Preliminary Results* PDM at ''Summary.''

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Oil Country Tubular Goods from Ukraine, 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Termination of the Suspension Agreement on Certain Oil Country Tubular Goods from Ukraine, Rescission of Administrative Review, and Issuance of Antidumping Duty Order,* 84 FR 33918 (July 16, 2019) (*Order*).

[5] *See* Issues and Decision Memorandum.

[6] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Interpipe, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Interpipe for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Interpipe will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review or in a prior segment of the proceeding, but the producer was covered, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 7.47 percent as established in the original less-than-fair-value investigation.[8]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective 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), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: March 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–06018 Filed 3–22–23; 8:45 am]

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[7] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See Order,* 84 FR at 33919.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC799]

Western Pacific Fishery Management Council; Public Meetings; Correction

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

ACTION: Notice of correction of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Guam Regional Ecosystem Advisory Committee (REAC) to make recommendations to the Council on fishery management issues in the Western Pacific Region. This notice announces a change in location for the Guam REAC meeting from the Governor's Complex to the Hilton Guam Resort and Spa.

DATES: The meeting will be held March 23, 2023. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Guam REAC will be held as a hybrid meeting for members and public, with remote participation option available via Webex. The in-person portion of the Guam REAC meeting will be held at the Caffe Cino-Private Dining Room, Hilton Guam Resort and Spa, 202 Hilton Road, Tumon Bay, Guam 96913.

Specific information on joining the meeting, connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The original notice published on February 28, 2023 (88 FR 12658). This notice corrects the location of the Guam REAC meeting. The Guam REAC meeting will be held between 8:30 a.m. and 4 p.m. Chamorro Standard Time (ChST) on March 23, 2023.

Please note that the evolving public health situation regarding COVID–19 may affect the conduct of the Guam REAC meeting. At the time this notice

was submitted for publication, the Council anticipated convening the Guam REAC meeting as an in-person meeting with a web conference attendance option. If public participation options will be modified, the Council will post notice on its website at *www.wpcouncil.org* by, to the extent practicable, 5 calendar days before each meeting.

Agenda for the Guam REAC Meeting

Thursday, March 23, 2023, 8:30 a.m. to 4 p.m. ChST

1. Welcome and Introductions
2. About the Guam REAC
3. Current Fishery Ecosystem Issues
   a. Introduction and Overview of Endangered Species Act (ESA) Critical Habitat
   b. Status of Guam Fisheries Stocks
   c. Overview of Data Collection System and Efforts
4. Territorial Issues
   a. Marine Conservation Plan 2023–2026
   b. Developing Fishery Management Plans
5. Federal Issues
   a. Military Issues
   i. The Use of Open Burn on Guam
   ii. Explosive Ordinance/Blasting Pit Permit at Tarague Basin and Sea Turtle Nesting Mitigation
   iii. Planned Military Exercises at Whiskey 517 and Working With the Fishing Community for Safe Passage
   b. Review of the Sikes Act Agreement
   c. Status of Guam National Wildlife Refuge and US Marine Corps Firing Range
6. Updates on the NOAA Fisheries Equity and Environmental Justice (EEJ) Strategy
7. Public Comments
8. Discussion and Recommendations
9. Other Business

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: March 20, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–05951 Filed 3–22–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC834]

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel; Advisory Panel Nominations

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

ACTION: Notice of public meeting and webinar/conference call; solicitation of nominations.

SUMMARY: NMFS will hold a 3-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in May 2023. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public. NMFS also is soliciting nominations for the HMS AP. NMFS consults with, and considers the comments and views of, the HMS AP when preparing and implementing Fishery Management Plans (FMPs) or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill one environmental seat on the HMS AP for a 3-year appointment. Individuals with definable interests in the environmental community will be considered for membership on the HMS AP under this solicitation.

DATES: The AP meeting and webinar will be held on Tuesday, May 9, from 10 a.m. to 5 p.m.; Wednesday, May 10, from 9:30 a.m. to 5 p.m.; and Thursday, May 11, from 9 a.m. to 12 p.m. Nominations must be received on or before April 15, 2023.

ADDRESSES: The meeting will be held in the Silver Spring, Maryland area, with the location being announced on the NMFS website prior to the meeting. The meeting will also be accessible via WebEx webinar/conference call. Meeting location, conference call, and webinar access information will be available at: *https://www.fisheries.noaa.gov/event/may-2023-hms-advisory-panel-meeting.*

Participants accessing the webinar are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

You may submit AP nominations and requests for the Advisory Panel Statement of Organization, Practices, and Procedures by email to *HMSAP.Nominations@noaa.gov.* Include in the subject line the following identifier: ''HMS AP Nominations.''

FOR FURTHER INFORMATION CONTACT: Peter Cooper, 301–427–8503, *Peter.Cooper@noaa.gov,* or Tiffany Weidner, 301–427–8550, *HMSAP.Nominations@noaa.gov.*

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635.

HMS AP Meeting

The Magnuson-Stevens Act requires the establishment of APs and requires NMFS to consult with and consider the comments and views of AP members during the preparation and implementation of FMPs or FMP amendments (16 U.S.C. 1854(g)(1)(A)–(B)). NMFS meets with the HMS AP approximately twice each year to consider potential alternatives for the conservation and management of Atlantic tunas, swordfish, billfish, and shark fisheries, consistent with the Magnuson-Stevens Act.

For this meeting, we anticipate discussing, among other topics:

- Bluefin tuna management activities;
- Amendment 15 to the 2006 Consolidated HMS FMP regarding spatial management;
- Amendment 16 to the 2006 Consolidated HMS FMP regarding shark management;
- Outcomes of the 2022 International Commission for the Conservation of Atlantic Tunas (ICCAT) Annual Meeting; and
- Atlantic HMS Essential Fish Habitat 5-Year Review.

We also anticipate inviting other NMFS offices and the U.S. Coast Guard to provide updates, if available, on their activities relevant to HMS fisheries. Additional information on the meetings and a copy of the draft agenda will be posted prior to the meeting (see **ADDRESSES**).

In-person access to the meeting by the public may be limited depending on the Centers for Disease Control and Prevention's COVID–19 Community Level for Montgomery County, MD at the time of the meeting. All members of the public will have virtual access to the meeting available via webinar and status updates of in-person public access to

the meeting will be available on the NMFS website (see **ADDRESSES**).

HMS AP Nominations Procedures and Guidelines

Participants

NMFS seeks to fill one vacancy on the HMS AP for a term starting in 2023. Specifically, NMFS seeks nominations (which may include self-nomination) from the environmental/non-governmental organization (NGO) sector of individuals who are knowledgeable about HMS and/or HMS fisheries. Representation on the HMS AP, as shown in Table 1, consists of 12 members from the commercial sector, 12 from the recreational sector, 4 from environmental/NGO sector, 4 from the academic sector, and the ICCAT Advisory Committee Chair.

TABLE 1—CURRENT REPRESENTATION ON THE HMS AP BY SECTOR, REGION, AND SPECIES

Sector	Fishing region	Species	Date appointed	Date term expires	Member status
Academic	Southeast Gulf of Mexico	Sharks	1/1/2022	12/31/2023	Active.
Academic	Northeast/Mid-Atlantic	Tuna/Shark	1/1/2022	12/31/2024	Active.
Academic	Southeast/Gulf of Mexico	Sharks	1/1/2022	12/31/2024	Active.
Academic	Northeast	Tunas	1/1/2022	12/31/2024	Active.
Commercial	South Atlantic/Caribbean	Swordfish	1/1/2023	12/31/2025	Active.
Commercial	Mid-Atlantic	Swordfish/Tuna	1/1/2023	12/31/2025	Active.
Commercial	Gulf of Mexico	Swordfish/Tuna	1/1/2023	12/31/2025	Active.
Commercial	Gulf of Mexico	Sharks	1/1/2021	12/31/2023	Active.
Commercial	Northeast	Tuna	1/1/2021	12/31/2023	Active.
Commercial	Gulf of Mexico/Southeast	Swordfish/Tuna	1/1/2021	12/31/2023	Active.
Commercial	Gulf of Mexico	Tuna	1/1/2021	12/31/2023	Active.
Commercial	Northeast	Tuna	1/1/2021	12/31/2023	Active.
Commercial	Northeast/Southeast/Gulf of Mexico	HMS/Tuna	1/1/2022	12/31/2024	Active.
Commercial	Southeast	Sharks	1/1/2022	12/31/2024	Active.
Commercial	Gulf of Mexico	All	1/1/2022	12/31/2024	Active.
Commercial	Northeast	Swordfish/Tuna	1/1/2022	12/31/2024	Active.
Environmental	All	HMS	1/1/2020	12/31/2022	Expired.
Environmental	All	Tuna	1/1/2023	12/31/2025	Active.
Environmental	All	Shark	1/1/2021	12/31/2023	Active.
Environmental	Caribbean	HMS	1/1/2022	12/31/2024	Active.
Recreational	Northeast	Tuna	1/1/2023	12/31/2025	Active.
Recreational	Northeast	Tuna/Sharks	1/1/2023	12/31/2025	Active.
Recreational	All	HMS	1/1/2023	12/31/2025	Active.
Recreational	South Atlantic/Gulf of Mexico	HMS	1/1/2023	12/31/2025	Active.
Recreational	Gulf of Mexico	HMS	1/1/2023	12/31/2025	Active.
Recreational	All	Billfish	1/1/2021	12/31/2023	Active.
Recreational	Mid-Atlantic	Shark	1/1/2021	12/31/2023	Active.
Recreational	Southeast/Mid-Atlantic	Billfish	1/1/2021	12/31/2023	Active.
Recreational	Northeast	Tuna/Shark	1/1/2022	12/31/2024	Active.
Recreational	Northeast/Southeast/Gulf of Mexico	All	1/1/2022	12/31/2024	Active.
Recreational	Mid-Atlantic	HMS	1/1/2022	12/31/2024	Active.
Recreational	Southeast	HMS/Billfish	1/1/2022	12/31/2024	Active.

In filling vacancies, NMFS will seek to maintain the current representation from each of the sectors. NMFS also considers species expertise and representation from the fishing regions (Northeast, Mid-Atlantic, Southeast, Gulf of Mexico, and Caribbean) to ensure the diversity and balance of the HMS AP. The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of expertise and interests given the responsibilities of the HMS AP. The HMS AP also includes one member representing each relevant Fishery Management Council and ex-officio participants representing the coastal states and interstate commissions.

Through this notice, NMFS is also taking steps to advance a transparent process that promotes equity, inclusion, and accessibility when seeking nominees to serve in these important roles. As such, NMFS encourages nominations for women and for individuals from underserved communities that meet the knowledge and experience of the positions described in this notice. See Executive Order (E.O.) 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) § 2 (defining ''underserved communities'' as ''populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life,'' ''such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.''). E.O. 13985 is available at:

https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

Nomination Procedures for Appointments to the AP

Nomination packages should include:

1. The name of the nominee and a description of their expertise,

experience and interest in HMS or HMS fisheries, or in particular species of sharks, swordfish, tunas, or billfish;

2. Contact information, including nominee's mailing address, phone, and email;

3. A statement of nominee's background and/or qualifications;

4. A written commitment that the nominee shall actively participate in good faith, and consistent with ethics obligations, in the meetings and tasks of the HMS AP; and

5. A list of outreach resources and/or references that the nominee has at their disposal to communicate their qualifications for HMS AP membership.

Nominees for this vacancy should have experience representing a private, non-governmental, regional, national, or international environmental organization that represents marine fishery interests regarding HMS.

Tenure for the HMS AP

Member tenure will be for 3 years, with approximately one third of the members' terms expiring on December 31 of each year. Nominations are sought for a term beginning in 2023 and expiring at the end of 2025.

Members can serve a maximum of 3 consecutive terms (a total of 9 consecutive years). Afterwards, a member must then sit off the HMS AP for a single year before reapplying for a new term.

Dated: March 17, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–05919 Filed 3–22–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC796]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Punta Gorda Lighthouse Stabilization Project in Humboldt County, CA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Bureau of Land Management (BLM) for authorization to take marine mammals incidental to construction activities associated with Phase 2 of the Punta Gorda Lighthouse (PGL) Stabilization Project in Humboldt County, CA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1 year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 24, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Fleming@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process

or making a final decision on the IHA request.

Summary of Request

On October 26, 2022, NMFS received a request from the BLM for an IHA to take marine mammals incidental to Phase 2 of the Punta Gorda Lighthouse Stabilization Project in Humboldt County, California. Following NMFS' review of the application, BLM submitted a revised version on January 27, 2023 and again on February 8, 2023. The application was deemed adequate and complete on February 9, 2023. BLM's request is for take of northern elephant seal (*Mirounga angustirostris*), Pacific harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus*), and Steller sea lion (*Eumatopias jubata*) by Level B harassment only. Neither BLM nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to BLM for related work (87 FR 34659, June 7, 2022). BLM complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Effects of the Specified Activity on Marine Mammals and their Habitat and Estimated Take sections.

This proposed IHA would cover the final year of work of a larger project for which BLM obtained a prior IHA. The larger 2-year project involves construction activities to restore all remaining buildings of the Punta Gorda Lighthouse Site.

Description of Proposed Activity

Overview

The PGL was established as an aid to navigation in 1912 along the northern California coast. While in use, the lighthouse station included the lighthouse, oil house, three residences, and numerous other small buildings typical of small military outposts. The U.S. Coast Guard decommissioned the lighthouse in 1951. The BLM assumed management of the site following the PGL's decommission. The concrete lighthouse and oil house were all that remained when the site was listed in the National Registry of Historic Places in 1976.

The BLM repaired and stabilized the lighthouse building itself during the summer of 2022. Construction activities are proposed to repair and stabilize the remaining structure at the site, which is an oil house. Human presence, noise from construction work, and noise from and/or presence of supply transport vehicles may result in behavioral disturbance primarily of harbor seals and northern elephant seals, and potentially California sea lions and Steller sea lions. The project will take no more than 122 construction days between June and September 2023.

Dates and Duration

Stabilization and repair of the PGL oil house will occur between June 1 and October 1, 2023. Work crews are expected to work 8 to 10 hours per day, Monday through Friday with intermittent weekend work necessary to meet work schedule objectives, for a total of up to 122 days. The proposed IHA would be valid from June 1, 2023 to October 1, 2023.

Specific Geographic Region

The PGL is located approximately 10 kilometers (km) southwest of Petrolia, California and 18 km south of Cape Mendocino, within the King Range National Conservation Area. The PGL is a remote site situated along the Lost Coast Trail, which extends 40 km (24.8 mi) from the mouth of the Mattole River to Shelter Cove, California and is the longest stretch of undeveloped coastline in California. Vehicle access to the PGL site will originate at the trailhead at the Mattole Campground, and requires traveling across sandy beach that can be limited by high tides. Supplies and demolition material may also be transported to and from the site from the air via helicopter. The oil house sits upon a small hill above a sandy moderately sloped fine-sand beach that is separated by a narrow marine terrace. Pinnipeds are most often found on the beach itself but elephant seals occasionally use the marine terrace as well. Please see the Description of Marine Mammals in the Area of Specified Activities section below for a detailed description of the marine mammals that are known to haul-out at the PGL and surrounding areas.

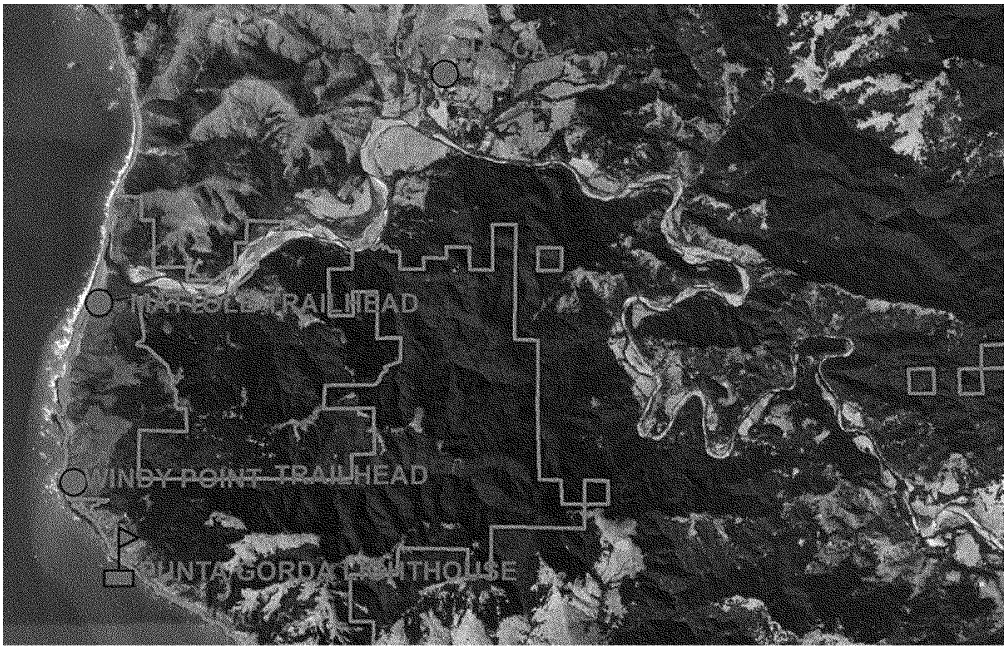

Figure 1. Location of the Punta Gorda Lighthouse in Humboldt County, California

Detailed Description of the Specified Activity

Phase 2 of the PGL stabilization project is comprised of repairs to the oil house; the foundation and walls of the oil house are cracked and separated and the lead-based paint has deteriorated.

The BLM proposed to conduct repair work in stages. As part of the initiation phase, the portion of the marine terrace north of the PGL would be designated and fenced for support of construction activities (*e.g.* parking vehicles, storing tools and materials, fuel storage and containment). A fence would be erected around the staging area and lighthouse station to prevent elephant seals from moving in to the work zone.

The first stage of correcting deficiencies of the oil house would consist of lead paint remediation and demolition of failing concrete and rebar. The remaining structure will be treated to prevent further corrosion. The roof of the oil house will be completely demolished along with the northwestern corner of the oil house foundation. Numerous other small concrete repairs will occur simultaneously. Gas powered construction saws, jack hammers, heavy equipment (*e.g.* backhoe/excavator) and hand tools will be used to complete the demolition. Following demolition, concrete forms will be erected, new concrete will be poured, and the new structure will be painted with a sealing elastomeric paint (or similar product) to prevent further corrosion.

The site will be accessed by ground vehicles at the Mattole Campground trailhead to the north. The route requires traveling across sand and can be limited by high tides. Supplies will be transported by ground using all-terrain vehicles (ATVs), side-by-side terrain vehicles (UTVs), and heavy equipment. Helicopters may also be used to transport supplies faster than ground transportation would allow. Helicopters would not land at the work site, but would hover approximately 50–100 feet (15–30 m) above ground for a short duration (up to five minutes) while the sling load is disconnected. Additionally, ground vehicles or helicopter lifts may be used to transport demolition debris to waste facilities if not buried on site.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in Table 1 are the most recent available at the time of publication (including from the draft 2022 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumatopias jubata*	Eastern U.S	-, -, N	43,201 (N/A, 43,201, 2017).	2,592	112
California sea lion	*Zalophus californica*	U.S	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Family Phocidae (earless seals):						
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013)	5,122	13.7
Pacific Harbor seal	*Phoca vitulina richardii*	California	-, -, N	30,968 (N/A 27,348, 2012).	1,641	43

[1] Endangered Species Act (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.* CV is coefficient of variation; N*min* is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

As indicated above, all four species (with four managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

California Sea Lion

California sea lions are distributed along the west coast of North America from British Columbia to Baja California and throughout the Gulf of California. Breeding occurs on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.,* 2017). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned, which takes about a year.

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

California sea lions have been observed traveling in the coastal waters and hauled out on offshore rocks near the access route. They are infrequently observed in waters near the proposed project area; During the first year of construction, California sea lions were observed on the offshore rocks and on the beach near the project area on several occasions (BLM 2022).

Steller Sea Lion

The project site could be visited by the eastern distinct population segment (DPS) of Steller sea lion; the eastern DPS includes animals born east of Cape Suckling, AK (144° W), and includes sea lions living in southeast Alaska, British Columbia, Washington, Oregon, and California. Steller sea lion are most typically found in coastal waters on the continental shelf, but they also occur and sometimes forage in much deeper continental slope and pelagic waters. Haulout and rookery sites consist of beaches (gravel, rocky, or sand), ledges, and rocky reefs. They usually return to their natal rookery sites to breed.

Steller sea lions have been observed in the water near PGL and hauled out in offshore rocks near Sea Lion Gulch, which is a haulout site approximately 2.5 km to the south of the project site. A single Steller sea lion was observed on one occasion at PGL during the first year of construction (BLM 2022). Though uncommon, it is reasonably likely that a Steller sea lion could occur at the PGL or along the access route.

Northern Elephant Seal

Northern elephant seals are found in the eastern and central North Pacific Ocean, from as far north as Alaska to as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. While on land, they prefer sandy beaches.

They typically breed and give birth in the Channel Islands off California or Baja California in Mexico, primarily on offshore islands from December to March. In mid-December, adult males begin arriving at rookeries, closely followed by pregnant females on the verge of giving birth. Females give birth to a single pup, generally in late December or January (Le Boeuf and Laws, 1994) and nurse their pups for approximately four weeks (Reiter *et al.,* 1991). Upon pup weaning, females mate with an adult male and then depart the islands. The last adult breeders depart the islands in mid-March. The spring peak of elephant seals on the rookery occurs in April, when females and immature seals (approximately one to four years old) arrive at the colony to molt (a one-month process) (USFWS 2013). The year's new pups remain on the island throughout both of these peaks, generally leaving by the end of April (USFWS 2013). The lowest numbers of elephant seals present at rookeries occurs during June, July, and August, when sub-adult and adult males molt. Another peak number of young seals returns to the rookery for a haulout period in October, and at that time some individuals undergo partial molt (Le Boeuf and Laws, 1994).

Northern elephant seals colonized the beach below the PGL in 2013 and 2014, and the colony has grown rapidly since then. They haul out on the beach between the intertidal zone and the narrow marine terrace, and occasionally make their way onto the marine terrace or even the Lost Coast Trail. Approximately 165 elephant seal pups were born during the 2020–2021 breeding season, up from 110 the previous year. The highest attendance counted during the 2021 spring molt totaled approximately 700 individuals. The lowest elephant seal attendance of the year occurs in July and August. Juveniles and non-breeding females start to appear in September before the pregnant females begin arriving in mid-October (Goley *et al.,* 2021).

Harbor Seal

Harbor seals are one of the most common marine mammals along the U.S. West and East Coasts. One the west, coast they are found from Bering Sea to Baja California. They have long been considered non-migratory, typically staying within 15–31 miles of their natal area, though tracking data show they sometimes travel much further distances to exploit seasonally available food or give birth to pups.

Harbor seals mate at sea, and females give birth during the spring and summer. Pupping season varies with latitude. Pups are nursed for 4–6 weeks and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July (Lowry *et al.,* 2008).

There are two large harbor seal haulout sites near the PGL, Sea Lion Gulch, and the Mattole River Spit, approximately 6 km to the north. A small group of harbor seals routinely haul-out on the beach near the intertidal zone and on the adjacent rocks below the PGL, approximately 120 m from the oil house. Up to 190 harbor seals have been observed at the PGL (Goley *et al.,* 2021). Harbor seals have haulout site fidelity (Herder, 1986, Yochem *et al.,* 1987, Dietz *et al.,* 2012, Waring *et al.,* 2016) and the seals present at the PGL haulout are likely to be present across multiple days. Although harbor seals commonly use the beach near the PGL for resting throughout the year, only small numbers of pups have been observed in the area and the PGL is not considered a rookery site for harbor seals.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected

to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic and visual stimuli generated by personnel working at the PGL and traversing the beach to access the work site, noise from construction equipment operating at the PGL, and helicopters hovering over the site to transport equipment and supplies may have the potential to cause behavioral disturbance.

Human Presence

The appearance of construction personnel may have the potential to cause Level B harassment of marine mammals hauled-out at the PGL and along the proposed access routes. Disturbance could result in a variety of effects, from subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of the BLM's construction personnel (*e.g.,* turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes. NMFS assumes that pinnipeds that move greater than two body lengths or longer, or if already moving, engage in a change of direction of greater than 90 degrees in response to the disturbance, or pinnipeds that flush into the water, are behaviorally harassed, and thus considered incidentally taken by Level B harassment. NMFS uses a 3-point scale (Table 2) to determine which disturbance reactions constitute take under the MMPA. Levels 2 and 3 (movement and flush) are considered take, whereas level 1 (alert) is not. Animals that respond to the presence of BLM personnel by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

TABLE 2—DISTURBANCE SCALE OF PINNIPED RESPONSES

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only Levels 2 and 3 are considered take under the MMPA. Level 1 is not considered take.

During the first year of construction, Level B harassment to pinnipeds was far less than authorized. Early on, vehicle approaches to PGL disturbed harbor seals, but they quickly appeared to become habituated to the presence of vehicles (BLM 2022). The loudest activities (*e.g.,* driving fence posts, jack hammering, and hammering/grinding on metal), caused the greatest level of disturbance primarily to harbor seals. However, disturbance events were more prevalent during the start of the day as seals seemingly began to habituate to the construction activities as the day progressed. Overall Level B harassment observed was a small fraction of the estimated take authorized (BLM 2022) and while harbor seals were observed both moving and flushing (Levels 2 and 3; Table 2) in response to construction activities, no flushing behavior was observed of elephant seals.

Reactions to human presence, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Southall *et al.,* 2007; Weilgart 2007). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displace marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart, 2007). Nevertheless, this is not likely to occur during the proposed activities since rapid habituation or movement to nearby haulouts is expected to occur after a potential pinniped flush, as was observed during first year construction activities (BLM 2022).

Disturbances resulting from human activity can impact short- and long-term pinniped haulout behavior (Renouf *et al.,* 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.,* 1984; Stewart, 1984; Suryan and Harvey, 1999; and Kucey and Trites, 2006). Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.,* 1984; Calambokidis *et al.,* 1991; and Suryan and Harvey 1999).

In 2004, Johnson and Acevedo-Gutierrez (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haulout sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the 7-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 138 and 371 m, respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 39 m, possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007). Although no boats would be used in the PGL stabilization project, we expect that hauled-out pinnipeds exposed to the BLM's

vehicles and construction equipment would exhibit similar responses to those exposed to boats in the 2007 Acevedo-Gutierrez and Johnson study, and would quickly return to their haulout after the vehicles pass.

Noise

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this proposed rule. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is the ratio of a measured sound pressure and a reference level. The commonly used reference pressure is 1 μPa for under water, and the units for SPLs are dB re: 1 μPa. The commonly used reference pressure is 20 μPa for in air, and the units for SPLs are dB re: 20 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square is the square root of the arithmetic average of the squared instantaneous pressure values. All references to SPL in this document refer to the rms unless otherwise noted. SPL does not take into account the duration of a sound. NMFS has developed acoustic thresholds for behavioral disturbance from airborne noise (90 dB for harbor seals and 100 dB for all other pinnipeds; Southall *et al.,* 2007, NOAA 2009).

Demolition and construction work at the PGL would include use of gas powered construction saws, jack hammers, heavy equipment (likely a backhoe or small excavator), saws, and hand tools. Fencing would be erected to prevent marine mammals from entering the work area. Received sound levels for seals hauled out on the beaches below the PGL are not expected to exceed the behavioral disturbance thresholds.

It is possible that the use of helicopters to transport materials, especially the helicopter hovering at the work site while the sling load is disconnected, would cause a subset of the marine mammals hauled-out at the PGL to react. There is little information available on the acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson, *et al.,* 1995) and to NMFS' knowledge, there has been no specific documentation of temporary threshold shift (TTS), let alone permanent threshold shift (PTS), in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions (Baker *et al.,* 2012; Scheidat *et al.,* 2011). The specific type and model of helicopter that may be used for work at the PGL is not yet known, therefore the predicted source level of noise from the helicopter that could be used to estimate distances to the behavioral disturbance threshold is also unknown. However, NMFS has considered that while noise from the helicopter is likely to affect the degree to which marine mammals respond to the stimulus, the physical presence of aircraft could also lead to non-auditory effects on marine mammals involving visual or other cues. Marine mammals in the vicinity of the helicopter are likely to exhibit behavioral responses (*e.g.,* hasty dives or turns, change in course, or flushing and stampeding from a haulout site, as a result of visual detection of the helicopter) regardless of the received SPL.

There are few well-documented studies of the impacts of aircraft overflight over pinniped haulout sites or rookeries, and many of those that exist, are specific to military activities (Efroymson *et al.,* 2001). Although helicopter flights were proposed in support of year 1 construction activities at PGL, no helicopter flights were implemented. In 2008, NMFS issued an IHA to the USFWS for the take of Steller sea lions and Pacific harbor seals, incidental to rodent eradication activities on an islet offshore of Rat Island, AK conducted by helicopter. The 15-minute aerial treatment consisted of the helicopter slowly approaching the islet at an elevation of over 1,000 ft (304.8 m); gradually decreasing altitude in slow circles; and applying the rodenticide in a single pass and returning to Rat Island. The gradual and deliberate approach to the islet resulted in the sea lions present initially becoming aware of the helicopter and calmly moving into the water. Further, the USFWS reported that all responses fell well within the range of Level B harassment (*i.e.,* limited, short-term displacement resulting from aircraft noise due to helicopter overflights).

Several factors complicate the analysis of long- and short-term effects for aircraft overflights. Information on behavioral effects of overflights by military aircraft (or component stressors) on most wildlife species is sparse. Moreover, models that relate behavioral changes to abundance or reproduction, and those that relate behavioral or hearing effects thresholds from one population to another are generally not available. In addition, the aggregation of sound frequencies, durations, and the view of the aircraft into a single exposure metric is not always the best predictor of effects and it may also be difficult to calculate. Overall, there has been no indication that single or occasional aircraft flying above pinnipeds in water cause long term displacement of these animals (Richardson *et al.,* 1995). Bowles and Stewart (1980) observed the effects of helicopter flights over California sea lions and harbor seals observed on San Miguel Island, CA; animals responded to some degree by moving within the haulout and entering into the water, stampeding into the water, or clearing the haul out completely. Both species always responded with the raising of their heads. California sea lions appeared to react more to the visual cue of the helicopter than the noise.

In a study of the effects of helicopter landings at the St. George Reef Lighthouse on Northwest Seal Rock off the coast of Crescent City, California, Crescent Coastal Research (CCR) found a range of from 0 to 40 percent of all pinnipeds present on the island were temporarily displaced (flushed) due to initial helicopter landings in 1998. Their data suggested that the majority of these animals returned to the island once helicopter activities ceased, over a period of minutes to 2 hours (CCR, 2001). Far fewer animals flushed into the water on subsequent takeoffs and landings, suggesting rapid habituation to helicopter landing and departure (CCR, 2001).

Stampede

There are other ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. They are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. These situations are particularly injurious when: (1) Animals fall when entering the water at high-relief locations; (2) there is extended separation of mothers and pups; and (3) crushing of pups by large males occurs during a stampede. However, NMFS does not expect any of these scenarios to occur at the PGL as the proposed action would occur outside of the pupping/breeding season for elephant seals and late enough in the harbor seal pupping season that any pups present would likely be old enough to accompany their mother during a flushing event, there are no cliffs at the PGL, and monitoring from IHAs for similar activities at this site and others has not recorded stampeding

events (*e.g.,* BLM 2022, Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021).

The haulout sites at the PGL consist of low sloping sandy beaches with unimpeded and non-obstructive access to the water. If disturbed, the small number of hauled-out animals may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area or increase injury potential. Therefore, NMFS has determined the BLM's proposed activities pose no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations and thus there is no risk that these disturbances will result in Level A harassment or mortality/serious injury.

Anticipated Effects on Marine Mammal Habitat

The primary potential impact to marine mammal habitat associated with the construction activity is the temporary occupation of marine mammal habitat by BLM personnel and equipment but no permanent impacts would occur. The footprint of the PGL station would not change, and although vagrant elephant seals occasionally enter the compound, the lighthouse station itself is not considered to be suitable marine mammal habitat. During the stabilization project, a fence would be erected to exclude a portion of the marine terrace from use by elephant seals. The area expected to be fenced is usually unoccupied during the proposed construction window so few animals are expected to be displaced. Hauled out pinnipeds may temporarily leave the area if disturbed by acoustic or visual stimuli from project activities, but would likely return to the area once activities are concluded. The duration of displacement could vary from minutes, which would be expected for animals disturbed along the access route that may return to the haulout once the construction personnel pass by (*e.g.,* Allen *et al.,* 1985), to hours or days, for animals that flush from the beach below the PGL. The Lost Coast has miles of suitable undeveloped habitat for displaced animals to relocate during construction activities. The direct effects to pinnipeds appear at most to displace the animals temporarily from their haulout sites, and we do not expect, and have not observed during previous authorizations including first year construction at this site, that the pinnipeds would permanently abandon a haulout site as a result of the PGL stabilization project.

Indirect effects of the activities on nearby feeding or haulout habitat are not expected. Increased noise levels are not likely to affect acoustic habitat or adversely affect marine mammal prey in the vicinity of the project area because source levels are low, transient, well away from the water, and do not readily transmit into the water. It may be necessary for the BLM to bring a fuel storage tank to the PGL site to power generators and heavy equipment. Fuel would be stored behind fencing upland of the beach and the fuel tank would have a secondary containment system in place. To prevent chemical leaks, the BLM would inspect all equipment prior to attempting to cross Four Mile Creek while accessing the worksite. Debris generated by the construction activities (*e.g.,* removed concrete and metal structures) would either be buried onsite or removed by overland transit or helicopter lifts. Any materials not removed would be buried well upland of the beach, far away from any potential haulout areas. Buried material would consist of existing elements of the oil house, no new materials would be introduced and left behind. NMFS does not expect that the proposed activities would have any long- or short-term physical impacts to pinniped habitat at the PGL.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

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 construction personnel and equipment, including helicopters used to transport materials. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. For the BLM's proposed activities, behavioral (Level B) harassment is limited to movement and flushing, defined by the disturbance scale of pinniped responses (Table 2).

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Researchers from Humboldt State University (HSU) regularly conduct census counts of pinnipeds at the PGL and surrounding areas along the northern California coast (*e.g.,* Goley *et al.,* 2021, BLM 2022). Protected Species Observers (PSOs) on site during the first year of construction recorded daily counts as well. Counts of northern elephant seals, harbor seals, California sea lion, and Steller sea lion at the PGL during the effective dates of the proposed IHA (June 1 through October 1) are presented below.

TABLE 3—PINNIPED CENSUS COUNTS AT PUNTA GORDA LIGHTHOUSE

Date	Number of elephant seals observed	Number of harbor seals observed *	Number of California sea lions observed *	Number of Steller sea lions observed *
2019 Counts				
June 8	101	51	-	-
June 15	74	107	-	-
June 23	34	81	-	-

TABLE 3—PINNIPED CENSUS COUNTS AT PUNTA GORDA LIGHTHOUSE—Continued

Date	Number of elephant seals observed	Number of harbor seals observed *	Number of California sea lions observed *	Number of Steller sea lions observed *
July 7	40	116	-	-
July 14	50	180	-	-
July 21	54	123	-	-
August 3	39	105	-	-
August 21	44	80	-	-
August 31	62	22	-	-
September 15	162	22	-	-
September 27	244	28	-	-
2020 Counts				
June 4	177	-	-	-
June 11	83	-	-	-
June 14	80	55	-	-
June 24	37	-	-	-
June 27	38	77	-	-
July 4	36	-	-	-
July 12	39	90	-	-
July 16	38	-	-	-
July 24	36	123	-	-
July 30	38	-	-	-
August 6	32	-	-	-
August 9	28	73	-	-
August 13	28	-	-	-
August 20	27	-	-	-
August 27	33	-	-	-
August 30	48	36	-	-
September 5	60	38	-	-
September 19	133	51	-	-
September 27	177	53	-	-
2021 Counts				
June 10	199	-	-	-
June 29	59	109	-	-
July 10	48	128	-	-
July 26	34	104	-	-
August 7	30	103	-	-
August 22	42	68	-	-
September 2	106	-	-	-
September 16	135	-	-	-
2022 Counts				
June 22	39	42	0	0
June 23	53	50	0	0
June 24	34	117	0	0
June 25	50	110	0	0
June 27	38	150	0	0
June 28	61	126	0	0
June 29	54	132	0	0
June 30	56	169	0	0
July 1	52	137	0	0
July 5	48	156	0	0
July 6	51	142	0	0
July 7	34	-	0	0
July 8	33	121	0	0
July 9	56	141	0	0
July 11	28	106	0	0
July 12	37	139	0	1
July 13	38	156	0	0
July 14	34	190	0	0
July 15	37	134	0	0
July 16	30	136	0	0
July 18	29	114	0	0
July 19	30	108	0	0
July 20	25	122	0	0
July 21	27	99	0	0
July 22	32	109	0	0
July 23	31	109	0	0

TABLE 3—PINNIPED CENSUS COUNTS AT PUNTA GORDA LIGHTHOUSE—Continued

Date	Number of elephant seals observed	Number of harbor seals observed *	Number of California sea lions observed *	Number of Steller sea lions observed *
July 25	29	115	0	0
July 26	33	93	0	0
July 27	30	58	0	0
July 28	29	91	0	0
July 29	33	73	0	0
August 1	31	82	0	0
August 2	28	76	0	0
August 4	32	77	0	0
August 5	28	105	2	0
August 6	29	72	0	0
August 8	26	71	0	0
August 9	27	55	10	0
August 10	28	48	7	0
August 11	32	41	0	0
August 12	38	56	0	0
August 15	34	46	0	0
August 16	40	56	3	0
August 17	42	61	0	0
August 18	44	50	0	0
August 19	42	64	0	0
August 20	39	56	0	0
August 22	40	57	7	0
August 23	48	58	6	0
August 24	48	60	0	0
August 25	54	59	0	0
August 26	51	48	0	0
August 27	54	38	0	0
August 29	65	37	0	0
August 30	57	51	1	0
August 31	46	49	0	0
September 1	60	41	0	0
Daily Average	52.4	87.4	0.6	0.02

* Dashes (-) refer to instance where researchers did not record occurrence information.

Between 2019 and 2022, census counts of elephant seals and harbor seals were collected at PGL during the effective dates of the proposed IHA (June 1–October 1). Across all 4 years, the average daily count was 52.4 elephant seals (Goley *et al.,* 2021, BLM 2022). A large proportion of the elephant seals present at PGL are uniquely tagged and dye stamped to identify individuals and the same individuals were identified at the PGL haulout on multiple days. Across all four years, the daily average of harbor seals was 87.4. The harbor seals present at the PGL are not tagged or otherwise clearly identifiable, but since harbor seals typically show hauling site fidelity (Herder 1986, Yochem *et al.,* 1987, Dietz *et al.,* 2012, Waring *et al.,* 2016), researchers from HSU hypothesize that the harbor seal colony at the PGL is made up of the same individuals that move between Punta Gorda and other nearby haulouts.

During the first year of construction (June–October 2022), PSOs recorded the number of California and Steller sea lions present in the PGL area. The daily average count of California sea lions was 0.6 and the daily average count of Steller sea lions was 0.02.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

To estimate the total number of pinnipeds that may be present at the PGL and subject to behavioral disturbance from the PGL stabilization project, the BLM multiplied the daily count of each species averaged across all years of available census data (52.4 elephant seals, 87.4 harbor seals, 0.6 California sea lions, and 0.02 Steller sea lions) by the maximum days of work at the PGL (122 days), for an estimated total take events of 6,393 for northern elephant seals, 10,663 for harbor seals, 73 for California sea lions, and 2 for Steller sea lions) taken by Level B harassment. This estimation assumes that all animals present would exhibit behavioral responses that are considered take (Levels 2 and Level 3 as described in Table 2). As described above, many of the seals present at the PGL are suspected or confirmed to be present across multiple days. Therefore, the above estimated take numbers are considered to represent instances of take, not necessarily the number of individual seals that may be taken. In the case of Steller sea lion, 2 takes may not adequately account for all instances of possible take that could occur should multiple individuals enter the project area over the course of construction, or one individual enter the project area on multiple occasions. As such the take estimate for this species has been increased to 30 as requested by the applicant.

TABLE 4—PROPOSED TAKE BY LEVEL B HARASSMENT BY SPECIES AND PERCENTAGE OF EACH STOCK AFFECTED

Species	Stock	[a] Proposed take by Level B harassment	Stock abundance	Percent of stock
Northern elephant seal	California breeding	6,393	187,386	3.4
Pacific harbor seal	California	10,663	30,968	34.4
California sea lion	U.S	73	257,606	0.03
Steller sea lion	Eastern U.S	30	77,149	0.04

[a] The proposed take represents the estimated number of instances of take, which does not equate to the number of individuals that may be taken.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The following mitigation measures are proposed:

The work season has been planned to reduce the level of impact on elephant and harbor seals. The effective dates of the proposed IHA (June 1, 2022 through October 1, 2022) occur when the elephant seal presence is at its lowest and any harbor seal pups that may be on site would be old enough to be self-sufficient if the colony temporarily flushes into the water. No elephant seal pups are expected to be present during the work season.

To the extent possible, the BLM would limit the daily number of vehicle trips between the project area and the contractor's offshore camp where additional tools and supplies would be stored in trailers or other storage containers.

While accessing and departing the project site, trained PSOs would monitor ahead of the vehicle(s) path, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation (*e.g.,* change of course, slow down) is required. Vehicles would not approach within 20 m of marine mammals. If animals remain in the access path with no possible route to go around and maintain 20 m separation, a PSO may walk toward the animals and intentionally flush them into the water to allow the vehicle(s) to proceed. To the extent possible, if multiple vehicles are traveling to the site, they should travel in a convoy such that animals are not potentially harassed more than once while the vehicles pass.

At least one PSO will arrive onsite 10 minutes ahead of contractors each day to obtain counts in two separate locations viewing both haulouts before work commences.

A fence would be erected to keep elephant seals from entering the construction area to limit disturbance and prevent accidental injury from vehicles and construction debris.

All helicopters associated with the project would slowly approach the work site and allow all marine mammals present to flush into the water before setting any hauled materials down on the ground.

The BLM must cease or delay visits to the project site if a species for which the number of takes that have been authorized for a species are met, or if a species for which takes were not authorized, is observed.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral

context of exposure (*e.g.,* age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

At least one NMFS-approved PSO would travel to and from the construction site ahead of the work crew each day and serve as a lead monitor to record incidental take. PSOs would consist of BLM wildlife biologists, biological technicians, and interns, as well as King Range National Conservation Area staff. At least one PSO would monitor the beach surrounding the PGL during all construction activities.

PSOs should have the following qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number of species of marine mammals observed; dates and times when construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammal observed in the area when necessary.

PSOs must record the following information for each day of work:

- Date, time, and access route of each visit to the work site;
- Information on the weather, including tidal state and estimated horizontal visibility;
- Composition of marine mammals observed, such as species, sex, and life history stage (*e.g.,* adult, sub-adult, pup);
- Estimated numbers (by species) of marine mammals observed during the activities;
- Location of marine mammals observed during construction activities.
- Marine mammal disturbances according to a three-point scale of intensity (see Table 2)
- Behavioral responses or modifications of behaviors that may be attributed to the specific activities, a description of the specific activities occurring during that time (*e.g.,* pedestrian, vehicle, or helicopter approach), and any mitigation action taken; and
- Note the presence of any offshore predators (date, time, number, and species).

Reporting

The BLM would report all observations of marked or tag-bearing pinnipeds or carcasses and unusual behaviors, distributions, or numbers of pinnipeds to the NMFS West Coast Regional Office.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of each work season, or 60 days prior to the requested issuance date of any future IHAs for projects at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS on the draft report, the draft report will be considered the final report. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings and behavioral response to construction activities, and associated PSO data sheets.

In addition to submitting raw sightings data, the report must include:

- Dates, and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period such as supply transport via ground and/or helicopter, fence installation, trail maintenance, and demolition etc.;
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), and any relevant weather conditions including fog, sun glare, and estimated observable distance.

Prior to the commencement of activities, on each subsequent hour during construction, and before finishing construction each day, PSOs would record and report the following marine mammal observations:

- Name of the PSO who completed the observations and PSO location and activity at the time of recording;
- Time of observation;
- The number (by species) of marine mammals observed during the activities, by age and sex, if possible, and distances to construction activities. Data may be reported according to groups in cases where animals are concentrated together;
- The behavioral response of marine mammals (by species, age, and sex as possible) to construction activities based on the 3 point scale (Table 2), including distances to construction activities and descriptions of construction activities occurring at the time of observance. When pinnipeds are concentrated in groups, closest distance of the group to construction activities may be reported;
- A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Separately, the same information should be recorded and reported each time Level 2 or Level 3 harassment of marine mammals is observed.

Reporting Injured or Dead Marine Mammals

In the event that the BLM or any other personnel involved in the activities discover an injured or dead marine mammal, the BLM would report the incident to the NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*) and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury were clearly caused by a specific activity, the BLM would immediately cease the specified activities until NMFS 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 IHA. The BLM would not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;

- Condition of the animal(s) (including carcass condition of the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 4, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Activities associated with Phase 2 of the PGL stabilization project, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) from in-air sounds and visual disturbance. Potential takes could occur if individual marine mammals are present nearby when activity is happening.

No injuries or mortalities are anticipated to occur as a result of the PGL stabilization project and none are proposed to be authorized. The risk of marine mammal injury, serious injury, or mortality associated with the proposed construction project increases somewhat if disturbances occur during pupping season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (*e.g.,* through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. However, the proposed activities would occur outside of the elephant seal pupping season, therefore no elephant seal pups are expected to be present. Although the timing of the proposed activities would partially overlap with harbor seal pupping season, the PGL is not a harbor seal rookery and few pups are anticipated to be encountered during the proposed construction. In fact, the daily average of harbor seal pups present at PGL during 2022 construction (June 22–September 1) was just 1.7. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. The proposed activities would occur late enough in the pupping season that any harbor seal pups present would likely be old enough to keep up with their mother in unlikely event of a stampede or other flushing event. The proposed mitigation measures (*i.e.,* minimum separation distance, slow approaches, and minimizing vehicle trips to the PGL) generally preclude the possibility of behaviors, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities including phase 1 construction at this site, will likely be limited to reactions such as alerts or movements away from the lighthouse structure, including flushing into the water. Most likely, individuals will simply move away from the acoustic or visual stimulus and be temporarily displaced from the areas. In fact, during the first year of construction at PGL elephant seals were not observed flushing at any point during construction and were only observed moving on 11 occasions. Harbor seals were observed flushing 255 times and moving 322 times, which represents a small fraction (6%) of the Level B harassment authorized for the project (BLM 2022).

Monitoring reports from similar activities (*e.g.,* Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021) have reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations as noted above. Repeated exposures of individuals to relatively low levels of sound and visual disturbance outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors or result in permanent abandonment of the haulout site. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound and visual disturbance produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

Of the marine mammal species anticipated to occur in the proposed activity areas, none are listed under the ESA and there are no known areas of biological importance in the project area. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary displacement from haulout sites. The Lost Coast area has abundant haulout areas for pinnipeds to temporarily relocate, and marine mammals are expected to return to the area shortly after activities cease. No adverse effects to prey species are anticipated as no work would occur in-water, and habitat impacts are limited and highly localized, consisting of construction work at the existing lighthouse station and the transit of vehicles and equipment along the access route. 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 mitigation and monitoring measures, NMFS finds that the total marine mammal take from the BLM's

PGL stabilization project will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment is anticipated or proposed to be authorized;
- Few pups are expected to be disturbed, and would not be abandoned or otherwise harmed by other seals flushing from the area;
- Effects of the activities would be limited to short-term, localized behavioral changes;
- Nominal impacts to pinniped habitat are anticipated
- No biologically important areas have been identified in the project area;
- There is abundant suitable habitat nearby for marine mammals to temporarily relocate; and
- Mitigation measures are anticipated to be effective in minimizing the number and severity of takes by Level B harassment, which are expected to be of short duration.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

With the exception of Pacific harbor seals, the amount of take NMFS proposes to authorize is well below one-third of any stock's best population estimate (see Table 4), which NMFS considers to be small relative to stock abundance. In fact, the annual take by Level B harassment is less than 1% of stock abundance for both otariid species that may be encountered in the project area (*i.e.,* California sea lion and Steller sea lion), and less than 4 percent of the northern elephant seal stock's best population estimate. While the estimated take of Pacific harbor seal equates to over 33% of the Pacific harbor seal stock, these takes represent instances of take, not necessarily the number of individual seals that may be taken. As such, in all cases, including Pacific harbor seal, these take estimates are considered conservative because NMFS assumes all takes are of different individual animals which is likely not the case. Researchers from HSU have used tags and dye stamps to identify individual elephant seals and have verified the same individuals are hauling out at PGL. While harbor seals are not marked or otherwise clearly identifiable, HSU researchers hypothesize that the harbor seal colony at PGL is made up of the same individuals that move between Punta Gorda and other nearby haulouts. This is based on the fact that this species typically shows hauling site fidelity (Herder 1986, Yochem *et al.,* 1987, Dietz *et al.,* 2012, Waring *et al.,* 2016). Therefore, many individuals that may be taken by Level B harassment are likely to be the same across consecutive days, despite PSOs counting them as separate takes throughout the duration of the project.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Regional Office.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the BLM for conducting Phase 2 of the PGL Stabilization Project repair in Humboldt County, California between June 1 and October 1, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

• A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

• The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 16, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC766]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of Liquefied Natural Gas Platforms Off Louisiana

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from New Fortress Energy Louisiana FLNG LLC (NFE) for authorization to take marine mammals incidental to construction of liquefied natural gas platforms off Grand Isle, Louisiana. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 24, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.clevenstine@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On October 7, 2022, NMFS received a request from NFE for an IHA to take marine mammals incidental to pile driving associated with construction off the southeast coast of Grand Isle, Louisiana. Following NMFS' review of the application, NFE submitted a revised version on February 3, 2023, which was deemed adequate and complete. NFE's request is for take of bottlenose dolphin (*Tursiops truncatus*) by Level B harassment only. Neither NFE nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

NFE proposes to construct the Louisiana FLNG Project, a deepwater port export terminal in West Delta Lease Block 38 approximately 12 nautical miles (nm; 22 kilometers (km)) off the southeast coast of Grand Isle, Louisiana, in approx. 26–28 meters (m; 85–91 feet (ft)) of water (Figure 1). NFE intends to use impact pile driving to install 26 steel piles, each 108 inch (in; 2.743 m) in diameter, to support three fixed-jacket platforms. Impact pile driving activities would occur for a total of 9 days (three days per platform) anytime from May through August 2023. NFE has requested authorization to incidentally take one species (two stocks) of marine mammal by Level B harassment only. Take would potentially result from exposure to sounds produced by impact pile driving and is expected to produce short-term and localized impacts in the form of behavioral harassment of marine mammals located in the project area. No injury or mortality is expected and none is proposed to be authorized.

NFE also plans the following: trench for pipeline laterals; construct and install two pipeline laterals (24 in, 20 in diameter) and tie-ins to an existing offshore natural gas pipeline; setting of three self-elevating platforms; and anchoring for a floating liquefied natural gas storage unit (FSU) and service vessel buoys. No take of marine mammals is anticipated to occur incidental to all other portions of the project (pipelines, self-elevating platform installation, anchoring for FSU construction activities), and these activities will not be discussed further.

Dates and Duration

This IHA would be effective from May 1, 2023 until April 30, 2024. Impact pile driving activities would occur for a total of 9 days from May–August 2023. NFE plans to conduct impact pile driving during daylight hours, with pile installation beginning no earlier than one hour after (civil) sunrise and no later than 90 minutes (min) before (civil) sunset.

Specific Geographic Region

The project will be located within the Gulf of Mexico (GOM), approx. 12 nm (22 km) off the southeast coast of Grand Isle, Louisiana, at a depth of 26–28 m (85–91 ft; Figure 1). All project activities for which take is being requested will be located in Outer Continental Shelf West Delta Lease Block 38. For the immediate project area, the sea floor is expected to be predominantly clay with sediment layers as follows: clay (0–19 m), clay-silt (19–54 m), and sand (54 m).

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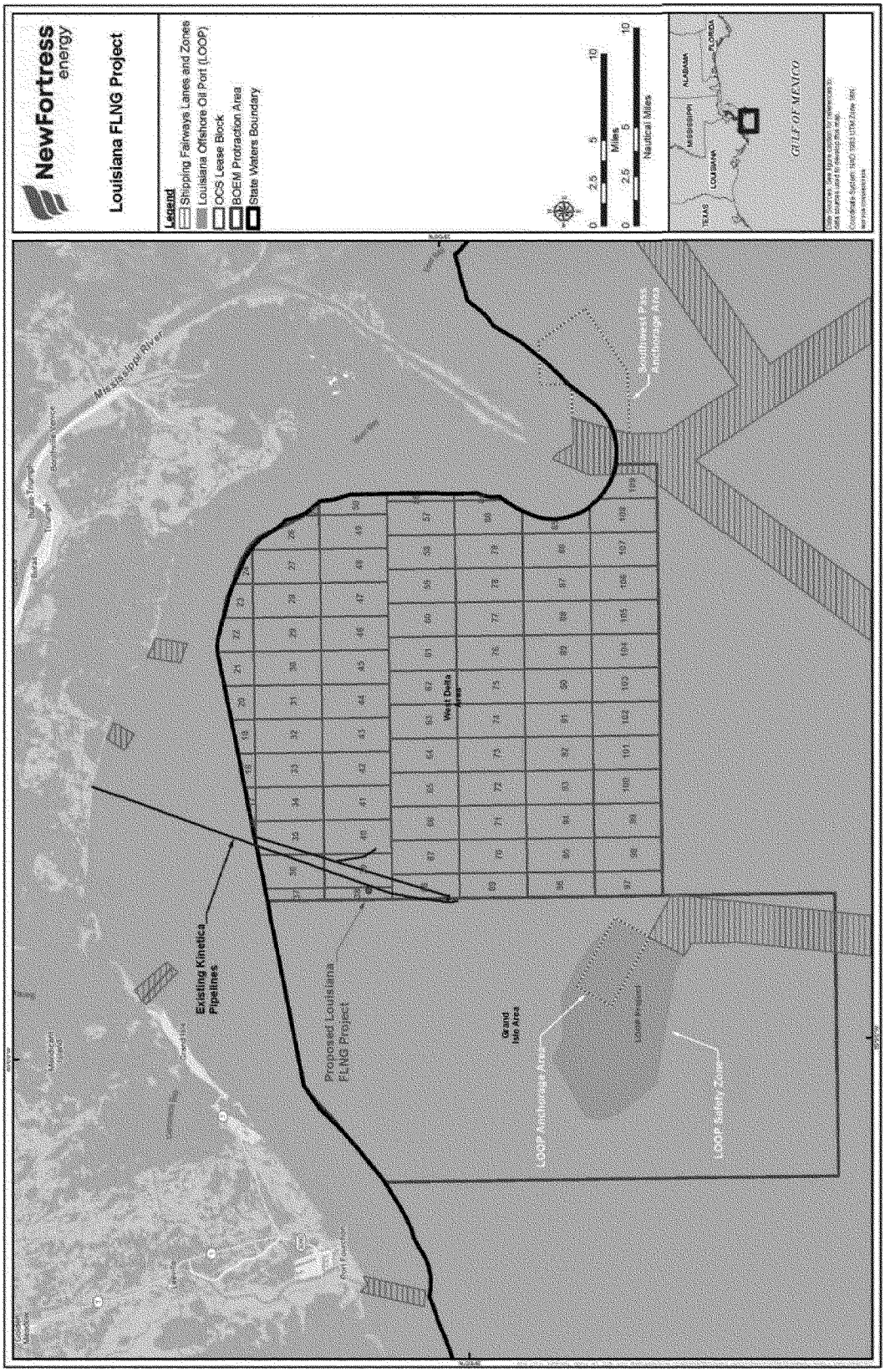

Figure 1. Project Area Map

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Detailed Description of the Specified Activity

Impact pile driving of 26 steel piles, each 108 in (2.743 m) in diameter, to support three fixed-jacket platforms (P4, P5, P6) would occur over 9 days (3 days per platform). Piles would be driven sequentially and the number of piles driven per day would vary between the

three platforms (Tables 1, 2). Hammer blows per day are based on daylight-only operations with a single hammer, spread evenly across the construction window. 9 days of active pile driving are estimated to drive all 26 piles. Estimated hammer blows vary from 3,942 to 7,144 per day depending on platform and pile segment being driven (piles in P5 and P6 are assembled from three separate segments).

TABLE 1—PILE DRIVING SPECIFICATIONS FOR THE THREE FIXED-JACKET PLATFORMS

Platform	Number of piles	Length of pile (feet)	Diameter of pile (inches)	Depth of penetration (feet)	Estimated hammer blows (total)	Estimated hammer blows (per pile)
P4	12	385	108	260	17,052	1,421
P5	8	405	108	280	19,136	2,392
P6	6	345	108	220	14,352	2,392

Note: Hammer blows per pile vary with length of pile and depth of penetration.

TABLE 2—PILE DRIVING PROGRESSION SUMMARY

Platform	Pile segment	Hammer energy (percent)	Hammer energy (kilojoules)	Duration (minutes) [2]	Blows per minute	Total number of blows [1]	Total number of blows per day
P4	P1	20	460	36.53	30	1,096	5,684
P4	P1	40	920	42.93	30	1,288	5,684
P4	P1	60	1,380	110.0	30	3,300	5,684
P5	Day 1: P1	20	460	85.6	30	2,568	5,256
P5	Day 1: P1	40	920	89.6	30	2,688	5,256
P5	Day 2: P1+P2	20	460	17.07	30	512	6,736
P5	Day 2: P1+P2	40	920	22.67	30	680	6,736
P5	Day 2: P1+P2	60	1,380	184.8	30	5,544	6,736
P5	Day 3: P1+P2+P3	20	460	52.8	30	1,584	7,144
P5	Day 3: P1+P2+P3	40	920	22.4	30	672	7,144
P5	Day 3: P1+P2+P3	60	1,380	162.93	30	4,888	7,144
P6	Day 1: P1	20	460	64.2	30	1,926	3,942
P6	Day 1: P1	40	920	6.2	30	2,016	3,942
P6	Day 2: P1+P2	20	460	12.8	30	384	5,052
P6	Day 2: P1+P2	40	920	17	30	510	5,052
P6	Day 2: P1+P2	60	1,380	138.6	30	4,158	5,052
P6	Day 3: P1+P2+P3	20	460	39.6	30	1,188	5,358
P6	Day 3: P1+P2+P3	40	920	16.8	30	504	5,358
P6	Day 3: P1+P2+P3	60	1,380	122.2	30	3,666	5,358

[1] Total number of blows are based on the total number of piles installed per day.
[2] Duration provided for all piles within a 24-hour period.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 3 lists all stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and GOM SARs. All values presented in Table 3 are the most recent available at the time of publication (including from the draft 2022 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Odontoceti (toothed whales, dolphins, and porpoises). *Family Delphinidae.*						
Bottlenose dolphin	*Tursiops truncatus*	Gulf of Mexico, Continental Shelf.	-/-; N	0.11; 57,917; 2017–2018	556	65
Bottlenose dolphin	*Tursiops truncatus*	Gulf of Mexico, Western Coastal.	-/-; N	0.13; 18,585; 2017–2018	167	36

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

As indicated above, one species (two managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed project area are included in Table 3 of the IHA application. While Atlantic spotted dolphin (*Stenella frontalis*), bottlenose dolphin (northern GOM Oceanic Stock), pantropical spotted dolphin (*Stenella attenuata*), Rice's whale (*Balaenoptera ricei),* Risso's dolphin (*Grampus griseus*), and sperm whale (*Physeter microcephalus*) have been documented in the region (see application Section 6—Table 6–8), the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

Bottlenose Dolphin

Bottlenose dolphins are present year-round in the nearshore waters of the GOM and are expected to have a common occurrence within the vicinity of the project area. There are two distinct bottlenose dolphin morphotypes: migratory coastal and offshore, and the population of bottlenose dolphins in the GOM consists of a complex mosaic of 38 stocks of bottlenose dolphin (Waring *et al.,* 2010). This includes 33 bay, sound, and estuary stocks in the inshore waters; three coastal stocks (western, northern, eastern); the northern GOM Continental Shelf Stock; and the northern GOM Oceanic Stock (Waring *et al.,* 2013). Of those, only two stocks are reasonably expected near the project area: the GOM Western Coastal Stock and the northern GOM Continental Shelf Stock. The northern GOM Oceanic Stock is not likely to occur within the project area because the stock range is defined as extending from the 200-m isobath of the GOM south toward the seaward extent of the Exclusive Economic Zone (Hayes *et al.,* 2022) and, therefore, is not discussed further.

Bottlenose dolphins under the GOM Western Coastal Stock have the possibility to occur within the vicinity of the project area as this stock range is defined as the Mississippi River Delta to the U.S.-Mexico border, in waters typically less than 20 m (66 ft) deep along the inner continental shelf (within 7.5 km (4.6 miles) of shore; Hayes *et al.,* 2022). Bottlenose dolphins under the northern GOM Continental Shelf Stock are likely to occur within the project area as well, as this stock inhabits waters from 20–200 m (66–656 ft) deep throughout the U.S. GOM. There are two biologically important areas for bottlenose dolphins north of the project area in Caminada Bay and Barataria Bay, Louisiana, but neither project staging nor implementation are expected to impact these areas.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approx. 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.

TABLE 4—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from impact pile driving. The effects of underwater noise from the NFE's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action area.

For general information on sound, its interaction with the marine environment, and a description of acoustic terminology, please see, *e.g.,* ANSI (1986, 1995), Au and Hastings (2008), Hastings and Popper (2005), Mitson (1995), NIOSH (1998), Richardson *et al.* (1995), Southall *et al.* (2007), and Urick (1983). Underwater sound from active acoustic sources can cause one or more of the following: temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure.

Threshold Shifts

Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury. Behavioral disturbance to marine mammals from sound may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocena*), and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)), and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (*Phoca vitulina;* Kastelein *et al.,* 2019a, 2019b, 2020a, 2020b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS would be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015; Mooney *et al.,* 2009). This means that TTS predictions based on the total, cumulative SEL would overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources.

The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hr) in captivity, mean TTS increased from 0 dB after 15 min exposure to 5 dB after 360 min exposure; recovery occurred within 60 min (Kastelein *et al.,* 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. Nonetheless, what we considered herein is the best available science. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007, 2019) and

Finneran (2015), and Table 5 in NMFS (2018).

In-water construction activities associated with this project would include impact pile driving to install 26 steel piles over 9 days. The sounds produced by this activity are considered impulsive and intermittent. Impulsive sounds are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment

Exposure to noise from pile driving also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010; Southall *et al.,* 2021). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B and C of Southall *et al.* (2007) as well as Nowacek *et al.* (2007); Ellison *et al.* (2012), and Gomez *et al.* (2016) for a review of studies involving marine mammal behavioral responses to sound.

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, sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Sivle *et al.,* 2016; Wensveen *et al.,* 2017). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal (Goldbogen *et al.,* 2013).

The likely or possible impacts of NFE's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment and vessels; however, we expect that any animals that approach the project site close enough to be harassed due to the presence of equipment would be within the Level B harassment zones for pile driving and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to be primarily acoustic and generated by heavy equipment operation during pile installation (*i.e.,* impact driving). Impact hammers would be used to complete in-water construction and may act as an acoustic stressor. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound emitted by impact pile driving would be temporary and localized. Due to the relatively limited area of impact compared to the extensive available surrounding habitat, potential impacts from sound are anticipated to be negligible on marine mammal habitat.

Marine Mammal Habitat Effects

NFE's proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact pile driving, elevated levels of underwater noise would ensonify the project area where both fishes and mammals occur, and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are expected to be of short duration (9 days total) and would likely have temporary impacts on marine mammal habitat through increases in underwater sound.

In-Water Construction Effects on Potential Foraging Habitat

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the location where piles are installed. In general, turbidity associated with pile installation is localized to an approx. 25-ft (7.6-m) radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity. Such impact-producing factors may provoke mobile prey species to leave the area of activity and/or cause injury or mortality in less mobile species. This may indirectly inhibit marine mammal foraging activities within the project area. Project impacts to marine mammal prey species are expected to be minor and limited to short-term changes that may result in potential prey avoidance of the project area during construction. Marine mammals and prey species impacted by impact pile driving activities are expected to return to normal behavior shortly after the conclusion of pile driving operations, and return to areas of available habitat immediate proximity to the area around the impact pile driving activities; therefore, impacts to habitat are considered negligible and not discussed further.

The area likely impacted by impact pile driving (0.2 acres) for this project (441.5 acres) is relatively small compared to the total available habitat in the waters off Louisiana in the northern GOM. The proposed project area is highly influenced by anthropogenic activities, and provides limited foraging habitat for marine mammals. Furthermore, pile driving at the proposed project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by prey of the disturbed area would still leave significantly large areas of potential foraging habitat in the nearby vicinity.

In-Water Construction Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, other marine mammals). Marine mammal prey varies by species, season, and location. 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 and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds (*e.g.,* impulsive) can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Many studies have demonstrated that impulsive sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Popper *et al.,* 2005).

Sound pressure levels (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 hr 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).

The most likely impact to fishes from pile driving activities at the project area would be temporary behavioral avoidance of the area. In general, impacts to marine mammal prey species are expected to be minor and temporary. Further, it is anticipated that preparation activities for pile driving and upon initial startup of equipment would cause fish to move away from the affected area where injuries may occur. Therefore, relatively small portions of the proposed project area would be affected for short periods of time and the potential for effects on fish to occur would be temporary and limited to the duration of sound-generating activities (*i.e.,* impact pile driving).

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas for fish and marine mammal foraging in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. 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 the acoustic source (*i.e.,* impact pile driving). Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* single big bubble curtain, visual monitoring, ramp-up, power down, shutdown) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group

size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 microPascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

NFE's proposed activity includes the use of an impulsive (*i.e.,* impact pile driving) source and, therefore, the RMS SPL thresholds of 160 dB re 1 µPa is applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). NFE's proposed activity includes the use of an impulsive (*i.e.,* impact pile driving) source.

These thresholds are provided in Table 5. 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 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including empirical sound source levels, and underwater sound propagation modeling.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected by sound generated by the primary component of the project (*i.e.,* impact pile driving).

Empirical sound source modeling was developed by Tetra Tech, Inc., based on literature, engineering guidelines, and underwater source measurements and acoustic modeling assessments of similar equipment and activities. These data were then used in propagation modeling completed by NFE. The empirical model calculation methodology is described in detail (see Appendix C in the Underwater Acoustic Assessment of the application) for impact piling, and that methodology was used to determine the L_{pk} and SEL sound source levels for the impact piling activities. A summary of construction scenarios included in the acoustic modeling analysis is provided in Table 5–1 of the Underwater Acoustic Assessment of the application.

Underwater sound propagation modeling was completed by NFE using *dBSea* (Marshall Day Acoustics) for the prediction of underwater noise using bathymetry data and ''placing'' noise sources (*i.e.,* platform pile driving

location) in the modeled environment (see the Underwater Acoustic Assessment in the application). The scenarios modeled were ones where potential underwater noise impacts of impact pile driving on marine species were assessed, and noise mitigation methods were also included. To examine results in more detail, levels may be plotted in cross sections, or a detailed spectrum may be extracted at any point in the calculation area. Levels were calculated in third octave bands from 12.5 hertz (Hz) to 20 kilohertz (kHz). The accuracy of underwater sound propagation modeling results is largely dependent on the sound source characteristics and the accuracy of data inputs and assumptions used to describe the medium between the path and receiver. The representative acoustic modeling scenarios were derived from descriptions of the expected construction activities and operational conditions through consultations between the project design and engineering teams from NFE.

The impact pile driving scenarios were modeled using a vertical array of point sources spaced at 1 m intervals, distributing the sound emissions from pile driving throughout the water column. The vertical array was assigned third-octave band sound characteristics adjusted for site-specific parameters, including expected hammer energy and number of blows. Third octave band center frequencies from 12.5 Hz up to 20 kHz were used in the modeling. The scenarios modeled were impact pile driving for a fixed-jacket design associated with the three fixed-jacket platforms (P4, P5, P6; Table 6). To be conservative, it was assumed the maximum rated hammer energy of 1,380 kJ would be employed for all of the impact piling scenarios.

The underwater acoustic modeling analysis used a split solver, with dBSeaPE (Parabolic Equation Method) evaluating the low frequency (12.5–800 Hz) range and dBSeaRay (Ray Tracing Method) addressing the high frequency (1–20 kHz) range. The dBSeaPE solver uses the range-dependent acoustic model parabolic equation method, a versatile and robust method of marching the sound field out in range from the sound source. This method is widely used in the underwater acoustics community. The dBSeaRay solver forms a solution by tracing rays from the source to the receiver. Many rays leave the source covering a range of angles, and the sound level at each point in the receiving field is calculated by coherently summing the components from each ray. This is currently the only computationally efficient method at high frequencies.

TABLE 6—UNDERWATER ACOUSTIC MODELING SCENARIOS—PILE INSTALLATION

Platform	Activity description	Duration of pile installation (minutes)	Total hammer blows (based on total piles per day)	Location (UTM coordinates) for modeling locations	Sound source level (peak sound pressure)	Sound source level (cumulative sound exposure over 24-hour period)	Sound source level (root mean square sound pressure)
P4	4 piles per day (12 piles total).	190	5,684	223,049 m, 3,219,466 m.	236	210	220
P5	8 pile segments per day (8 piles total).	238	7,144	222,890 m, 3,219,450 m.	236	210	220
P6	6 pile segments per day (6 piles total).	122	5,358	223,176 m, 3,219,585 m.	236	210	220

Note: All piles are 108 in (2.743 m) diameter piles. Maximum hammer energy is 1,380 kJ.

To calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, a maximum received level-over-depth approach was used by NFE. This approach uses the maximum received level that occurs within the water column at each sampling point. Both the maximum range at which the sound level was calculated in the model (R_{max}) and the maximum range at which a sound level was calculated excluding five percent of the R_{max} ($R_{95\%}$) were calculated for each of the regulatory thresholds. The $R_{95\%}$ excludes major outliers or protruding areas associated with the underwater acoustic modeling environment. Regardless of shape of the calculated isopleths, the predicted range encompasses at least 95 percent of the area that would be exposed to sound at or above the specified level. All distances to injury thresholds are presented in terms of the $R_{95\%}$ range. The calculated values for all three platforms were comparable (Tables 7, 8, 9), which is expected given the similar water depths, benthic conditions, bathymetry, and sound speed profile influences resulting from the sites' close proximity to one another.

For purposes of calculating and requesting take, NFE used the 6 dB attenuated isopleths associated with the use of a single big bubble curtain with a minimum airflow rate of 0.3 m^3/min*m (see Proposed Mitigation). A single bubble curtain with an airflow rate of 0.3 m^3/min*m can achieve 8–14 dB reduction when deployed on the seafloor at a depth of 30 m (98 ft; Koschinski and Ludemann, 2020). Available single big bubble curtains, operating with an airflow rate of 0.5 m^3/min*m, are documented to achieve a minimum of 10 dB reduction in sound propagation (Bellmann *et al.,* 2020). To be conservative in determination of take estimations, a 6 dB mitigation level was chosen.

TABLE 7—MARINE MAMMAL INJURY AND BEHAVIORAL ONSET CRITERIA THRESHOLD DISTANCES (METERS) FOR PILE DRIVING AT P4 LOCATION

Hearing group	Metric	Threshold (dB)	Distance (m) without attenuation	Distance (m) with 6 dB attenuation
LF cetaceans	Cumulative sound exposure over 24-hour period $L_{E,24hr}$	183	3,929	2,010
LF cetaceans	Peak sound pressure $L_{p,pk}$	219	39	23
MF cetaceans	Cumulative sound exposure over 24-hour period $L_{E,24hr}$	185	116	46

TABLE 7—MARINE MAMMAL INJURY AND BEHAVIORAL ONSET CRITERIA THRESHOLD DISTANCES (METERS) FOR PILE DRIVING AT P4 LOCATION—Continued

Hearing group	Metric	Threshold (dB)	Distance (m) without attenuation	Distance (m) with 6 dB attenuation
MF cetaceans	Peak sound pressure $L_{p,pk}$	230	11	NA*
Marine mammal behavior	Root mean square sound pressure L_p	160	3,208	1,560

*The threshold level is greater than the source level, therefore, distances are not generated.

TABLE 8—MARINE MAMMAL INJURY AND BEHAVIORAL ONSET CRITERIA THRESHOLD DISTANCES (METERS) FOR PILE DRIVING AT P5 LOCATION

Hearing group	Metric	Threshold (dB)	Distance (m) without attenuation	Distance (m) with 6 dB attenuation
LF cetaceans	Cumulative sound exposure over 24-hour period $L_{E,24hr}$	183	4,558	2,249
LF cetaceans	Peak sound pressure $L_{p,pk}$	219	39	24
MF cetaceans	Cumulative sound exposure over 24-hour period $L_{E,24hr}$	185	132	70
MF cetaceans	Peak sound pressure $L_{p,pk}$	230	12	NA*
Marine mammal behavior	Root mean square sound pressure L_p	160	3,037	1,582

*The threshold level is greater than the source level, therefore, distances are not generated.

TABLE 9—MARINE MAMMAL INJURY AND BEHAVIORAL ONSET CRITERIA THRESHOLD DISTANCES (METERS) FOR PILE DRIVING AT P6 LOCATION

Hearing group	Metric	Threshold (dB)	Distance (m) without attenuation	Distance (m) with 6 dB attenuation
LF cetaceans	Cumulative sound exposure over 24-hour period $L_{E,24hr}$	183	3,908	1,887
LF cetaceans	Peak sound pressure $L_{p,pk}$	219	39	24
MF cetaceans	Cumulative sound exposure over 24-hour period $L_{E,24hr}$	185	111	45
MF cetaceans	Peak sound pressure $L_{p,pk}$	230	11	NA*
Marine mammal behavior	Root mean square sound pressure L_p	160	3,141	1,603

*The threshold level is greater than the source level, therefore, distances are not generated.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

As discussed previously, given the project location in relatively shallow shelf waters in the western GOM and brief project duration, take is expected for only the bottlenose dolphin. However, NFE provided quantitative analysis for additional species that rarely occur in shelf waters and/or ESA-listed species (Rice's whales and sperm whales). These analyses, shown in Table 10, confirmed that no take is reasonably expected to occur for species other than bottlenose dolphin.

Marine mammal density estimates are based on the most recent marine mammal species distribution data for the GOM (Litz *et al.,* 2022). While there are multiple sources of information in this region (*e.g.,* Roberts *et al.,* 2016; Hayes *et al.,* 2022; Maze-Foley and Mullin, 2006)), the most recent information (Litz *et al.,* 2022) was used in take estimation calculations.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Potential take calculations were based on annual species density within the project area, given the dates during which impact pile driving would occur (May–August). Bottlenose dolphins are the only marine mammal species with calculated take, and is the only marine mammal species for which authorization of take is proposed. No take by Level A harassment is anticipated during impact pile driving.

TABLE 10—AVERAGE MARINE MAMMAL DENSITIES USED IN EXPOSURE ESTIMATES AND ESTIMATES OF CALCULATED TAKES BY LEVEL A AND LEVEL B HARASSMENT DUE TO IMPACT PILE DRIVING

Species	Stock	Average seasonal density (per 100 km^2)	Take by Level A harassment at P4	Take by Level B harassment at P4	Take by Level A harassment at P5	Take by Level B harassment at P5	Take by Level A harassment at P6	Take by Level B harassment at P6
Atlantic spotted dolphin	GOM	0.247	0	0	0	0	0	0
Bottlenose dolphin	GOM	149.159	0	15	0	15	0	16
Pantropical spotted dolphin	GOM	0.000	0	0	0	0	0	0
Rice's whale	GOM	0	0	0	0	0	0	0
Risso's dolphin	GOM	0	0	0	0	0	0	0
Sperm whale	GOM	0	0	0	0	0	0	0

Note: Cetacean density values from the NOAA Southeast Fisheries Science Center (Litz *et al.,* 2022). Bottlenose dolphin density values not identified to stock.

Bottlenose dolphin density information is not differentiated by individual stock (Litz *et al.,* 2022). Given the difficulty of bottlenose dolphin identification in the field, it has been assumed that the total calculated take of bottlenose dolphins could accrue to either the western coastal stock or the continental shelf stock. Take calculations presented in Table 10 indicate that bottlenose dolphins may be present during construction activities, but do not account for average group sizes. Average pod size is assumed to be 20 individuals (Maze-Foley and Mullin, 2006). Due to the likelihood that bottlenose dolphins may be present during construction activities, one pod of bottlenose dolphins was assumed to potentially be present per each day of impact pile driving; therefore, the total number of days (9) was multiplied by the average group size (20) to produce the proposed take number for authorization (Table 11).

TABLE 11—AVERAGE MARINE MAMMAL DENSITIES USED IN EXPOSURE ESTIMATES AND ESTIMATES OF REQUESTED TAKES BY LEVEL B HARASSMENT DUE TO IMPACT PILE DRIVING

Species	Stock	Take by Level B harassment at P4	Take by Level B harassment at P5	Take by Level B harassment at P6	Total Level B take [3]	Percent population
Bottlenose dolphin [2 3]	Western Coastal	60	60	60	180	0.3
Bottlenose dolphin [2 3]	Continental Shelf.					

Note: Given the difficulty of visual identification in the field for bottlenose dolphins, it has been assumed the calculated take could be accrued to either the GOM Western Coastal stock or the northern GOM Continental Shelf stock.

[1] Cetacean density values from Litz *et al.* (2022).

[2] Bottlenose dolphin density value from Litz *et al.* (2022) reported for the entire GOM are presented. Estimated take is listed as the total over 3 days of activity at each platform (9 days total).

[3] Bottlenose dolphin estimated take was adjusted to account for one group size of 20 individuals per day for 9 days of construction (Maze-Foley and Mullin, 2006).

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Single Big Bubble Curtain

NFE would employ a single big bubble curtain with a minimum airflow rate of 0.3 m^3/min*m. In a big bubble curtain system, the entire construction site (installation vessel and foundation structure) is enveloped by a nozzle hose deployed in a complete circle at a specified distance from the site of pile driving on the sea floor. The hose is perforated through which air is forced creating an air bubble curtain that encloses the construction site (Bellmann *et al.,* 2020).

Pile Driving Weather and Time Restrictions

Pile driving would commence only during daylight hours no earlier than one hour after (civil) sunrise. Pile driving would not be initiated later than 1.5 hr before (civil) sunset. Pile driving may continue after dark when the installation of the same pile began during daylight hours (1.5 hr before (civil) sunset) and must proceed for human safety or installation feasibility reasons. Pile driving will not be initiated in times of low visibility when the shutdown zone for MF cetaceans (500 m) cannot be visually monitored, as determined by the lead PSO on duty.

Protected Species Observers (PSOs)

The placement of four PSOs during all pile driving activities (described in the Proposed Monitoring and Reporting section) would ensure the shutdown zone is visible in good conditions. Visual monitoring of the established zone would be performed by qualified and NMFS–approved third-party PSOs.

Harassment and Shutdown Zones

The harassment and shutdown zones would be established and continuously monitored by PSOs during impact pile driving to minimize impacts to marine mammals. NMFS proposes to require the 500-m shutdown zone. This zone is expanded from the largest estimated Level A harassment zone (70 m) under the 6 dB reduction scenario in order to provide a conservative monitoring area for purposes of potential shutdown of activity (see below).

Ramp-Up Procedures

NFE would implement a ''ramp-up'' technique when impact pile driving with the maximum hammer energy limited to 60 percent. The ramp up technique requires an initial 30 min using a reduced hammer energy and involves initially driving a pile using a low hammer energy and, as the pile is driven further into the soil, the hammer energy is increased as necessary to achieve desired soil penetration. A ramp up would occur at the beginning of the impact pile driving of each pile and at any time following the cessation of impact pile driving of 30 min or longer.

Shutdown and Power-Down Procedures

The shutdown zone around the pile driving activities would be maintained by four PSOs, as previously described, for the presence of marine mammals before, during, and after pile driving activity. For pile driving, from an engineering standpoint, any significant stoppage of driving progress may allow time for displaced sediments along the pile surface areas to consolidate and bind. Attempts to restart the driving of a stopped pile may be unsuccessful and create a situation where a pile is permanently bound in a partially driven position. If a marine mammal is observed entering or within the shutdown zone after pile driving has commenced, a shutdown of pile driving would occur when practicable as determined by the lead engineer on duty, who must evaluate the following:

- Use of site-specific soil data and real-time hammer log information to judge whether a stoppage would risk causing pile refusal at restart of pile; and,
- Confirmation that pile penetration is deep enough to secure pile stability in the interim situation, taking into account weather statistics for the relevant season and the current weather forecast.

Determination by the lead engineer on duty would be made for each pile as the installation progresses and not for the site as a whole. If a shutdown is called for but the lead engineer determines shutdown is not practicable due to an 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 (power-down) would be implemented when the lead engineer determines it is practicable.

Subsequent restart/increased power of the equipment can be initiated if the animal has been observed exiting the shutdown zone within 30 min of the shutdown, or, after an additional time period has elapsed with no further sighting of the animal that triggered the shutdown (*i.e.,* 15 min for small odontocetes, 30 min for all other species). If pile driving shuts down for reasons other than mitigation (*e.g.,* mechanical difficulty) for brief periods (*i.e.,* less than 30 min), it may be activated again without a ramp up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the shutdown zone.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring and reporting requirements are provided herein. Visual monitoring of the harassment zones, to the extent practicable, and established shutdown zone would be performed by a minimum of four qualified and NMFS–approved third-party PSOs. A visual observer team comprising NMFS–approved PSOs, operating in shifts, would be stationed aboard both the respective project vessel and a dedicated PSO vessel. PSO qualifications would include a science degree and direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/GOM. All PSOs would work in shifts such that no one monitor would work more than 4 consecutive hr without a consecutive 2-hr break or longer than 12 hr during any 24-hr period.

PSOs would be responsible for visually monitoring and identifying marine mammals approaching or entering the established harassment and shutdown zones during survey activities. It would be the responsibility of a designated lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. Observations from other PSOs would be communicated to the lead PSO on duty, who would then be responsible for implementing the necessary mitigation procedures.

PSOs would be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to their established zones using range finders. Reticulated binoculars would also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine species.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates and locations of survey operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age classification (if known), numbers, behavior), and details of any observed ''taking'' (behavioral disturbances or injury/mortality). The data sheet would be provided to NMFS for review and approval prior to the start of survey activities. In addition, prior to initiation of project activities, all crew members would undergo environmental training, a component of which would focus on the procedures for sighting and protection of marine

mammals. A briefing would also be conducted between the survey supervisors and crews, the PSOs, and NFE. The purpose of the briefing would be to establish responsibilities of each party, define the chains of command, discuss communication procedures, provide an overview of monitoring purposes, and review operational procedures.

During impact pile driving, visual monitoring would occur as follows using a minimum of four PSOs assigned to two different locations:

- A minimum of two PSOs must be on active duty at the pile driving vessel/platform from 60 min before, during, and for 30 min after all pile installation activity; and,
- A minimum of two PSOs must be on active duty on a dedicated PSO vessel from 60 min before, during, and for 30 min after all pile installation activity. The dedicated PSO vessel must be located at the best vantage point in order to observe and document marine mammal sightings in proximity to the shutdown zone.

Reporting

NFE will provide the following reporting as necessary during active pile driving activities:

- The applicant will report any observed injury or mortality as soon as feasible and in accordance with NMFS' standard reporting guidelines. Reports will be made by phone (305–361–4586) and by email (*blair.mase@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) and will include the following:
  - Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
  - Species identification (if known) or description of the animal(s) involved;
  - Condition of the animal(s) (including carcass condition if the animal is dead);
  - Observed behaviors of the animal(s), if alive;
  - If available, photographs or video footage of the animal(s); and,
  - General circumstances under which the animal was discovered.
- An annual report summarizing the prior year's activities will be provided that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of listed marine mammals that may have been incidentally taken during project pile driving, and provides an interpretation of the results and effectiveness of all monitoring tasks. The annual draft report will be provided no later than 90 days following completion of construction activities. Any recommendations made by NMFS will be addressed in the final report, due after the IHA expires and including a summary of all monitoring activities, prior to acceptance by NMFS. Final reports will follow a standardized format for PSO reporting from activities requiring marine mammal mitigation and monitoring.
- All PSOs will use a standardized data entry format (see Appendix B PSO Standardized Data Entry of application).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Level A harassment is extremely unlikely given the required mitigation measures designed to minimize the possibility of injury to marine mammals. No mortality is anticipated given the nature of the activity.

Pile installation activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment only, from underwater sounds generated from impact pile installation activities. Potential takes could occur if individuals move into the ensonified zones when these activities are underway. The takes from Level B harassment would be due to potential behavioral disturbance. The potential for harassment is minimized through the implementation of planned mitigation strategies.

Take would occur within a limited, confined area of each stock's range. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance (less than one percent for each stock).

No marine mammal stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The employment of a single big bubble curtain for sound attenuation, large shutdown zone, and proposed monitoring make injury takes of marine mammals unlikely. The shutdown zone would be thoroughly monitored before the proposed pile installation begins and activities would be postponed or hammer energy would be reduced (power down) if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals would be detected by trained observers under environmental conditions described for the proposed project. NFE's plan to limit construction activities to daylight hours would also increase detectability of marine mammals in the area. Therefore, the proposed mitigation and monitoring measures are expected to eliminate the potential for Level A harassment as well as reduce the amount and intensity for Level B behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance) as construction activities would occur over the course of 9 days. Individual animals, even if taken multiple times, would likely move away from the sound source and be temporarily displaced from the area due to elevated noise level during pile removal. Marine mammals could also experience TTS if they move into the Level B harassment zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours; thus, it is not considered an injury. While TTS could occur, it is not considered a likely outcome of this

activity. In all, there would be no adverse impacts to the stocks as a whole.

The proposed project is not expected to have significant adverse effects on marine mammal habitat. There are no Biologically Important Areas or ESA-designated critical habitat within the project area. The activities may cause fish to leave the area temporarily, which could impact marine mammals' foraging opportunities in a limited portion of the foraging range. However, due to the short duration of activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term behavioral effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival, and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect either of the stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The specified activity and associated ensonified areas are small relative to the overall habitat ranges of the stocks;
- The applicant is required to implement mitigation measures to minimize impacts, such as a single big bubble curtain, ramp-up procedures, and implementation of shutdown zone, when practicable;
- Biologically important areas or critical habitat have not been identified within the project area; and,
- The lack of anticipated significant or long-term effects to marine mammal habitat.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity would have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take by Level B harassment only of one marine mammal species with two managed stocks. The total amount of takes proposed for authorization relative to the best available population abundance is below one third of the estimated stock abundances and less than one percent for both stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to NFE for conducting impact pile driving to support construction of liquefied natural gas platforms in waters off Grand Isle, Louisiana, from May 1, 2023, through April 30, 2024, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or

include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 20, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–06006 Filed 3–22–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Change

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Change to the Procurement List.

SUMMARY: This action changes service additions to the Procurement List that are furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* April 21, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

If the Committee approves the change to the Procurement List, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on any small entities. The major factors considered for this certification were:

1. The action did not result in any additional reporting, recordkeeping, or other compliance requirements for small entities other than the nonprofit agencies furnishing the services to the Government.

2. The action did result in authorizing nonprofit agencies to furnish the products to the Government.

3. There were no known regulatory alternatives which would have accomplished the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products added to the Procurement List.

End of Certification

The following is the intended change to the service currently on the Procurement List:

Service(s)

Service Type: Facilities Maintenance Services

Mandatory for: U.S. Army, Department of Public Works, Fort Knox, KY

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), is announcing that Skookum Contract Services and Professional Contract Services, Inc. were recommended to the Committee to serve as mandatory sources for the Total Facilities Maintenance (TFM) Pilot Project at Ft. Knox, KY. The short-term goal of this Pilot is to allocate the TFM requirement, utilizing enhanced competitive procedures. The long-term goal is to incorporate lessons learned from the Pilot into the Committee's regulatory and policy framework to promote greater Program transparency, spur innovation, and enhance employment opportunities for blind and other significantly disabled individuals.

The TFM requirement consists of approximately 109,054 acres and 2,326 buildings and covers several functional areas, such as building and structure maintenance, snow and ice removal, landscaping services, utility system maintenance, and others. The current requirement also includes custodial services, which is excluded from the Pilot and will become a separate, stand-alone addition for the currently performing NPA. SourceAmerica is the incumbent TFM contractor, but the follow-on requirement will transition from SourceAmerica to one of the recommended NPAs, using a two-phase evaluation process.

Phase I began mid-January 2023 with SourceAmerica's issuance of an Opportunity Notice, which established the criteria to participate in the competition. After responses were received, SourceAmerica assessed and recommend two NPAs to the Committee for further considerations. If the Committee determines this requirement is suitable for transfer in accordance with 41 CFR 51–2.4, the Committee will authorize one or both NPAs for addition to the Procurement List as mandatory sources, and conclude Phase I. After which, the Committee will publish a final notice formally identifying the NPA(s) authorized to compete in Phase II.

The Phase II evaluation will assess the NPAs on technical capability, past performance, and price. The SourceAmerica Phase II Evaluation Team will assess the NPAs against the stated evaluation factors. The U.S. Army's Installation Management Command and the Army's Mission and Installation Contracting Command will provide technical support to SourceAmerica throughout the Phase II evaluation process. SourceAmerica will select the NPA that can provide the best overall solution to the Army at the conclusion of Phase II.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–05937 Filed 3–22–23; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a General Reevaluation Report/Supplemental Environmental Impact Statement for the Ala Wai Canal Flood Risk Management Study, Honolulu, HI

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent; extension of public comment period.

SUMMARY: The U.S. Army Corps of Engineers, Pittsburgh District, is extending the public comment period for the Notice of Intent (NOI) to Prepare a General Reevaluation Report/Supplemental Environmental Impact Statement for the Ala Wai Canal Flood Risk Management Study, Honolulu, HI. The NOI was published in the **Federal Register** on Wednesday, February 22, 2023. The public comment period for the NOI was originally scheduled to end on Friday, March 24, 2023. The U.S. Army Corps of Engineers is extending the public comment period by 45 days and will consider comments received through Monday, May 8, 2023.

DATES: The deadline for receipt of comments on the NOI published in the **Federal Register** on February 22, 2023 (88 FR 10880) is extended to May 8, 2023.

ADDRESSES: You may submit comments related to development of the General Reevaluation Report/Supplemental Environmental Impact Statement by any of the following methods:

• *Website: https://www.honolulu.gov/alawai/contact.html.*

- *Email: alawai@honolulu.gov.*
- *Mail:* U.S. Army Corps of Engineers, Honolulu District, 230 Otake St. (Attn: POH–PPC, Ala Wai), Fort Shafter, HI 96858–5440.

FOR FURTHER INFORMATION CONTACT: For further information about this project, please visit *https://www.honolulu.gov/alawai.* You may also contact Shawna Herleth-King at 312–846–5407 or by email at: *shawna.s.herleth-king@usace.army.mil.*

Kimberly A. Peeples,

Brigadier General, U.S. Army, Commander, Great Lakes and Ohio River Division.

[FR Doc. 2023–05981 Filed 3–22–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Certificate of Alternate Compliance for USS NANTUCKET (LCS 27)

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of issuance of Certificate of Alternate Compliance.

SUMMARY: The U.S. Navy hereby announces that a Certificate of Alternate Compliance has been issued for USS NANTUCKET (LCS 27). Due to the special construction and purpose of this vessel, the Admiralty Counsel of the Navy has determined it is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the navigation lights provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special function as a naval ship. The intended effect of this notice is to warn mariners in waters where 72 COLREGS apply.

DATES: This Certificate of Alternate Compliance is effective March 23, 2023 and is applicable beginning March 15, 2023.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Joel White, JAGC, U.S. Navy, Admiralty Attorney, Office of the Judge Advocate General, Admiralty and Claims Division (Code 15A), 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, 619–553–0356, or *admiralty@navy.mil.*

SUPPLEMENTARY INFORMATION: Background and Purpose. Executive Order (E.O.) 11964 of January 19, 1977 and 33 U.S.C. 1605 provide that the requirements of 72 COLREGS as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, shall not apply to a vessel or class of vessels of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel(s) to comply fully with the provisions without interfering with the special function of the vessel(s). Notice of issuance of a Certificate of Alternate Compliance must be made in the **Federal Register**.

In accordance with 33 U.S.C. 1605, the Admiralty Counsel of the Navy, under authority delegated by the Secretary of the Navy, hereby finds and certifies that USS NANTUCKET (LCS 27) is a vessel of special construction or purpose, and that, with respect to the position of the following navigational lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the special function of the vessel:

Annex I, paragraph 2(a)(i), pertaining to the vertical position of the forward masthead light; Annex I, paragraph 3(a), pertaining to the horizontal position of the forward masthead light; and Annex I, paragraph 3(a), pertaining to the horizontal separation between the forward and aft masthead lights.

The Admiralty Counsel of the Navy further finds and certifies that these navigational lights are in closest possible compliance with the applicable provision of the 72 COLREGS.

Authority: 33 U.S.C. 1605(c), E.O. 11964.

Dated: March 20, 2023.

A.R. Holt,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2023–05999 Filed 3–22–23; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: U.S. Department of Education, President's Board of Advisors on Historically Black Colleges and Universities, Office of Secretary, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda for the April 5, 2023, hybrid meeting of the President's Board of Advisors on Historically Black Colleges and Universities (Board) and provides information to members of the public about how to attend the meeting, request to make oral comments at the meeting, and submit written comments pertaining to the work of the Board.

DATES: The Board meeting will be held on April 5, 2023 from 10 a.m. to 4 p.m. E.D.T. on the campus of Norfolk State University, 700 Park Avenue, Norfolk, Virginia 23504 in the Norfolk State University Student Center, Dorothy B. Brothers Auditorium, Room 149. The public may also join the meeting virtually at *https://ems8.intellor.com/login/847260,* join the Zoom event and follow the prompts to connect audio by computer or utilize the ''call me'' feature for audio by telephone.

FOR FURTHER INFORMATION CONTACT: Sedika Franklin, Associate Director/Designated Federal Official, U.S. Department of Education, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW, Washington, DC 20204; telephone: (202) 453–5634 or (202) 453–5630, or email *sedika.franklin@ed.gov.*

SUPPLEMENTARY INFORMATION:

The Board's Statutory Authority and Function: The Board is established by 20 U.S.C. 1063e (the HBCUs Partners Act) and Executive Order 14041 (September 3, 2021) and is continued by Executive Order 14048 (September 30, 2021). The Board is also governed by the provisions of 5 U.S.C. Chapter 10 (Federal Advisory Committees), which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President, through the White House Initiative on Historically Black Colleges and Universities (Initiative), on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President in the following areas: (i) improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the Nation in achieving its educational goals and in advancing the interests of all Americans; (iv) elevating the public awareness of, and fostering appreciation of, HBCUs; (v) encouraging public-private investments in HBCUs; and improving government-wide strategic planning related to HBCU competitiveness to align Federal

resources and provide the context for decisions about HBCU partnerships, investments, performance goals, priorities, human capital development, and budget planning.

Meeting Agenda: The meeting agenda will include roll call; approval of the January 27, 2023 meeting minutes; an update from the Board Chairperson; a virtual update from the Under Secretary of the U.S. Department of Education; a work session for each of the Board's subcommittees (Preservation and Growth, Infrastructure, and Career Pathways and Financial Support and Research); a briefing from Braven's Founder and CEO; a briefing from the Student Freedom Initiative's Executive Director; and a discussion regarding the Board's first report to the President. The public comment period will begin immediately following the conclusion of such discussions.

Access to the Meeting: Registration is required to attend the meeting and may be submitted via email, in-person or via the virtual platform sign in page. To submit a registration in advance, please submit an email to the *whirsvps@ed.gov* mailbox by 11 a.m. on April 3, 2023. Please include in the subject line of the email ''Meeting Registration.'' The email must include the name(s), title, organization/affiliation (if applicable), mailing address, email address, and telephone number of the person(s) who will be attending the meeting. Upon arrival, pre-registered attendees will be asked to sign in at the meeting room registration table. Members of the public may also register in-person on the day of the meeting by signing in at the meeting room registration table. Those attending remotely will sign in prior to gaining access to the virtual meeting room.

Submission of requests to make an oral comment: Members of the public may email *whirsvps@ed.gov* to request to provide an oral comment pertaining to the work of the Board on April 5, 2023 during the public comment period of the meeting. There will be an allotted total time of 10 minutes for public comment.

Method: To request to provide an oral comment during the meeting, please submit an email to the *whirsvps@ed.gov* mailbox by April 3,2023. Please do not send materials directly to Board members. Include in the subject line of the email request ''Oral Comment Request.'' The email must include the name(s), title, organization/affiliation, email address, and telephone number of the person(s) requesting to speak, and a brief summary (not to exceed one page) of the principal points to be made. All individuals submitting an advance request in accordance with this notice will be added to the public comment request list for oral comment in the order in which they were received. Individuals will be called upon and each commenter will have an opportunity to speak for up to two minutes during the allotted public comment period. All oral comments made will become part of the official record of the meeting.

Submission of written public comments: Written comments pertaining to the work of the Board may be submitted electronically by 11 a.m. on April 3, 2023, send written comments via email to *whirsvps@ed.gov* and include in the subject line ''Written Comments: Public Comment.'' The email must include the name(s), title, organization/affiliation, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to the email or provided in the body of the email message. Please do not send material directly to the members of the Board. Written comments provided by the submission date will be distributed to the Members of the Board during the public comment period and will become part of the official record of the meeting.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Board's website, *https://sites.ed.gov/whhbcu/policy/presidents-board-of-advisors-pba-on-hbcus,* no later than 90 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may also inspect the meeting materials and other Board records at 400 Maryland Avenue SW, Washington, DC, by emailing *oswhi-hbcu@ed.gov* or by calling (202) 453–5634 to schedule an appointment.

Reasonable Accommodations: The meeting sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: HBCUs Partners Act, Presidential Executive Order 14041, continued by Executive Order 14048.

Donna M. Harris-Aikens,

Deputy Chief of Staff for Strategy, Office of the Secretary.

[FR Doc. 2023–06003 Filed 3–21–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Strengthening Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for the Strengthening Institutions Program (SIP), Assistance Listing Number 84.031A. This notice relates to the approved information collection under OMB control number 1840–0114.

DATES:

Applications Available: March 23, 2023.

Deadline for Transmittal of Applications: May 22, 2023.

Deadline for Intergovernmental Review: July 21, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/d/2022-26554.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Nalini Lamba-Nieves, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B116, Washington, DC

20202–4260. Telephone: (202) 453–7953. Email: *Nalini.Lamba-Nieves@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SIP Program provides grants to eligible institutions of higher education (IHEs) to help them become self-sufficient and expand their capacity to serve low-income students by providing funds to improve and strengthen the institution's academic quality, institutional management, and fiscal stability.

Priorities: This notice contains one competitive preference priority and one invitational priority. The competitive preference priority is from the Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Competitive Preference Priority: For FY 2023, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 6 points to an application, depending on how well the application meets the priority.

This priority is:

Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success (up to 6 points).

Background: Academic disparities for low-income and minority students have been such a longstanding, serious problem that in the 2008 Higher Education Opportunity Act, Congress requested the Department document these gaps in postsecondary education.[1] Additional significant inequalities in financial, social, and other services for these minority and low-income populations were laid bare during the COVID–19 pandemic. These students, the institutions that serve them, and their communities are still recovering from pandemic disruptions. Data collection and analysis is important to this recovery process, to identify which service areas need strengthening, what services are now necessary and no longer optional, and where funds should be invested for maximum impact.[2] To increase access to and success in higher education by low-income and minority students, and to hasten recovery efforts, the FY 2023 SIP priorities allow applicants to address this goal in any or all of three ways: by improving data gathering; implementing proven, evidence-based strategies and programs; and providing students with a variety of high-quality learning opportunities. The FY 2023 SIP priorities also offer continuity, as recent SIP competitions have included similar priorities.

Priority: Projects that are designed to increase postsecondary access, affordability, completion, and post-enrollment success for underserved students by addressing one or more of the following priority areas:

(a) Establishing a system of high-quality data collection and analysis, such as data on persistence, retention, completion, and post-college outcomes, for transparency, accountability, and institutional improvement. (up to 2 points)

(b) Supporting the development and implementation of student success programs that integrate multiple comprehensive and evidence-based services or initiatives, such as academic advising, structured/guided pathways, career services, credit-bearing academic undergraduate courses focused on career, and access to technological devices. (up to 2 points)

(c) Supporting the development and implementation of high-quality and accessible learning opportunities, including learning opportunities that are accelerated or hybrid online; credit-bearing; work-based; and flexible for working students. (up to 2 points)

Invitational Priority: For FY 2023, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that propose to implement activities that promote postsecondary completion for students who are no longer enrolled because of challenges they faced during the COVID–19 pandemic or who stopped attending for other reasons. Institutions may opt to supplement or expand evidence-based and data-driven activities to support retention and completion.

Definitions: The following definitions apply to the priorities for this competition. The definition of ''underserved students'' is from the Supplemental Priorities, and the remainder of the definitions are from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application User Guide, available at The ELM Application (*ed.gov*). Other sources include: Logic models: A tool for effective program planning, collaboration, and monitoring (*ed.gov*), Logic models: A tool for designing and monitoring program evaluations (*ed.gov*), and Logic models for program design, implementation, and evaluation: Workshop toolkit (*ed.gov*).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Underserved student means a student in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

[1] In response to the congressional request, in August 2012, the National Center for Education Statistics published a statistical report, *Higher Education: Gaps in Access and Persistence Study. https://nces.ed.gov/pubs2012/2012046.pdf.*

[2] See Karen Bussey, Kim Dancy, Mamie Voight, *Better Data, Better Outcomes: Promoting Evidence, Equity, and Student Success through the Framework for State Postsecondary Data Solutions.* IHEP, November 2019. Page 6. *https://eric.ed.gov/?id=ED600578.*

(f) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(g) A pregnant, parenting, or caregiving student.

(h) A student who is the first in their family to attend postsecondary education.

(i) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(j) A student who is working full-time while enrolled in postsecondary education.

(k) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(l) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

Program Authority: 20 U.S.C. 1057–1059g.

Note: In 2008, the Higher Education Act (HEA) was amended by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110–315. Please note that the SIP regulations in 34 CFR part 607 have not been updated to reflect these statutory changes. The statute supersedes all other applicable regulations.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 607. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2023.

Note: A cooperative arrangement is an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this competition and another eligible or ineligible IHE, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Estimated Available Funds: $36,886,151.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Individual Development Grants:

Estimated Range of Awards: $400,000–$450,000 per year.

Estimated Average Size of Awards: $425,000 per year.

Maximum Award: We will not make an award exceeding $450,000 for a single 12-month budget period.

Estimated Number of Awards: 70.

Cooperative Arrangement Development Grants:

Estimated Range of Awards: $500,000–$550,000 per year.

Estimated Average Size of Awards: $525,000 per year.

Maximum Award: We will not make an award exceeding $550,000 for a single 12-month budget period.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by title III, part A, of the HEA. To qualify as an eligible institution under any title III, part A program, an institution must—

(a) Be accredited or pre-accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Be legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(c) Be designated as an ''eligible institution'' by demonstrating that it: (1) has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice announcing the FY 2023 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on January 17, 2023 (88 FR 2611). Only institutions that the Department determines are eligible, or which are granted a waiver under the process described in the notice, may apply for a grant in this program.

An eligible IHE may only submit one Individual Development Grant application. However, an eligible IHE may submit one application for an Individual Development Grant and a Cooperative Arrangement Development Grant. Both may be awarded in the same fiscal year. A grantee with an Individual Development Grant or a Cooperative Arrangement Development Grant may be a partner in one or more Cooperative Development Arrangement Grants. The lead institution in a Cooperative Arrangement Development Grant must be an eligible institution. Partners are not required to be eligible institutions. Current program grantees who have Individual Development Grants may not apply for another Individual Development Grant in this competition.

Relationship between the Title III, Part A Programs and the Developing Hispanic-Serving Institutions (HSI) Program

A grantee under the HSI program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, part A program. 20 U.S.C. 1101d. The title III, part A programs are: SIP; the Tribally Controlled Colleges and Universities program; the Alaska Native and Native Hawaiian-Serving Institutions program; the Asian American and Native American Pacific Islander-Serving Institutions program; the Predominantly Black Institutions program; and the Native American-Serving Nontribal Institutions program. Furthermore, a current title III, Part A or title V program grantee may not give up its grant to receive a grant under SIP, as described in 34 CFR 607.2(g)(1).

An eligible IHE that is not a current grantee under the above-cited programs may apply for a FY 2023 grant under all title III, part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant, as described in 34 CFR 607.2(g)(1).

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1057(d)(1)–(2)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise

be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/d/2022-26554,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10(c). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative to no more than 50 pages for Individual Development Grants and no more than 65 pages for Cooperative Arrangement Development Grants. If you are addressing the competitive preference priority, we recommend that you limit your response to no more than an additional five pages total, three additional pages for the competitive preference priority and two additional pages for the invitational priority. Please include a separate heading when responding to one or both priorities. We also recommend that you use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria. A detailed budget is required in the Budget selection criterion response.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 607.22(a) through (g) and 34 CFR 75.210. Applicants should address each of the following selection criteria separately for each proposed activity. The selection criteria below are worth a total of 100 points; the maximum score for each criterion is noted in parentheses. An applicant that also chooses to address the competitive preference priority can earn up to 106 total points.

(a) *Quality of the Applicant's Comprehensive Development Plan.* (Maximum 20 Points) The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of the Project Design.* (Maximum 15 Points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project demonstrates a rationale (as defined in this notice).

(c) *Quality of Activity Objectives.* (Maximum 16 Points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(d) *Quality of Implementation Strategy.* (Maximum 15 Points) The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(e) *Quality of Key Personnel.* (Maximum 8 Points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(f) *Quality of Project Management Plan.* (Maximum 10 Points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(g) *Quality of Evaluation Plan.* (Maximum 10 Points) The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(h) *Budget.* (Maximum 6 Points) The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria in this notice, as well as the competitive preference priority. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review.

If a tie-breaker is necessary, under 34 CFR 607.23(b) we award additional points to applications that contain any of the following three elements. Specifically, we add 1 additional point for each of the following (up to 3 points total) to an application that:

(1) Has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at similar type institutions;

(2) Has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions; or

(3) Proposes to carry out one or more of the following activities—

(i) Faculty development;

(ii) Funds and administrative management;

(iii) Development and improvement of academic programs;

(iv) Acquisition of equipment for use in strengthening management and academic programs;

(v) Joint use of facilities; and

(vi) Student services.

For these funding considerations, we use 2020–2021 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to

disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For purposes of Department reporting under 34 CFR 75.110, the following performance measures will be used in assessing the effectiveness of SIP:

(a) The percentage change, over the 5-year period, of the number of full-time degree-seeking undergraduates enrolled at SIP institutions. Note that this is a long-term measure that will be used to periodically gauge performance.

(b) The percentage of first-time, full-time degree-seeking undergraduate students at 4-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution.

(c) The percentage of first-time, full-time degree-seeking undergraduate students at 2-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution.

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 4-year SIP institutions graduating within 6 years of enrollment.

(e) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 2-year SIP institutions graduating within 3 years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *https://www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *https://www.federalregister.gov.* Specifically, through the advanced feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–05922 Filed 3–22–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0053]

Agency Information Collection Activities; Comment Request; 2024–2025 Free Application for Federal Student Aid (FAFSA®)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of the existing information collection.

DATES: Interested persons are invited to submit comments on or before May 23, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0053. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *https://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 224–84, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger at (202) 377–4018 or the FAFSA Product Team at *fsa_fafsa_team@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised and continuing collections of information. This helps ED assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand ED's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. ED is especially interested in public comments addressing the following issues: (1) is

this collection necessary to the proper function of ED; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might ED enhance the quality, utility, and clarity of the information to be collected; and (5) how might ED minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of the Collection: 2024–2025 Free Application for Federal Student Aid.

OMB Control Number: 1845–0001.

Type of Review: A revision of a currently approved information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 34,328,439.

Total Estimated Number of Annual Burden Hours: 22,417,460.

Abstract: Section 483, of the Higher Education Act of 1965, as amended (HEA), mandates that the Secretary of Education ''. . . shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance . . .''.

The determination of need and eligibility are for the following Title IV, HEA, federal student financial assistance programs: the Federal Pell Grant Program; the Campus-Based programs (Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS)),; the William D. Ford Federal Direct Loan (Direct Loan) Program; the Teacher Education Assistance for College and Higher Education (TEACH) Grant; the Children of Fallen Heroes Scholarship; and the Iraq and Afghanistan Service Grant.

Federal Student Aid (FSA), an office of the U.S. Department of Education, subsequently developed an application process to collect and process the data necessary to determine a student's eligibility to receive Title IV, HEA program assistance. The application process involves an applicant's submission of the Free Application for Federal Student Aid (FAFSA®). After submission and processing of the FAFSA form, an applicant receives a FAFSA Submission Report, which is a summary of the processed data they submitted on the FAFSA form. The applicant reviews the FAFSA Submission Summary, and, if necessary, will make corrections or updates to their submitted FAFSA data. Institutions of higher education listed by the applicant on the FAFSA form also receive a summary of processed data submitted on the FAFSA form which is called the Institutional Student Information Record (ISIR).

ED and FSA seek OMB approval of all application components as a single ''collection of information.'' The aggregate burden will be accounted for under OMB Control Number 1845–0001. The specific application components, descriptions, and submission methods for each are listed in Table 1.

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS

Component	Description	Submission method
Initial Submission of FAFSA form:		
fafsa.gov	Any applicant with a Federal Student Aid ID (FSA ID) can complete the electronic version of the FAFSA form.	Submitted by the applicant.
Printed FAFSA form	The printed version of the FAFSA PDF for applicants who are unable to access the internet or complete the form using *fafsa.gov*.	Mailed by the applicant.
Correcting and Reviewing Submitted FAFSA information		
fafsa.gov—Corrections	Any applicant with an FSA ID—regardless of how they originally applied—may make corrections to their own data. Note that no user will be able to make corrections to any federal tax information (FTI) that was obtained from the IRS.	Submitted by the applicant.
Electronic Other—Corrections	With the applicant's permission, corrections can be made by an FAA using the Electronic Data Exchange (EDE).	The FAA may be using their mainframe computer or software to facilitate the EDE process.
Paper FAFSA Submission Summary.	The paper summary is mailed to paper applicants who did not provide an email address. Applicants can write corrections directly on the paper FAFSA Submission Summary and mail for processing. Note that users for whom federal tax information (FTI) was obtained from the IRS will not be able to make corrections to that data.	Mailed by the applicant.
FAFSA Partner Portal (FPP)—Corrections.	An institution can use FPP to correct the FAFSA form	Submitted by an FAA on behalf of an applicant.
Internal Department Corrections.	The Department will submit an applicant's record for system-generated corrections to the FAFSA Processing System. There is no burden to the applicants under this correction type as these are system-based corrections.	These corrections are system-generated.
Federal Student Aid Information Center (FSAIC) Corrections.	Any applicant, with their Data Release Number (DRN), can change the postsecondary institutions listed on their FAFSA form or change their address by calling FSAIC.	These changes are made directly in the FPS by an FSAIC representative.
FAFSA Submission Summary—electronic.	The electronic FAFSA Submission Summary is an online version of the FAFSA Submission Summary that is available on *fafsa.gov* to all applicants. Notification for the FAFSA Submission Summary is sent to students who applied electronically or by paper and provided a valid email address. These notifications are sent by email and include a secure hyperlink that takes the user to the *fafsa.gov* site.	Cannot be submitted for processing.

This information collection also documents an estimate of the annual public burden as it relates to the application process for federal student aid. The Applicant Burden Model (ABM) measures applicant burden through an assessment of the activities each applicant conducts in conjunction with other applicant characteristics and, in terms of burden, the average applicant's experience. Key determinants of the ABM include:

- The total number of applicants that will potentially apply for federal student aid;
- How the applicant chooses to complete and submit the FAFSA form (*e.g.,* by paper or electronically);
- How the applicant chooses to submit any corrections and/or updates (*e.g.,* the paper FAFSA Submission Summary or electronically);
- The type of FAFSA Submission Summary document the applicant receives (paper or electronic);
- The formula applied to determine the applicant's student aid index (SAI); and
- The average amount of time involved in preparing to complete the application.

The ABM is largely driven by the number of potential applicants for the application cycle. The total application projection for 2024–2025 is based on the projected total enrollment into post-secondary education for Fall 2024. The ABM is also based on the application options available to students and parents. ED accounts for each application component based on analytical tools, survey information and other ED data sources.

For 2024–2025, ED is reporting a net burden decrease of 427,252 hours.

Dated: March 21, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–06169 Filed 3–22–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0049]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Developing Hispanic-Serving Institutions Program New Grant Application (1894–0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 24, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Njeri Clark, 202–453–6224.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Developing Hispanic-Serving Institutions Program New Grant Application (1894–0001).

OMB Control Number: 1840–0745.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 300.

Total Estimated Number of Annual Burden Hours: 16,500.

Abstract: Collection of the information is necessary in order for the Secretary of Education to carry out the Developing Hispanic-Serving Institutions Program under Title V, Part A, Section 501 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1101–1101d; 1103–1103g. The information will be collected from Institutions of Higher Education and will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities and to determine the dollar share of the Congressional appropriation to be awarded to successful applicants. The Developing Hispanic-Serving Institutions Program provides grants to: (1) expand educational opportunities for, and improve the academic attainment of, Hispanic students; and (2) expand and enhance academic offerings, program quality, faculty quality, and institutional stability of colleges and universities that are educating the majority of Hispanic college students and help large numbers of Hispanic and low-income students complete postsecondary degrees. Information is collected under authority of 20 U.S.C. 1101–1101d, 1103–1103g; the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99; the OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 3474; and the applicable regulations for this program in 34 CFR 606.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: March 20, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–06012 Filed 3–22–23; 8:45 am]

BILLING CODE 4000–01–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: EC23–62–000.

Applicants: Landrace Holdings, LLC, PGR 2021 Lessee 18, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Landrace Holdings, LLC, et al.

Filed Date: 3/17/23.

Accession Number: 20230317–5121.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: EC23–63–000.

Applicants: Virginia Line Solar, LLC, PGR 2022 Lessee 1, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Virginia Line Solar, LLC, et al.

Filed Date: 3/17/23.

Accession Number: 20230317–5125.

Comment Date: 5 p.m. ET 4/7/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG00–32–001.

Applicants: Fresno Cogeneration Partners, L.P.

Description: Fresno Cogeneration Partners, L.P. submits Notice of Material Change in Facts of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/6/23.

Accession Number: 20230306–5198.

Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: EG14–16–001.

Applicants: Fortistar North Tonawanda Inc.

Description: Fortistar North Tonawanda LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/9/23.

Accession Number: 20230309–5243.

Comment Date: 5 p.m. ET 3/30/23.

Docket Numbers: EG23–97–000.

Applicants: PGR 2022 Lessee 1, LLC.

Description: PGR 2022 Lessee 1, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/16/23.

Accession Number: 20230316–5146.

Comment Date: 5 p.m. ET 4/6/23.

Docket Numbers: EG23–98–000.

Applicants: Remy Jade II, LLC.

Description: Remy Jade II, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/16/23.

Accession Number: 20230316–5155.

Comment Date: 5 p.m. ET 4/6/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2695–002.

Applicants: Lincoln Land Wind, LLC.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report__Lincoln Land Wind, LLC to be effective N/A.

Filed Date: 3/16/23.

Accession Number: 20230316–5183.

Comment Date: 5 p.m. ET 4/6/23.

Docket Numbers: ER22–93–001.

Applicants: Tatanka Ridge Wind, LLC.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report__Tatanka Ridge Wind, LLC to be effective N/A.

Filed Date: 3/16/23.

Accession Number: 20230316–5184.

Comment Date: 5 p.m. ET 4/6/23.

Docket Numbers: ER22–526–001.

Applicants: Glacier Sands Wind Power, LLC.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report__Glacier Sands Wind Power, LLC to be effective N/A.

Filed Date: 3/16/23.

Accession Number: 20230316–5185.

Comment Date: 5 p.m. ET 4/6/23.

Docket Numbers: ER23–762–001.

Applicants: The Dayton Power and Light Company, PJM Interconnection, L.L.C.

Description: Compliance Filing of The Dayton Power & Light Company with respect to the five planned transmission projects.

Filed Date: 3/8/23.

Accession Number: 20230308–5180.

Comment Date: 5 p.m. ET 3/29/23.

Docket Numbers: ER23–1409–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Amendment to Sillicon Valley Power GDMSA (RS 248) to be effective 1/18/2023.

Filed Date: 3/17/23.

Accession Number: 20230317–5000.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: ER23–1410–000.

Applicants: Fifth Standard Solar PV, LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 4/21/2023.

Filed Date: 3/17/23.

Accession Number: 20230317–5002.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: ER23–1411–000.

Applicants: Newport Solar LLC.

Description: Baseline eTariff Filing: Newport Solar Application for MBR Authority w/Waivers & Expedited Consideration to be effective 3/20/2023.

Filed Date: 3/17/23.

Accession Number: 20230317–5003.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: ER23–1412–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Calpine NITSA Rev 17 to be effective 3/1/2023.

Filed Date: 3/17/23.

Accession Number: 20230317–5024.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: ER23–1413–000.

Applicants: Landrace Holdings, LLC.

Description: Baseline eTariff Filing: Landrace Holdings, LLC MBR Tariff to be effective 3/18/2023.

Filed Date: 3/17/23.

Accession Number: 20230317–5051.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: ER23–1414–000.

Applicants: PGR 2021 Lessee 18, LLC.

Description: Baseline eTariff Filing: PGR 2021 Lessee 18, LLC MBR Tariff to be effective 3/18/2023.

Filed Date: 3/17/23.

Accession Number: 20230317–5052.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: ER23–1415–000.

Applicants: Virginia Line Solar, LLC.

Description: Baseline eTariff Filing: Virginia Line Solar, LLC MBR Tariff to be effective 3/18/2023.

Filed Date: 3/17/23.

Accession Number: 20230317–5053.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: ER23–1416–000.

Applicants: PGR 2022 Lessee 1, LLC.

Description: Baseline eTariff Filing: PGR 2022 Lessee 1, LLC MBR Tariff to be effective 3/18/2023.

Filed Date: 3/17/23.

Accession Number: 20230317–5054.

Comment Date: 5 p.m. ET 4/7/23.

Docket Numbers: ER23–1417–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Blackbriar Farm LGIA Termination Filing to be effective 3/17/2023.

Filed Date: 3/17/23.
Accession Number: 20230317–5072.
Comment Date: 5 p.m. ET 4/7/23.
Docket Numbers: ER23–1418–000.
Applicants: AES WR Limited Partnership.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 6/1/2023.
Filed Date: 3/17/23.
Accession Number: 20230317–5084.
Comment Date: 5 p.m. ET 4/7/23.
Docket Numbers: ER23–1419–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 6833; Queue No. AE2–148 to be effective 2/17/2023.
Filed Date: 3/17/23.
Accession Number: 20230317–5089.
Comment Date: 5 p.m. ET 4/7/23.

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: March 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06009 Filed 3–22–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–93–000.
Applicants: Double Black Diamond Solar Power, LLC.
Description: Double Black Diamond Solar Power, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/16/23.
Accession Number: 20230316–5087.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: EG23–94–000.
Applicants: Landrace Holdings, LLC.
Description: Landrace Holdings, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/16/23.
Accession Number: 20230316–5130.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: EG23–95–000.
Applicants: PGR 2021 Lessee 18, LLC.
Description: PGR 2021 Lessee 18, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/16/23.
Accession Number: 20230316–5134.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: EG23–96–000.
Applicants: Virginia Line Solar, LLC.
Description: Virginia Line Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/16/23.
Accession Number: 20230316–5142.
Comment Date: 5 p.m. ET 4/6/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1668–004.
Applicants: Phoenix Energy Group, LLC.
Description: Notice of Non-Material Change in Status of Phoenix Energy Group, LLC.
Filed Date: 3/15/23.
Accession Number: 20230315–5216.
Comment Date: 5 p.m. ET 4/5/23.
Docket Numbers: ER17–405–000; ER17–406–000.
Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C., American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: Formal Challenge of the Joint Consumer Group to the 2022 Annual Formula Rate Update of AEP East Operating Companies.
Filed Date: 3/8/23.
Accession Number: 20230308–5176.
Comment Date: 5 p.m. ET 4/7/23.
Docket Numbers: ER20–1298–004.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2023–03–16_MISO TO's Order 864 Deficiency Response to be effective 1/27/2020.
Filed Date: 3/16/23.
Accession Number: 20230316–5107.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: ER22–1165–003.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Order No. 676–J Compliance Revisions to Tariff, Section 4.2 to be effective 2/23/2023.
Filed Date: 3/16/23.
Accession Number: 20230316–5096.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: ER23–868–001.
Applicants: PEI Power LLC.
Description: Tariff Amendment: Supplement to Tariff Filing to be effective 1/19/2023.
Filed Date: 3/16/23.
Accession Number: 20230316–5069.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: ER23–1064–001.
Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.
Description: Tariff Amendment: Amended Cert. of Concurrence—SPS Serv. Agreement to be effective 1/12/2023.
Filed Date: 3/16/23.
Accession Number: 20230316–5032.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: ER23–1398–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6824; Queue No. AE2–120 to be effective 2/14/2023.
Filed Date: 3/16/23.
Accession Number: 20230316–5002.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: ER23–1399–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Correction to 2022 Annual Regional Transmission Expansion Plan Update Filing to be effective 1/1/2022.
Filed Date: 3/16/23.
Accession Number: 20230316–5010.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: ER23–1401–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: NYISO-National Grid Joint 205: SGIA Hawthorn Solar Project SA2756 to be effective 3/2/2023.
Filed Date: 3/16/23.
Accession Number: 20230316–5016.
Comment Date: 5 p.m. ET 4/6/23.
Docket Numbers: ER23–1402–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–03–16_SA 4014 Ameren IL-Flora Solar E&P (J1679) to be effective 3/17/2023.
Filed Date: 3/16/23.

Accession Number: 20230316–5031.
Comment Date: 5 p.m. ET 4/6/23.

Docket Numbers: ER23–1403–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6274; Queue No. AE2–133 (amend) to be effective 5/16/2023.
Filed Date: 3/16/23.
Accession Number: 20230316–5048.
Comment Date: 5 p.m. ET 4/6/23.

Docket Numbers: ER23–1406–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: OATT Section 205 Amendments in Response to Order EL23–27 to be effective 12/1/2022.
Filed Date: 3/16/23.
Accession Number: 20230316–5094.
Comment Date: 5 p.m. ET 4/6/23.

Docket Numbers: ER23–1407–000.
Applicants: Transource Pennsylvania, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Transource Pennsylvania, LLC submits tariff filing per 35.13(a)(2)(iii: Transource Pennsylvania, LLC Order No. 679 Application to be effective 5/16/2023.
Filed Date: 3/16/23.
Accession Number: 20230316–5124.
Comment Date: 5 p.m. ET 4/6/23.

Docket Numbers: ER23–1408–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Sch. 12-Appx A: February 2023 RTEP, 30-Day Comment Period Requested to be effective 6/14/2023.
Filed Date: 3/16/23.
Accession Number: 20230316–5140.
Comment Date: 5 p.m. ET 4/6/23.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD23–4–000.
Applicants: North American Electric Reliability Corporation.
Description: North American Electric Reliability Corporation submits Petition for Approval of Proposed Reliability Standard PCR–002–4.
Filed Date: 3/10/23.
Accession Number: 20230310–5272.
Comment Date: 5 p.m. ET 4/10/23.

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 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: March 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05905 Filed 3–22–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6470–008]

Winooski Hydroelectric Company; Notice of Intent To Prepare an Environmental Assessment

On July 30, 2021, Winooski Hydroelectric Company filed an application for a subsequent license to continue operating the existing 856-kilowatt Winooski 8 Hydroelectric Project No. 6470 (Winooski 8 Project or project). The project is located on the Winooski River in Washington County, Vermont. The project does not occupy federal land.

In accordance with the Commission's regulations, on January 4, 2023, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare a single Environmental Assessment (EA) on the application to license the Winooski 8 Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA.	September 2023.[1]
Comments on EA	October 2023.

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Moretown Project. Therefore, in accordance with CEQ's regulations, the Final EA must be issued within 1 year of the issuance date of this notice.

Any questions regarding this notice may be directed to Kristen Sinclair at (202) 502–6587, or *kristen.sinclair@ferc.gov.*

Dated: March 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06007 Filed 3–22–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–576–000.
Applicants: Cove Point LNG, LP.
Description: Section 4(d) Rate Filing: Cove Point—Rate Schedule LTD–3 to be effective 4/16/2023.
Filed Date: 3/17/23.
Accession Number: 20230317–5010.
Comment Date: 5 p.m. ET 3/29/23.

Docket Numbers: RP23–577–000.
Applicants: Bison Pipeline LLC.
Description: Compliance filing: Company Use Gas Annual Report 2023 to be effective N/A.
Filed Date: 3/17/23.
Accession Number: 20230317–5036.
Comment Date: 5 p.m. ET 3/29/23.

Docket Numbers: RP23–578–000.
Applicants: Gas Transmission Northwest LLC.
Description: Section 4(d) Rate Filing: Negotiated Rate Agreement—Tourmaline to be effective 3/17/2023.
Filed Date: 3/17/23.
Accession Number: 20230317–5050.
Comment Date: 5 p.m. ET 3/29/23.

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 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: *https://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: March 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06008 Filed 3–22–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0905; FRL–10798–01–OCSPP]

Science Advisory Committee on Chemicals (SACC); Draft Supplement to the 1,4-Dioxane Risk Evaluation; Request for Nominations of ad hoc Expert Reviewers and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or ''Agency'') is seeking public nominations of scientific and technical experts that EPA can consider for service as *ad hoc* reviewers assisting the Science Advisory Committee on Chemicals (SACC) with the peer review of the ''2023 Draft Supplement to the 1,4-Dioxane Risk Evaluation.'' The draft supplement will be released for public review and comment in June of 2023. EPA is also planning to submit the draft supplement to the SACC for peer review and is scheduling a 4-day virtual public meeting for the SACC to consider and review the draft supplement in September of 2023.

DATES: Submit your nominations on or before April 24, 2023.

ADDRESSES:

Nominations: Submit your nominations to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**.

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Contact the DFO, Dr. Alaa Kamel, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency; telephone number: (202) 564–5336 or call the SACC main office at (202) 564–8450; email address: *kamel.alaa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What action is the Agency taking?

The Agency is seeking public nominations of scientific and technical experts that the EPA can consider for service as *ad hoc* reviewers assisting the SACC with the peer review of the ''2023 Draft Supplement to the 1,4-Dioxane Risk Evaluation.'' EPA is also planning a 4-day virtual public meeting for the SACC to consider and review the draft supplement. EPA will be soliciting comments from the SACC on the methodologies utilized in the draft 2023 1,4-dioxane supplemental risk evaluation that have not been previously peer reviewed.

This document provides instructions for submitting nominations for EPA to consider for *ad hoc* reviewers. EPA will publish a separate document in the **Federal Register** in June of 2023 to announce the availability of the draft supplement and solicit public comments. Additional instructions and information regarding the virtual public meeting will be provided at that time.

B. What is the Agency's authority for taking this action?

The SACC was established by EPA in 2016 in accordance with the Toxic Substances Control Act (TSCA), 15 U.S.C. 2625(o), to provide independent advice and expert consultation, at the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of TSCA. The SACC operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, and supports activities under the TSCA, 15 U.S.C. 2601 *et seq.,* the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.,* and other applicable statutes.

C. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, and disposal of chemical substances and mixtures, and/or those interested in the assessment of risks involving chemical substances and mixtures regulated under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

D. What should I consider as I submit my nominations to EPA?

Submitting CBI. Do not submit CBI or other sensitive information to EPA through *https://www.regulations.gov* or email. If your nomination contains any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting that information.

II. Nominations for ad hoc Reviewers

A. What is the purpose of the SACC?

The SACC provides independent scientific advice and recommendations to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA. The SACC is comprised of experts in toxicology; environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, physiologically based pharmacokinetic modeling (PBPK), computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). The SACC currently consists of 17 members. When needed, the committee will be assisted by *ad hoc* reviewers with specific expertise in the topics under consideration.

B. Why is EPA seeking nominations for ad hoc reviewers?

As part of a broader process for developing a pool of candidates for SACC peer reviews, EPA is asking the public and stakeholder communities for nominations of scientific and technical experts that EPA can consider as prospective candidates for service as *ad hoc* reviewers assisting the SACC with the peer reviews. Any interested person or organization may nominate qualified individuals for consideration as prospective candidates for this review by following the instructions provided in this document. Individuals may also self-nominate.

Those who are selected from the pool of prospective candidates will be invited to attend the public meeting and to participate in the discussion of key issues and assumptions at the meeting. In addition, they will be asked to review

and to help finalize the meeting minutes.

C. What expertise is sought for this peer review?

Individuals nominated for this SACC peer review, should have expertise in one or more of the following areas: Engineering (experience in environmental exposure release from industrial sources for review of Monte Carlo release assessment methods, risk assessment experience preferred); Industrial Hygiene (experience with evaluating the application of occupational exposure modeling approaches and monitoring data for industrial and commercial operations); Statistics (experience in water quality data for review of novel application of Monte Carlo methods in release assessment and water model); Exposure science and contaminant hydrology (experience in aquatic monitoring and modeling for groundwater and surface water with background in risk assessment); Exposure science with experience in air modeling (for review of air exposure analysis); Petroleum engineering (experience in evaluating sources of environmental releases from hydraulic fracturing operations); Risk assessment (experience in chemicals and environmental fate of chemicals for review of exposure factors, averaging time assumptions, etc. with background in risk assessment). Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this review.

D. How do I make a nomination?

By the deadline indicated under **DATES**, submit your nomination to the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Each nomination should include the following information: Contact information for the person making the nomination; name, affiliation, and contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee.

E. Will ad hoc reviewers be subjected to an ethics review?

SACC members and *ad hoc* reviewers are subject to the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, conflict of interest statutes in Title 18 of the United States Code and related regulations. In anticipation of this requirement, prospective candidates for service on the SACC will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the candidates' financial disclosure forms to assess whether there are financial conflicts of interest, appearance of a loss of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the SACC.

F. How will EPA select the ad hoc reviewers?

The selection of scientists to serve as *ad hoc* reviewers for the SACC is based on the function of the Committee and the expertise needed to address the Agency's charge to the Committee. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a federal department or agency or their employment by a federal department or agency, except EPA. Other factors considered during the selection process include availability of the prospective candidate to fully participate in the Committee's reviews, absence of any conflicts of interest or appearance of loss of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of loss of impartiality, lack of independence, and bias may result in non-selection, the absence of such concerns does not assure that a candidate will be selected to serve on the SACC.

Numerous qualified candidates are often identified for SACC reviews. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications, and achieving an overall balance of different scientific perspectives across reviewers. The Agency will consider all nominations of prospective candidates for service as *ad hoc* reviewers for the SACC that are received on or before the date listed in the **DATES** section of this document. However, the final selection of *ad hoc* reviewers is a discretionary function of the Agency. At this time, EPA anticipates selecting 10–15 *ad hoc* reviewers to assist the SACC in their review of the designated topic.

EPA plans to make a list of candidates under consideration as prospective *ad hoc* reviewers for this review available for public comment in late May or early June 2023. The list will be available in the docket at *https://www.regulations.gov* (docket ID number EPA–HQ–OPPT–2022–0905) and through the SACC website. You may also subscribe to the following listserv for alerts regarding this and other SACC-related activities: *https://public.govdelivery.com/accounts/USAEPAOPPT/subscriber/new?topic_id=USAEPAOPPT_101.*

III. Virtual Public Meeting of the SACC

A. What is the purpose of this public meeting?

The focus of the 4-day virtual public meeting is the SACC peer review of the methodologies that have not been previously peer reviewed and are utilized in the 2023 1,4-dioxane supplemental risk evaluation. Feedback from this review will be considered in the development of the final supplement to the 1,4-dioxane risk evaluation. In addition, SACC reviewer feedback may help refine EPA's methods for conducting release assessments and evaluating general population exposures in risk evaluations of other chemicals under TSCA.

In addition, EPA intends to publish a separate document in the **Federal Register** to announce the availability of and solicit public comment on the draft supplement, at which time EPA will provide instructions for submitting written comments and registering to provide oral comments at the peer review meeting planned for September. EPA also intends to provide a meeting agenda for each day of the meeting, and as needed, may provide updated times for each day in the meeting agenda that will be posted in the docket and on the SACC website.

B. Why did EPA develop these documents?

TSCA requires the U.S. Environmental Protection Agency (EPA or the Agency) to conduct risk evaluations on prioritized chemical substances and identifies the minimum components EPA must include in all chemical substance risk evaluations. The purpose of conducting risk evaluations is to determine whether a chemical substance presents an unreasonable risk to human health or the environment under the conditions of use. These evaluations include assessing unreasonable risks to relevant potentially exposed or susceptible subpopulations. As part of this process EPA, (1) integrates hazard and exposure assessments using the best available science that is reasonably available to assure decisions are based on the weight of the scientific evidence, and (2) conducts peer review for risk evaluation

approaches that have not been previously peer reviewed.

1,4-Dioxane is one of the first 10 chemical substances undergoing the TSCA risk evaluation process after passage of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which amended TSCA. 1,4-Dioxane is primarily used as a solvent in a variety of commercial and industrial applications such as the manufacture of other chemicals (*e.g.,* adhesives, sealants) or as a processing aid or laboratory chemical. Although there are no direct consumer and commercial uses of 1,4-dioxane, it is also produced as a byproduct in commercial and consumer products from several manufacturing processes, including ethoxylation, sulfonation, sulfation, and esterification.

In the 2019 draft 1,4-dioxane risk evaluation, EPA reviewed the exposures and hazards of 1,4-dioxane direct commercial uses assessing risk from occupational exposures and surface water exposures to environmental organisms. This assessment, which included the physical and chemical properties, lifecycle information, environmental fate and transport information, and hazard identification and dose-response analysis was reviewed by the SACC. The Agency considered the SACC feedback and is not seeking additional review at this time as this information has not changed.

In October of 2020, a supplement to the draft 1,4-dioxane risk evaluation was released for public comment. The October 2020 supplement assessed eight conditions of use (COUs) of 1,4-dioxane as a byproduct in consumer products and general population exposure from incidental contact with surface water. The Agency determined that the additional analysis did not warrant SACC review.

The 2019 draft and 2020 supplement were both incorporated into the final *Risk Evaluation for 1,4-Dioxane* published December 2020. After publication, EPA determined an additional supplement to the final *Risk Evaluation for 1,4-Dioxane* was needed to consider critical exposure pathways not previously assessed. Specifically, the more recent supplement (2023) includes evaluation of additional conditions of use in which 1,4-dioxane is present as a byproduct in industrial processes and commercial products and evaluates risks from general population exposures to 1,4-dioxane released to ambient surface water and groundwater, ambient air, and land. To evaluate these additional exposure pathways, the Agency used new methods and novel applications of existing methods. These new methods described below have not been the subject of public comment or peer review for applications in TSCA risk evaluations.

In the 2023 supplemental, EPA is relying on the physical and chemical properties, lifecycle information, environmental fate and transport information, and hazard identification and dose-response analysis presented in the final *Risk Evaluation for 1,4-Dioxane,* thus, is not seeking feedback on these topics. However, EPA is seeking review of the methodologies listed below that have not been previously peer reviewed and are utilized in the 2023 1,4-dioxane supplemental risk evaluation.

EPA applied Monte Carlo modeling in the assessment of 1,4-dioxane occupational exposures and environmental releases.

The Agency has utilized Monte Carlo approaches in TSCA risk evaluations previously for specific conditions of use; however, the application of Monte Carlo methods in the draft 2023 1,4-dioxane supplemental risk evaluation was expanded to capture additional exposure and release models for additional conditions of use. The expanded application of these methods incorporates randomness and variability to improve the representativeness of the resulting model outputs. This was done to further improve exposure and release estimates and is in response to previous SACC review comments received on the first 10 risk evaluations.

EPA assessed hydraulic fracturing as a condition of use.

This evaluation required consideration of new field operations data that have not yet been considered in TSCA risk evaluations to estimate occupational exposures and environmental releases from these operations. EPA has developed a new generic exposure scenario for hydraulic fracturing and applied it in the draft 1,4-dioxane supplemental risk evaluation along with the Monte Carlo modeling to estimate a range of potential releases.

EPA assessed the ambient air pathway to determine exposures and associated risks to fenceline communities (a subset of the general population).

The Agency assessed general population exposures via the inhalation route through both single- and multi-year analyses.

The single-year analysis utilized the Fenceline 1.0 methodology described in the ''Draft TSCA screening level approach for assessing ambient air and water exposures to fenceline communities, Version 1.0'' (see ''Peer Review of the EPA TSCA Screening Level approach for Assessing Ambient Air and Water Exposures to Fenceline Communities March 15–17, 2022,'' *https://www.regulations.gov/docket/EPA-HQ-OPPT-2021-0415/document*) previously reviewed by the SACC. Although that methodology has been peer reviewed, the results from application of the methodology to 1,4-dioxane is first presented in the 2023 supplemental risk evaluation.

In response to SACC recommendations, EPA expanded on the methodology reviewed by the SACC to evaluate multiple years of release data and to consider the combined risks from multiple facilities releasing 1,4-dioxane to a single media (ambient air). The methods used to evaluate combined exposure and risks from multiple facilities releasing 1,4-dioxane have not previously been applied in the context of TSCA risk assessments. The multi-year analysis applies the ''pre-screening'' methodology described in the SACC-reviewed draft Fenceline report with some modifications to focus the analysis on a single exposure scenario found to represent a higher-end exposure estimate. While the pre-screening methodology has been reviewed by SACC, neither the modification to the approach nor the results from applying the modified pre-screening methodology have been presented prior to this supplemental risk evaluation.

EPA assessed general population exposures via drinking water sourced from groundwater and surface water.

Although the 2020 1,4-dioxane risk evaluation considered incidental oral and dermal exposures to surface water, the 2020 analysis did not consider drinking water exposures through sourcing of 1,4-dioxane contained in surface water or groundwater.

Surface Water

- 1,4-Dioxane concentrations in surface water reported in the 2023 draft supplemental risk evaluation were modeled based on known facility and publicly owned treatment works releases directly to surface water. This methodology is generally consistent with what was previously done to aquatic exposures and presented in the draft Fenceline 1.0 methodology previously reviewed by the SACC.[1] However, this analysis was modified to include consideration of multiple years of release data, as recommended by SACC, and integrated NHDPlus flow networks and flows to modernize approaches previously utilized in TSCA risk evaluations. This assessment is the first time the modified approach has

been employed in a TSCA risk evaluation.

• 1,4-Dioxane concentrations resulting from consumer and commercial down-the-drain releases of 1,4-dioxane through publicly owned treatment works to surface water were estimated. EPA used the Stochastic Human Exposure and Dose Simulation Model (SHEDS) for high-throughput (HT) (SHEDS–HT) model (see Environ. Sci. Technol. 2014, 48, 21, 12750–12759) predictions to estimate down-the-drain disposals (Isaacs, 2014). SHEDS–HT was developed by EPA under the ExpoCast program for evaluating chemicals based on the potential for biologically relevant human exposure. This is the first TSCA risk evaluation incorporating down-the-drain estimates based on SHEDS–HT model predictions and is the first time the down-the-drain model has been used for one of the first 10 chemicals.

• 1,4-Dioxane concentrations in surface water were modeled based on multiple upstream sources, including releases from facilities and publicly owned treatment works and down-the-drain releases. In addition, EPA compared the modeled concentrations to drinking water monitoring data for community water systems. This approach to considering the contribution of multiple sources to drinking water exposures is novel. EPA has not previously considered multiple releases when estimating exposure concentrations in surface water for a TSCA risk evaluation.

Groundwater

• 1,4-Dioxane concentrations in groundwater were modeled for two disposal pathways by applying the Delisting Risk Assessment Software (DRAS) model in a novel way. DRAS is a multi-pathways model developed by the EPA that calculates the potential human health risks associated with disposing a specific facility's given waste stream in a landfill or surface impoundment (see EPA's ''Hazardous Waste Delisting Risk Assessment Software Version 4. Lenexa''). DRAS was specifically designed to address the Criteria for Listing Hazardous Waste. The supplemental 1,4-dioxane risk evaluation presents a novel application of this model and first application in a TSCA risk evaluation.

Specifically, EPA compared the modeled concentrations to monitoring data from groundwater contaminations around the nation to consider if they are within a reasonable range. A second model, EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP), was also utilized in the 1,4-dioxane assessment to characterize the potential impact that different landfill liners might have when accounting for increasing amounts of data in a Monte Carlo analysis. This model has also not been previously used in any TSCA risk evaluations.

• EPA is also seeking review of the overall synthesis of the results of these novel methodologies and the integration of the results into the 1,4-dioxane supplemental risk evaluation. Feedback from this review will be considered in the development of the final supplement to the 1,4-dioxane risk evaluation. In addition, SACC reviewer feedback may help refine EPA's methods for conducting release assessments and evaluating general population exposures in risk evaluations of other chemicals under TSCA.

C. How can I access the documents submitted for review to the SACC?

EPA is planning to release the draft supplement mentioned above and all background documents, related supporting materials, and draft charge questions provided to the SACC in June 2023. At that time, EPA will publish a separate document in the **Federal Register** to announce the availability of and solicit public comment on the draft supplement and provide instructions for submitting written comments and registering to provide oral comments. These materials will also be available in the docket through *https://www.regulations.gov* (docket ID number EPA–HQ–OPPT–2022–0905) and through the SACC website. In addition, as additional background materials become available and are provided to the SACC, EPA will include those additional background documents (*e.g.,* SACC members and consultants participating in this meeting and the meeting agenda) in the docket and on the SACC website.

D. How can I participate in the virtual public meeting?

The public virtual meeting will be held via a webcast platform such as ''*Zoomgov.com*'' and audio teleconference. You must register online to receive the webcast meeting link and audio teleconference information. Please follow the registration instructions that will be announced on the SACC website in the summer of 2023.

Authority: 15 U.S.C. 2625(o); 5 U.S.C. 10.

Dated: March 20, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–05982 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0067; FRL–10578–02–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses February 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before April 24, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0067, 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: Dan Rosenblatt, Registration Division (RD) (7505T), main telephone number: (202) 566–2875, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

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

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

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 in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

EPA File Symbol: 74779–ER, 74779–EE. *Docket ID number:* EPA–HQ–OPP–2023–0045. *Applicant:* Rainbow Treecare Scientific Advancements, 2461 South Clark Street, Suite 710, Arlington, VA 22202. *Active ingredient:* Flutriafol. *Product type:* Fungicide. *Proposed Use:* Ornamental trees and shrubs in public, commercial, residential, and institutional landscape areas. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 14, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–06020 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10759–01–OMS]

Request for Nominations to EPA's National and Governmental Advisory Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for approximately 12 vacancies in the National Advisory Committee (NAC) and the Governmental Advisory Committee (GAC) which advises the U.S. Representative to the Commission for Environmental Cooperation (CEC). Vacancies on these two committees are expected to be filled by the fall of 2023. Additional sources may be utilized in the solicitation of nominees.

DATES: Please submit nominations by May 19, 2023.

ADDRESSES: Submit nominations via email to: Oscar Carrillo, Designated Federal Officer, Office of Resources and Business Operations, Federal Advisory Committee Management Division, U.S. Environmental Protection Agency with subject line COMMITTEE RESUME/CV 2023 to *carrillo.oscar@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the NAC or GAC membership, please contact Oscar Carrillo, Designated Federal Officer, by telephone at (202) 564–0347 or by email at *carrillo.oscar@epa.gov.*

SUPPLEMENTARY INFORMATION: The National Advisory Committee and the Governmental Advisory Committee advise the EPA Administrator in his capacity as the U.S. Representative to the Commission for Environmental Cooperation (CEC) on the development of U.S. policy positions regarding environment and trade in North America. The NAC and GAC were established May 13, 1994 and are authorized under Article 11 of the Environmental Cooperation Agreement (ECA) between the United States, Mexico and Canada entered into force on July 1, 2020, in parallel with the United States of America, United States of Mexico, and Canada (USMCA) trade agreement; and was established pursuant to Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The NAC and GAC were continued under the authority of Executive Order 14048, dated September 30, 2021, and operates under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. 10.

The committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the ECA and the USMCA. The NAC consists of 15 representatives from environmental non-profit groups, business and industry, and educational institutions. The GAC consists of 15 representatives from state, local, and tribal governments. Members are appointed by the EPA Administrator for a two-year term. The committees usually meet three times per year and the average workload for committee members is approximately 10 to 15 hours per month. Members serve on the committees in a voluntary capacity. Although EPA is unable to provide compensation or an honorarium for services, members may receive travel and per diem allowances, according to applicable federal travel regulations and EPA's budget. EPA is seeking nominations from various sectors, *i.e.,* for the NAC we are seeking nominees from academia, business and industry, and nongovernmental organizations; for the GAC we are seeking nominees from state, local and tribal government sectors. Nominees will be considered according to the mandates of FACA, which requires committees to support diversity across a broad range of constituencies, sectors, and groups. In accordance with Executive Order 14035 (June 25, 2021) and consistent with law, EPA values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its federal advisory committees. EPA's federal advisory committees strive to have a workforce that reflects the diversity of the American people. Additional information about the NAC and GAC is available at *https://www.epa.gov/faca/nac-gac.*

Selection Criteria: The following criteria will be used to evaluate nominees:

- Professional knowledge of the subjects examined by the committees, including trade & environment issues, the USMCA and ECA, and the CEC

• Represent a sector or group involved in trilateral environmental policy issues

• Senior-level experience in the sectors represented on both committees

• Demonstrated ability to work in a consensus building process with a wide range of representatives from diverse constituencies

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to these advisory committees. Individuals may self-nominate.

• Nominations must include: (1) a statement of interest, (2) resume or curriculum vitae (CV) and (3) a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, email address, and daytime telephone number. The statement of interest should describe how your background, knowledge, and experience would add value to the committee's work, and how your qualifications would contribute to the overall diversity of the NAC or GAC. To help the Agency in evaluating the effectiveness of its outreach efforts, please include in the statement of interest how you learned of this opportunity.

• Candidates from the academic sector must also provide a letter of support authorizing the nominee to represent their institution.

• Federal registered lobbyists are not permitted to serve on federal advisory committees.

• Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed for a two-year term. Anyone interested in being considered for nomination should submit their application materials by May 19, 2023.

Oscar Carrillo,

Program Analyst.

[FR Doc. 2023–06001 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0063; FRL–10797–02–OAR]

Draft Guidance on the Preparation of State Implementation Plan Provisions That Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has posted on its website a draft guidance document titled, ''Draft Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter.'' The EPA invites the public to review and provide input on certain issues in its draft guidance document during the comment period specified in the **DATES** section. The issues for which EPA is seeking input are identified in sections 3, 4, and 5 of the draft guidance document.

DATES: Comments must be received on or before April 24, 2023. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2023–0063], at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For general questions concerning this draft guidance document, please contact Michael Ling, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–01, Research Triangle Park, NC 27711, telephone (919) 541–4729, email at *ling.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Purpose

The purpose of the draft guidance on which the EPA is inviting public comment is to assist air agencies that are required to prepare nonattainment plan state implementation plan submissions for ozone or particulate matter under Part D of Title I of the Clean Air Act (CAA). Specifically, the draft guidance focuses on the requirement for those plans to include contingency measures (CMs), which are control requirements that would take effect if an area fails to attain an ozone or particulate matter National Ambient Air Quality Standard by an applicable attainment date, or fails to meet reasonable further progress requirements. These CM requirements are specified in CAA section 172(c)(9) for nonattainment areas generally, and in CAA section 182(c)(9) for ozone nonattainment areas classified Serious and higher.

The draft guidance focuses on three aspects of CM guidance that the EPA is revising or updating, summarized later in this notice, for which EPA is seeking input. The document also provides additional information to summarize EPA's existing guidance for CMs more broadly, including aspects that EPA is not changing, to ensure clarity and national consistency. In sections 3, 4 and 5 of the draft guidance, EPA is seeking input on the three key new or revised aspects of EPA's CM guidance. First, the guidance addresses the method that air agencies should use to calculate the EPA-recommended amount of emissions reductions that CMs should provide. Second, the guidance provides recommendations for an infeasibility justification, for an air agency to use if it cannot identify feasible CMs in a sufficient quantity to produce the recommended amount of CM emission reductions. Third, the guidance changes the recommended time period within which reductions from CMs should occur, which the EPA generally recommended to be one year, but which the EPA is now recommending be changed to 2 years if there are insufficient CMs available to achieve the recommended amount of emissions reductions within 1 year.

II. Instructions for Submitting Public Comments and Internet Website for Guidance Document Information

A. What should I consider as I prepare my comments for the EPA?

1. 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, note the docket ID, mark the outside of the digital storage media as CBI, and 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 above. 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 Code of Federal Regulations (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 at the email address *oaqpscbi@epa.gov,* and as described earlier, should include clear CBI markings and note the docket ID. 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–2023–0063. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the draft guidance by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

B. Where can I find additional information for this draft guidance?

A copy of the draft guidance can be found in the docket and a website for this draft guidance at *https://www.epa.gov/air-quality-implementation-plans/draft-contingency-measures-guidance.*

Scott Mathias,

Director, Air Quality Policy Division, Office of Air Quality Planning and Standards.

[FR Doc. 2023–06010 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10807–01–OA]

Notification of Public Meetings of the Clean Air Scientific Advisory Committee Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter Secondary National Ambient Air Quality Standards (NAAQS) Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Advisory Board (SAB) Staff Office announces two public meetings of the Clean Air Scientific Advisory Committee (CASAC) Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter (PM) Secondary National Ambient Air Quality Standards (NAAQS) Panel, hereafter referred to as the CASAC NO_X/SO_X/PM Panel. A public meeting will be held for the CASAC NO_X/SO_X/PM Panel to receive a briefing from EPA on the is *Policy Assessment (PA) for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter, External Review Draft.* A second public meeting will be held for the panel to peer review the PA.

DATES: The briefing from EPA on the PA will be held on May 31, 2023, from 11 a.m. to 3 p.m. The public meeting for the panel to peer review the PA will be held on Wednesday, June 28, 2023, from 8 a.m. to 5 p.m. and Thursday, June 29, 2023, from 8 a.m. to 5 p.m. All times listed are in Eastern Time.

ADDRESSES: The briefing on May 31, 2023, will be conducted virtually. Please refer to the CASAC website at *https://casac.epa.gov* for information on how to attend the briefing. The public meeting on June 28, 2023, and June 29, 2023, will be conducted in person (at a location to be determined) and virtually. Please refer to the meeting web page on the CASAC website at *https://casac.epa.gov* for the location and details on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this notice may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), SAB Staff Office, by telephone at (202) 564–2050 or via email at *yeow.aaron@epa.gov.* General information concerning the CASAC, as well as any updates concerning the meetings announced in this notice can be found on the CASAC website: *https://casac.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also: advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. As amended, 5 U.S.C., App. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including oxides of nitrogen, oxides of sulfur, and PM.

The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, and conducts business in accordance with FACA and related regulations. The CASAC and the CASAC NO_X/SO_X/PM Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC NO_X/SO_X/PM Panel will hold a public meeting to receive a briefing from EPA on the PA and a public meeting for the panel to peer review the PA.

Technical Contacts

Any technical questions concerning the PA should be directed to Ms. Ginger Tennant (*tennant.ginger@epa.gov*).

Availability of Meeting Materials

Prior to the meeting, the review documents, agenda and other materials will be accessible on the CASAC website: *https://casac.epa.gov.*

Procedures for Providing Public Input

Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the CASAC and the EPA review documents, and/or the group conducting the activity, for the CASAC to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: Individuals or groups requesting an oral presentation during the public meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. The public comment period will be on June 28, 2023. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by June 21, 2023, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by CASAC members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by June 28, 2023. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility

For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact the DFO, at the contact information noted above, preferably at least ten days prior to each meeting, to give EPA as much time as possible to process your request.

V Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–05983 Filed 3–22–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Technical Bulletin 2023–1, Intragovernmental Leasehold Reimbursable Work Agreements

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Technical Bulletin (TB) 2023–1 titled *Intragovernmental Leasehold Reimbursable Work Agreements.*

ADDRESSES: The TB is available on the FASAB website at *http://www.fasab.gov/accounting-standards/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: March 17, 2023.

Monica R. Valentine,

Executive Director.

[FR Doc. 2023–05963 Filed 3–22–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0055 and OMB 3060–0310; FR ID 133126]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 22, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0055.

Title: Application for Cable Television Relay Service Station License, FCC Form 327.

Form Number: FCC Form 327.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 400 respondents; 400 responses.

Estimated Time per Response: 3.166 hours.

Frequency of Response: On occasion reporting requirement; Every 5 years reporting requirement.

Total Annual Burden: 1,266 hours.

Total Annual Costs: $98,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 308 and 309 of the Communications Act of 1934, as amended.

Needs and Uses: This filing is the application for a Cable Television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 2, 7, 12 and 18 GHz CARS bands for microwave relays pursuant to part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network. CARS stations relay signals for and supply program material to cable television systems and other eligible entities using point-to-point and point-to-multipoint transmissions. These relay stations enable cable systems and other CARS licensees to transmit television broadcast and low power television and related audio signals, AM and FM broadcast stations, and cablecasting from one point (*e.g.,* on one side of a river or mountain) to another point (*e.g.,* the other side of the river or mountain) or many points (''multipoint'') via microwave. The filing is done for an initial license, for modification of an existing license, for transfer or assignment of an existing license, and for renewal of a license after five years from initial issuance or from renewal of a license. Filing is done in accordance with Sections 78.11 to 78.40 of the Commission's Rules. The form consists of multiple schedules and exhibits, depending on the specific action for which it is filed. Initial applications are the most complete, and renewal applications are the most brief. The data collected is used by Commission staff to determine whether grant of a license is in accordance with Commission requirements on eligibility, permissible use, efficient use of spectrum, and prevention of interference to existing stations.

OMB Control Number: 3060–0310.

Title: Section 76.1801, Registration Statement; Community Cable Registration, FCC Form 322.

Form Number: FCC Form 322.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 601 respondents and 601 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: One time and on occasion reporting requirements.

Total Annual Burden: 301 hours.

Total Annual Costs: $36,060.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303, 308, 309 and 621 of the Communications Act of 1934, as amended.

Needs and Uses: Cable operators are required to file FCC Form 322 with the Commission prior to commencing operation of a community unit. FCC Form 322 identifies biographical information about the operator and system as well as a list of broadcast channels carried on the system. This form replaces the requirement that cable operators send a letter containing the same information.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–05996 Filed 3–22–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0703; FR ID 133127]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 22, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0703.

Title: Determining Costs of Regulated Cable Equipment and Installation, FCC Form 1205.

Form Number: FCC Form 1205.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,650 respondents; 4,650 responses.

Estimated Time per Response: 4–12 hours.

Frequency of Response: Recordkeeping requirement, Annual reporting requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 301(j) of the Telecommunications Act of 1996 and 623(a)(7) of the

Communications Act of 1934, as amended.

Total Annual Burden: 35,800 hours.

Total Annual Cost: $1,800,000.

Needs and Uses: Information derived from FCC Form 1205 filings is used to facilitate the review of equipment and installation rates. This information is then reviewed by each cable system's respective local franchising authority. Section 76.923 records are kept by cable operators in order to demonstrate that charges for the sale and lease of equipment for installation have been developed in accordance with the Commission's rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–05997 Filed 3–22–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Potential Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Survey on Prenatal and Childbirth Care Experiences in Ambulatory and Inpatient Settings: Request for Information

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of Request for Information regarding a potential Consumer Assessment of Healthcare Providers and Systems (CAHPS®) survey to assess *patients' prenatal and childbirth care experiences* in ambulatory and inpatient settings.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites public comment in response to this Request for Information (RFI) about a potential Consumer Assessment of Healthcare Providers and Systems (CAHPS®) survey to assess *patients' prenatal care and childbirth care experiences* in ambulatory and inpatient care settings. Currently, no CAHPS instrument is available that is specifically designed to measure prenatal and childbirth care from the patient's perspective in these settings. Accordingly, this RFI seeks comments regarding methodologically sound approaches to assessing prenatal and childbirth care experiences in healthcare settings about topics such as communication with providers, respect, access to services, and patients' perceptions of bias in receiving care.

This RFI also seeks comments about any (1) existing patient experience surveys or survey items that might be incorporated into public domain CAHPS ambulatory and inpatient prenatal and childbirth experience surveys; and, (2) special considerations or concerns associated with the collection of such information. This RFI will help inform the development of scientifically sound surveys to potentially measure the experience of patients receiving prenatal and childbirth care.

DATES: Comments on this notice must be received by May 5, 2023.

ADDRESSES: Interested parties may submit comments electronically to *CAHPS1@westat.com* with the subject line ''Prenatal and Childbirth Care Experience Survey RFI.''

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Caren Ginsberg, Director, CAHPS and SOPS Programs, Center for Quality Improvement and Patient Safety, *caren.ginsberg@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: AHRQ is seeking public comment about survey characteristics and data collection approaches and strategies to optimize the meaningfulness of patient experience information from patients receiving prenatal and childbirth healthcare, that is, care received in a hospital or birthing center, during labor, delivery, and their stay in the hospital or birthing center. AHRQ's CAHPS Program advances scientific understanding of patient healthcare experiences using surveys developed for different healthcare settings. The CAHPS surveys cover topics that are important to patients and which patients are best able to assess, such as communication with providers, shared decision making, and access to health care services. CAHPS surveys measure care experiences; that is, what happened or how often something happened, in a health care encounter. CAHPS surveys do not collect information about availability of specific services; limitations to receiving specific services or procedures; or patient satisfaction (*e.g.,* patients' expectations for, or how they felt about, their care). Information collected by CAHPS surveys can motivate and focus quality improvement efforts and/or choice of providers by survey sponsors, health care organizations, clinicians, patients, consumers, and other stakeholders.

Specific questions of interest to AHRQ include, but are not limited to:

1. What are the highest priority aspect(s) of patient experiences with *prenatal healthcare* that should be asked about in a survey?

a. Why are these aspect(s) of patient experience a high priority for inclusion in a survey of prenatal healthcare?

b. What other topic area(s) should be included in a new survey assessing prenatal healthcare?

2. What are the highest priority aspect(s) of patient experiences with *childbirth healthcare* that should be asked about in a survey?

a. Why are these aspect(s) of patient experience a high priority for inclusion in a survey of childbirth healthcare?

b. What other topic area(s) should be included in a new survey assessing patient experiences with childbirth health care?

3. For which prenatal care settings should measures and/or surveys be developed? For example, should measures and/or surveys be developed for group practices? Hospitals? Birthing centers? Ambulatory care practices? Other settings?

4. For which childbirth care settings should measures and/or surveys be developed? For example, should measures and/or surveys be developed for hospitals? Birthing centers? Ambulatory care practices? Other settings?

5. What, if any, challenge(s) are there to collecting information about patient experiences with prenatal and childbirth healthcare?

6. What actions or approaches would facilitate the collection of information about the experience of patients with prenatal and childbirth healthcare?

(a) What data collection approach(es) would be most likely to promote participation by respondents to a survey of prenatal and childbirth healthcare (*e.g.,* web-based; paper-and-pencil; etc.)?

(b) Are there any way(s) that data collection approach(es) would differ based on whether patients received healthcare in inpatient care settings compared to ambulatory care settings?

7. Which survey measure(s) that assess prenatal and/or childbirth care experiences are currently being used? Please note that these surveys or items might be found in the patient satisfaction domain. Feel free to include them in response to this RFI.

(a) Which respondent groups (*e.g.,* patients in inpatient settings; family members; providers; etc.) are asked to complete these survey(s)?

(b) How are these currently used survey(s) administered (for example, paper-and-pencil; web-based; etc.) to patients?

(c) What information is collected in these survey(s) that assess prenatal care and/or childbirth experiences? How

well do these surveys perform? What are the strengths of the survey(s) currently in use?

(d) What content area(s) are missing from these survey(s) that are currently in use?

(e) Which content area(s) are low priority or not useful in these currently used survey(s)? Why are they not useful?

(f) How are the results and findings of these current survey(s) used to evaluate and/or improve care quality in inpatient and ambulatory healthcare settings? Are the results and findings of these current survey(s) used for other purposes?

(g) Are there any item(s) that address perceived bias in care that have been used to assess prenatal and/or childbirth care experiences of patients? How have these item(s) measured or operationalized ''perceived bias in care?'' What, if any, limitations do these item(s) have in measuring ''perceived bias in care?''

Respondents to this RFI are welcome to address as many or as few of these questions as they choose and/or to address additional areas of interest not listed.

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas in response to it. AHRQ will use the information submitted in response to this RFI at its discretion, and will not provide comments to any respondent's submission. However, responses to this RFI may be reflected in future initiatives, solicitation(s), notices of funding opportunities, or policies. Respondents are advised that the Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential or sensitive information should be included in your response. The contents of all submissions will be made available to the public upon request. Submitted materials must be publicly available or able to be made public.

Dated: March 20, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–05988 Filed 3–22–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0497]

Proposed Information Collection Activity; Personal Responsibility Education Program (PREP)—Extension

AGENCY: Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Request for public comments.

SUMMARY: OPRE and the Family and Youth Services Bureau (FYSB) in ACF request an extension to a currently approved information collection of performance measures data for the PREP Program (OMB No. 0970–0497; expiration date: 06/30/2023). The purpose of the request is to (1) continue the ongoing data collection and submission of the performance measures by PREP grantees and (2) eliminate the requirement for grantees to aggregate participant survey data to the program level for submission.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: This notice is specific to a request for an extension of data collection activities for the PREP Performance Measures Study component, which includes collection and analysis of performance measure data from State PREP (SPREP), Tribal PREP (TPREP), Competitive PREP (CPREP), and Personal Responsibility Education Innovative Strategies (PREIS) grantees. PREP grants support evidence-based programs to reduce teen pregnancy and sexually transmitted infections. The programs are required to provide education on both abstinence and contraceptive use and to offer information on adulthood preparation subjects. Data will be used to determine if the PREP grantees are meeting their programs' mission and priorities. This request includes revisions to the program-level data collection forms (Instruments 3 and 4) to no longer require grantees to aggregate participant survey data to the program level for submission.

Respondents: SPREP, TPREP, CPREP, and PREIS grantees; their subrecipients; and program participants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Instrument 1					
Participant entry survey	351,001	1	0.13333	46,799	15,600
Instrument 2					
Participant exit survey	320,203	1	0.11667	37,358	12,453
Instrument 3: Performance Reporting System Data Entry Form					
SPREP grantees	51	6	18	5,508	1,836
TPREP grantees	8	6	18	864	288
CPREP grantees	27	6	14	2,268	756
PREIS grantees	12	6	14	1,008	336

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Instrument 4: Subrecipient Data Collection and Reporting Form					
SPREP subrecipients	259	6	14	21,756	7,252
TPREP subrecipients	27	6	14	2,268	756
CPREP subrecipients	54	6	12	3,888	1,296
PREIS subrecipients	20	6	12	1,440	480

Estimated Total Annual Burden Hours: 41,052.

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: Sec. 50503, Pub. L. 115–123.

John M. Sweet, Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–05992 Filed 3–22–23; 8:45 am]

BILLING CODE 4184–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Operation Allies Welcome Afghan Supplement Survey (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. 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 is proposing to collect data for a new Operation Allies Welcome (OAW) Afghan Supplement Survey.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Under the Afghanistan Supplemental Appropriations Act, 2022, and Additional Afghanistan Supplemental Appropriations Act, 2022, Congress authorized ORR to provide resettlement assistance and other benefits available to refugees to specific Afghan populations in response to their emergency evacuation and resettlement. The OAW Afghan Supplement Survey is a sample survey of Afghan households entering the United States under OAW, collecting both household- and individual-level information. It will generate nationally representative data on OAW Afghans' well-being, integration outcomes, and progress towards self-sufficiency. Data collected will help ORR and service providers better understand the impact of services and on-going service needs of OAW Afghan populations.

Respondents: OAW Afghan populations.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours *
OAW Afghan Supplement Survey Contact Update Requests	1,100	1	0.05	55
OAW Afghan Supplement Survey	1,100	1	0.92	1,012

* Survey is one-time and will be completed within the 1st year.

Estimated Total Annual Burden Hours: 1,067.

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: Division C, Title III, Public Law 117–43, 135 Stat. 374; Division B,

Title III, Public Law 117–70, 1102 Stat. 4.

John M. Sweet, Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–05980 Filed 3–22–23; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0573]

Changes to Third-Party Vendors for Risk Evaluation and Mitigation Strategies; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the establishment of a docket to solicit comments on factors that generally should be considered by the Secretary of Health and Human Services (Secretary) when reviewing modification requests from sponsors of drugs subject to risk evaluation and mitigation strategies (REMS) related to changes in third-party vendors engaged by sponsors to aid in implementation and management of the strategies.

DATES: Submit either electronic or written comments by July 21, 2023. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 21, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–0573 for ''Proposed Changes to Third-Party Vendors Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Marcus Cato, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4475, 301–796–2380, *OSE.PMKTREGS@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 505–1 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355–1), authorizes FDA to require a REMS if FDA determines that a REMS is necessary to ensure that the benefits of the drug outweigh its risks. A REMS is a required risk management strategy that employs tools beyond prescribing information to ensure that the benefits of a drug outweigh its risks. A REMS may require a Medication Guide (or patient package insert) to provide risk information to patients, a communication plan to disseminate risk information to healthcare providers, and certain packaging and safe disposal systems for drugs that pose a serious risk of abuse or overdose. FDA may also require certain elements to assure safe use (ETASU) when such elements are necessary to mitigate a specific serious risk listed in the labeling of the drug. ETASU may include, for example, requirements that healthcare providers who prescribe the drug have particular training or experience, that patients using the drug be monitored, or that the drug be dispensed to patients with evidence or other documentation of safe-use conditions. Certain REMS with ETASU may also include an implementation system through which the applicant is able to monitor and evaluate implementation of the ETASU

and work to improve their implementation. Finally, REMS generally must have a timetable for submission of assessments of the strategy.

FDA can require a REMS before initial approval of a new drug application (NDA) or biologics license application (BLA) or after the drug has been approved if FDA becomes aware of new safety information about a drug and determines that a REMS is necessary to ensure that the benefits of the drug outweigh its risks. Under section 505–1(i)(1) of the FD&C Act, a drug that is approved under an abbreviated new drug application (ANDA) is only required to have certain elements of a REMS if these elements are required for the applicable listed drug: a Medication Guide or patient package insert, a packaging or disposal requirement, ETASU, and an implementation system.

When applicants develop REMS with ETASU, particularly those ETASU that require verification of certain conditions before the drug is dispensed, they often hire third-party vendors to design operational components to help implement and manage the program requirements. These third-party vendors, often referred to as REMS administrators, may perform a variety of functions for the REMS program, including building and operating a centralized database or repository for patient enrollment, prescriber and pharmacy certifications, and wholesaler enrollments. They often host a website or web portal that participants, such as patients, prescribers, pharmacies, and wholesalers, use to enroll in the program, and they provide the technological means for pharmacies and other dispensers to perform the necessary verifications at the point of dispensing. These operational components are often referred to collectively as the ''REMS system.'' In many cases, therefore, the REMS administrator performs critical functions in the daily operations of a REMS which directly impact patient access to the drug.

Applicants may submit modifications to their REMS at any time after approval which propose the addition, modification, or removal of any goal or element of the approved strategy. While FDA does not approve REMS administrators or changes in REMS administrators *per se,* an applicant's decision to change a REMS administrator may affect the REMS system, prompting an applicant to propose a REMS modification. Implementing such a change has the potential to cause significant disruptions in the operations of the program, including the ability for stakeholders to interact with the tools necessary to fulfill the various REMS requirements. These disruptions can impact patients' ability to access the drug.

The Consolidated Appropriations Act, 2023, signed into law on December 29, 2022, specified that ''[n]ot later than 90 days after the date of enactment of this Act, the Secretary shall open a single public docket to solicit comments on factors that generally should be considered by the Secretary when reviewing requests from sponsors of drugs subject to [REMS] to change third-party vendors engaged by sponsors to aid in implementation and management of the strategies. . . . Such factors include the potential effects of changes in third-party vendors on—(A) patient access; and (B) prescribing and administration of the drugs by healthcare providers.''

II. Request for Comments

FDA is soliciting comments from stakeholders regarding the factors that FDA should consider when it reviews a proposed REMS modification that is prompted by or related to a change in a REMS administrator for a REMS with ETASU. In addition to general factors, such as effect of the modification on patient access and prescribing and administration by healthcare providers, FDA is interested in comments on the following topics:

1. Comment on any stakeholder input that the applicant and/or REMS administrator should obtain prior to developing and implementing a new REMS system, including the extent and timing of stakeholder input.

2. Comment on whether the sponsor and/or REMS administrator should conduct testing of the changes to the operation of the REMS system prior to full implementation including:

- User acceptance testing with stakeholders and evaluation of any unexpected impact on stakeholder workflow
- An assessment of REMS data flows, including whether REMS data from the existing REMS system can be timely and successfully transferred to a new REMS system.

3. Comment on the amount of time needed to transition stakeholders from one REMS system to another REMS system (*e.g.,* enrollment or recertification), and the factors that go into that time frame.

4. Comment on whether the sponsor and/or the REMS administrator should conduct a failure modes and effects analysis to identify and plan for system failures. This includes providing for adequate support services in the event that the system fails to work as intended following full implementation of the new REMS system.

5. Comment on the metrics that the sponsor should capture to evaluate whether the REMS system was successfully and efficiently implemented.

Dated: March 20, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05962 Filed 3–22–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–2097]

Determination of Regulatory Review Period for Purposes of Patent Extension; CINTEC PLUS CYTOLOGY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for CINTEC PLUS CYTOLOGY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by May 22, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 19, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 22, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered

timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–E–2097 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; CINTEC PLUS CYTOLOGY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device CINTEC PLUS CYTOLOGY. CINTEC PLUS CYTOLOGY is a qualitative immunocytochemical assay intended for the simultaneous detection of the p16INK4a and Ki-67 proteins in cervical specimens collected by a clinician using an endocervical brush/spatula or broom collection device and placed in the ThinPrep Pap Test PreservCyt Solution. Subsequent to this approval, the USPTO received a patent term restoration application for CINTEC PLUS CYTOLOGY (U.S. Patent No. 8,367,353) from Ventana Medical Systems, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 9, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of CINTEC PLUS CYTOLOGY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CINTEC PLUS CYTOLOGY is 181 days. Of this time, 0 days occurred during the testing phase of the regulatory review period, while 181 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* not applicable. The applicant claims that the investigational device

exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on September 12, 2017. However, FDA records indicate that there was no IDE associated with the product, so the claimed date is not applicable.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* September 12, 2019. The applicant claims September 11, 2019, as the date the premarket approval application (PMA) for CINTEC PLUS CYTOLOGY (PMA P190024) was initially submitted. However, FDA records indicate that PMA P190024 was submitted on September 12, 2019.

3. *The date the application was approved:* March 10, 2020. FDA has verified the applicant's claim that PMA P190024 was approved on March 10, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 547 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: March 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05908 Filed 3–22–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–3014]

Determination of Regulatory Review Period for Purposes of Patent Extension; RECELL AUTOLOGOUS CELL HARVESTING DEVICE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for RECELL AUTOLOGOUS CELL HARVESTING DEVICE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by May 22, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 19, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 22, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–3014 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; RECELL AUTOLOGOUS CELL HARVESTING DEVICE.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in

its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products (including biologic device products), the testing phase begins when the exemption to permit the clinical investigations of the biologic device becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biologic device and continues until FDA grants permission to market the biologic device. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biologic device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic device RECELL AUTOLOGOUS CELL HARVESTING DEVICE. RECELL AUTOLOGOUS CELL HARVESTING DEVICE is indicated for the treatment of acute thermal burn wounds in patients 18 years of age and older. The RECELL AUTOLOGOUS CELL HARVESTING DEVICE is used by an appropriately-licensed healthcare professional at the patient's point-of-care to prepare autologous Regenerative Epidermal Suspension (RES™) for direct application to acute partial-thickness thermal burn wounds or application in combination with meshed autografting for acute full-thickness thermal burns. Subsequent to this approval, the USPTO received a patent term restoration application for RECELL AUTOLOGOUS CELL HARVESTING DEVICE (U.S. Patent No. 9,029,140) from Avita Medical Ltd., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 29, 2019, FDA advised the USPTO that this human biological device had undergone a regulatory review period and that the approval of RECELL AUTOLOGOUS CELL HARVESTING DEVICE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for RECELL AUTOLOGOUS CELL HARVESTING DEVICE is 4,455 days. Of this time, 4,097 days occurred during the testing phase of the regulatory review period, while 358 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* July 12, 2006. The applicant claims the biologic investigational device exemption (BB–IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on December 4, 2009. However, FDA records indicate that the BB–IDE effective date was July 12, 2006, when the BB–IDE was approved after initial FDA receipt.

2. *The date the application was initially submitted with respect to the biologic device under section 515 of the FD&C Act (21 U.S.C. 360e):* September 28, 2017. FDA has verified the applicant's claim that the biologic device marketing application (BP) for RECELL AUTOLOGOUS CELL HARVESTING DEVICE (BP170122) was initially submitted on September 28, 2017.

3. *The date the application was approved:* September 20, 2018. FDA has verified the applicant's claim that BP170122 was approved on September 20, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 793 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630

Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: March 20, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05948 Filed 3–22–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–3085; FDA–2019–E–3084; and FDA–2019–E–3083]

Determination of Regulatory Review Period for Purposes of Patent Extension; TEGSEDI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for TEGSEDI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by May 22, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 19, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 22, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2019–E–3085; FDA–2019–E–3084; and FDA–2019–E–3083, for ''Determination of Regulatory Review Period for Purposes of Patent Extension; TEGSEDI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when

the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, TEGSEDI (inotersen sodium) indicated for treatment of the polyneuropathy of hereditary transthyretin-mediated amyloidosis in adults. Subsequent to this approval, the USPTO received patent term restoration applications for TEGSEDI (U.S. Patent Nos. 8,101,743; 9,061,044; 9,399,774) from Ionis Pharmaceuticals, Inc. and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In, letters dated October 29, 2019, and November 29, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of TEGSEDI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TEGSEDI is 2,158 days. Of this time, 1,824 days occurred during the testing phase of the regulatory review period, while 334 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective: November 9, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 9, 2012.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act: November 6, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for TEGSEDI (NDA 211172) was initially submitted on November 6, 2017.

3. The date the application was approved: October 5, 2018. FDA has verified the applicant's claim that NDA 211172 was approved on October 5, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 526 days or 1,246 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket Nos. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: March 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05906 Filed 3–22–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[OMB No. 0906–0029—Extension]

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Shortage Designation Management System (SDMS)

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than April 24, 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the Acting HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call 301–594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Shortage Designation Management System.

OMB No.: 0906–0029—Extension.

Abstract: HRSA is committed to improving the health of the nation's underserved communities by developing, implementing, evaluating, and refining programs that strengthen the nation's health workforce. The Department of Health and Human Services relies on two federal shortage designations to identify and dedicate

resources to areas and populations in greatest need of providers: Health Professional Shortage Area (HPSA) designations and Medically Underserved Area/Medically Underserved Population (MUA/P) designations. HPSA designations are geographic areas, population groups, and facilities that are experiencing a shortage of health professionals. The authorizing statute for the National Health Service Corps (NHSC) created HPSAs to fulfill the statutory requirement that NHSC personnel be directed to areas of greatest need. To further differentiate areas of greatest need, HRSA calculates a score for each HPSA. There are three categories of HPSAs based on health discipline: primary care, dental health, and mental health. Scores range from 1 to 25 for primary care and mental health and from 1 to 26 for dental, with higher scores indicating greater need. They are used to prioritize applications for NHSC Loan Repayment Program award funding and determine service sites eligible to receive NHSC Scholarship and Students-to-Service participants.

MUA/P designations are geographic areas, or population groups within geographic areas, that are experiencing a shortage of primary care health care services based on the Index of Medical Underservice. MUAs are designated for the entire population of a particular geographic area. MUP designations are limited to a particular subset of the population within a geographic area. Both designations were created to aid the federal government in identifying areas with healthcare workforce shortages.

As part of HRSA's cooperative agreement with the State Primary Care Offices (PCOs), the State PCOs conduct needs assessments in their states, determine what areas are eligible for designations, and submit designation applications for HRSA review via the Shortage Designation Management System (SDMS). Requests that come from other sources are referred to the PCOs for their review, concurrence, and submission via SDMS. In order to obtain a federal shortage designation for an area, population, or facility, PCOs must submit a shortage designation application through SDMS for review and approval by HRSA. Both the HPSA and MUA/P application request local, state, and national data on the population that is experiencing a shortage of health professionals and the number of health professionals relative to the population covered by the proposed designation. The information collected on the applications is used to determine which areas, populations, and facilities have qualifying shortages.

In addition, interested parties, including the Governor, the State PCO, state professional associations, etc. are notified of each designation request submitted via SDMS for their comments and recommendations.

HRSA reviews the HPSA applications submitted by the State PCOs, and—if they meet the designation eligibility criteria for the type of HPSA or MUA/P in the application—designates the HPSA or MUA/P on behalf of the Secretary. HPSAs are statutorily required to be annually reviewed and revised as necessary after initial designation to reflect current data. HPSA scores, therefore, may and do change from time to time. MUA/Ps do not have a statutorily mandated review period.

The lists of designated HPSAs are published annually in the **Federal Register**. In addition, lists of HPSAs are updated on the HRSA website, so that interested parties can access the information.

A 60-day Notice was published in the **Federal Register**, 88, FR pp. 360–361 (January 4, 2023). There were no public comments.

Need and Proposed Use of the Information: The information obtained from the SDMS application is used to determine which areas, populations, and facilities have critical shortages of health professionals per PCO application submission. The SDMS HPSA application and SDMS MUA/P application are used for these designation determinations. Applicants must submit a SDMS application to the HRSA Bureau of Health Workforce to obtain a federal shortage designation. The application asks for local, state, and national data required to determine the application's eligibility to obtain a federal shortage designation. In addition, applicants must enter detailed information explaining how the area, population, or facility faces a critical shortage of health professionals.

Likely Respondents: State PCOs interested in obtaining a primary care, dental, or mental HPSA designation or a MUA/P in their state.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Designation Planning and Preparation	54	48	2,592	8	20,736
SDMS Application	54	83	4,482	4	17,928
Total	54	.....	7,074	.....	38,664

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–05986 Filed 3–22–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Advisory Committee on Individuals With Disabilities and Disasters

AGENCY: Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Advisory Committee on Individuals with Disabilities and Disasters (NACIDD or the Committee) is required by the PHS Act as amended by the Pandemic and All Hazards Preparedness and Advancing Innovation Act (PAHPAIA) and governed by the provisions of the Federal Advisory Committee Act (FACA). The NACIDD shall evaluate issues and programs and provide findings, advice, and recommendations to the Secretary of HHS and ASPR to support and enhance all-hazards public health and medical preparedness, response, and recovery aimed at meeting the needs of people with disabilities. The Secretary of HHS has delegated authority to operate the NACIDD to ASPR.

DATES: The NACIDD will conduct a public meeting (virtual) on April 20, 2023, to discuss, finalize, and vote on an initial set of recommendations to the HHS Secretary and ASPR regarding challenges, opportunities, and priorities for national public health and medical preparedness, response, and recovery, specific to the needs of people with disabilities in disasters. A more detailed agenda and meeting registration link will be available on the NACIDD meeting website located at: *https://www.phe.gov/nacidd.*

ADDRESSES: Members of the public may attend the meeting via a toll-free phone number or Zoom teleconference, which requires pre-registration. The meeting link to pre-register will be posted on *https://www.phe.gov/nacidd.* Members of the public may provide written comments or submit questions for consideration to the NACIDD at any time via email to *NACIDD@hhs.gov.* Members of the public are also encouraged to provide comments after the meeting.

FOR FURTHER INFORMATION CONTACT: Tabinda Burney, NACIDD Designated Federal Officer, Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS), Washington, DC; 202–699–1779, *NACIDD@hhs.gov.*

SUPPLEMENTARY INFORMATION: The NACIDD invites those who are involved in or represent a relevant industry, academia, profession, organization, or U.S. state, Tribal, territorial, or local government to request up to four minutes to address the committee live via Zoom. Requests to provide remarks to the NACIDD during the public meeting must be sent to *NACIDD@hhs.gov* at least 15 days prior to the meeting along with a brief description of the topic. We would specifically like to request inputs from the public on challenges in disaster training, opportunities, and strategic priorities for national public health and medical preparedness, response, and recovery specific to the needs of people with disabilities before, during, and after disasters. Slides, documents, and other presentation material sent along with the request to speak will be provided to the committee members separately. Please indicate additionally whether the presenter will be willing to take questions from the committee members (at their discretion) immediately following their presentation (for up to four additional minutes).

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2023–05976 Filed 3–22–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; PAR Panel: Fogarty Global Brain Disorders.

Date: April 17, 2023.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Todd Everett White, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3962, *todd.white@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05967 Filed 3–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Menopause and Optimizing Midlife Health of Women

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This symposium is sponsored by the NIH Office of Research on Women's Health (ORWH), the title of this year's symposium is ''Menopause and Optimizing Midlife Health of Women.'' The symposium will discuss menopausal transition, accumulation of morbidity after menopause, menopause in special populations, social determinants of health, menopausal hormonal therapy, and interventions to promote healthy aging.

DATES: The meeting will be held on May 16, 2023, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be virtual. Registration is available at *https://nih.zoomgov.com/webinar/register/WN_YMa1r3QbSsiQ8scHfc4ixA.* The meeting is viewable on NIH Videocast at *https://videocast.nih.gov/watch=49307*; no registration required.

FOR FURTHER INFORMATION CONTACT: For information concerning this meeting, see the ORWH website, *https://orwh.od.nih.gov/about/newsroom/events/7th-annual-vivian-w-pinn-symposium,* or contact Dr. Sarah Temkin, Associate Director for Clinical Research, Office of Research on Women's Health, 6707 Democracy Boulevard, Suite 400, Bethesda, MD 20817, telephone: 301–402–1770; email: *sarah.temkin@nih.gov.*

SUPPLEMENTARY INFORMATION: This Notice is in accordance with 42 U.S.C. 287d, of the Public Health Service Act, as amended. The 7th Annual Vivian W. Pinn Symposium honors the first full-

time director of ORWH, Dr. Vivian Pinn, and is held during National Women's Health Week. This event serves as a critical forum for experts across sectors to communicate and collaborate for the advancement of women's health.

Providing the keynote address, ''Menopausal Hormone Therapy: 30 Years of Lessons from the Women's Health Initiative,'' is JoAnn Manson, M.D., Professor of Medicine at Harvard Medical School and Chief of the Division of Preventive Medicine, Department of Medicine at Brigham and Women's Hospital. A patient advocacy panel will discuss the patient perspective of menopause.

The objectives of the symposium are to:

- Familiarize attendees with state of the science related to our understanding of risk factors and mechanisms that lead to reproductive aging.
- Understand women's unique morbidity and multimorbidity burden to identify points of intervention.
- Identify the needs of populations at risk for iatrogenic menopause (patients with germline inherited cancer risk) and early or complex menopausal symptoms (patients living with HIV, chronic conditions, and cancer).
- Identify priorities to address unmet environmental and other exposures as it relates to menopausal transition and symptoms in diverse populations of women.
- Understand current recommendations on menopausal hormone therapy prescribing including when to start and stop, and formulations and durations of use.

Interested individuals can register at: *https://nih.zoomgov.com/webinar/register/WN_YMa1r3QbSsiQ8scHfc4ixA.* More information about the speakers and agenda can be found at *https://orwh.od.nih.gov/about/newsroom/events/7th-annual-vivian-w-pinn-symposium.* This event is free.

Dated: March 17, 2023.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2023–05984 Filed 3–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 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: Center for Scientific Review Special Emphasis Panel; Topics in Neurological Injuries and Disorders.

Date: April 11, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christine Jean DiDonato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014J, Bethesda, MD 20892, (301) 435–1042, *didonatocj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05975 Filed 3–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the Biomedical Informatics, Library and Data Sciences Review Committee.

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 materials, 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: Biomedical Informatics, Library and Data Sciences Review Committee (BILDS).

Date: June 15–16, 2023.

Time: June 15, 2023, 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Time: June 16, 2023, 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, National Institutes of Health (NIH), 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05969 Filed 3–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 materials, 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 Library of Medicine Special Emphasis Panel; G08.

Date: June 16, 2023.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892, (Video Assisted Meeting).

Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, National Institutes of Health (NIH), 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05965 Filed 3–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. Attendance is limited by the space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should submit a request using the NIGMS contact us form at least 5 days prior to the event. The open session will also be videocast, closed captioned, and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

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 General Medical Sciences Council.

Date: May 18, 2023.

Open: 9:30 a.m. to 12:30 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Erica L. Brown, Ph.D., Director, Division of Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24C, Bethesda, MD 20892, 301–594–4499, *erica.brown@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Electronic copies are requested for the record.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: March 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05968 Filed 3–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes, Endocrinology and Metabolic Diseases Career Development Award Applications.

Date: April 17, 2023.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Charlene J. Repique, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, (301) 594–7791, *charlene.repique@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05974 Filed 3–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0104]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for U Nonimmigrant 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 extension 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 May 22, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0104 in the body of the letter, the agency name and Docket ID USCIS–2010–0004. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2010–0004.

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–2010–0004 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:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Petition for U Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–918, Supplement A, and Supplement B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Federal Government; or State, local or Tribal Government. This petition permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant classification. This nonimmigrant classification provides temporary immigration benefits, potentially leading to permanent resident status, to certain victims of criminal activity who: suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; have information regarding the criminal activity; and assist government officials in investigating and prosecuting such criminal activity.

(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–918 is 29,400 and the estimated hour burden per response is 5 hours. The estimated total number of respondents for the information collection Supplement A is 17,900 and the estimated hour burden per response is 1.5 hours. The estimated total number of respondents for the information collection Supplement B is 29,400 and the estimated hour burden per response is 1 hours. The estimated total number of respondents for the information collection of Biometric Services is 47,300 and the estimated hour burden per response is 1.17 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 258,591 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 $201,025.

Dated: March 16, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–05958 Filed 3–22–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0072]

Agency Information Collection Activities; Revision of a Currently Approved Collection Application for Suspension of Deportation or Special Rule Cancellation of Removal (NACARA)

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 May 22, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0072 in the body of the letter, the agency name and Docket ID USCIS–2008–0077. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0077.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Jerry Rigdon, Acting 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–2008–0077 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:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100, NACARA).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on the Form I–881 is used by Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) asylum officers, EOIR immigration judges, and Board of Immigration Appeals board members. The Form I–881 is used to determine eligibility for suspension of deportation or special rule cancellation of removal under Section 203 of NACARA. The form serves the purpose of standardizing requests for the benefits and ensuring that basic information required for assessing eligibility is provided by the applicants.

(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–881 is 202 and the estimated hour burden per response is 11 hours and 52 minutes; the estimated total number of respondents for the information collection of Biometrics is 333 and the estimated hour burden per response is 1 hour and 10 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 2,787 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 $100,419.

Dated: March 9, 2023.

Jerry Rigdon,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–05257 Filed 3–22–23; 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: 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 April 24, 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–2007–0041. 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.

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:

Comments

The information collection notice was previously published in the **Federal Register** on December 23, 2022, at 87 FR 78989, allowing for a 60-day public comment period. USCIS did not receive any 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–2007–0041 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:* 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 hour and 17 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 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.

Dated: March 16, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–05956 Filed 3–22–23; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6379–N–01]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development, HUD.

ACTION: Notice.

SUMMARY: In compliance with the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against FHA-approved mortgagees in fiscal year 2022.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW, Room B–133, Washington, DC 20410–8000; telephone (202) 402–2701 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)) requires that HUD ''publish in the **Federal Register** a description of and the cause for administrative action against a[n FHA-approved] mortgagee'' by HUD's Mortgagee Review Board (''Board''). In compliance with the requirements of section 202(c)(5), this Notice advises of actions that have been taken by the Board in its meetings from the beginning of fiscal year 2022, October 1, 2021, through September 30, 2022,

where settlement agreements have been reached, civil money penalties were imposed, or FHA participation was terminated as of February 21, 2023.

I. Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, and Reprimands

1. AlaskaUSA Mortgage Company L.L.C., Anchorage, AK [Docket No. 22–2007–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with AlaskaUSA Mortgage Company L.L.C. (''AlaskaUSA'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: AlaskaUSA failed to timely notify FHA of a state sanction in its fiscal year 2021.

2. American Lending, Inc., Costa Mesa, CA [Docket No. 21–2185–MR]

Action: On February 24, 2022, the Board voted to withdraw American Lending, Inc. (''American Lending'') for a period of three years.

Cause: The Board took this action based on the following alleged violations of FHA requirements: American Lending (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; (b) submitted to FHA a false certification concerning its fiscal year 2020; (c) failed to maintain in its fiscal year 2020 the minimum required adjusted net worth; (d) failed to timely notify FHA of its minimum adjusted net worth deficiency in its fiscal year 2020; (e) failed to maintain the minimum required liquid assets in its fiscal year 2020; (f) failed to timely notify FHA of a required liquid assets deficiency in its fiscal year 2020; (g) failed to maintain a warehouse line of credit or other acceptable mortgage-funding program in its fiscal years 2020 and 2021; (h) failed to timely notify FHA of a funding program deficiency in its fiscal year 2020; (i) failed to timely notify FHA of a change in principal ownership in its fiscal year 2021; and (j) failed to comply with FHA underwriting requirements concerning one FHA-insured mortgage loan.

3. Ark-La-Tex Financial Services L.L.C. d/b/a Benchmark, L.L.C., Plano, TX [Docket No. 21–2191–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Ark-La-Tex Financial Services L.L.C. d/b/a Benchmark (''Benchmark'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Benchmark (a) failed to timely notify FHA of an unresolved finding in its fiscal year 2020; and (b) failed to timely notify FHA of a state sanction in its fiscal year 2020.

4. Aurora Financial Group, Wall Township, NJ [Docket No. 21–2235–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Aurora Financial Group (''Aurora'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Aurora: (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; (b) failed to timely notify FHA of a state sanction in its fiscal year 2021; and (c) failed to timely notify FHA of a second state sanction in its fiscal year 2021.

5. Bay to Bay Lending, L.L.C., Tampa, FL [Docket No. 21–2234–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Bay to Bay Lending, L.L.C. (''Bay to Bay'') that included a civil money penalty of $40,490. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Bay to Bay: (a) failed to timely submit acceptable annual audited financial statements and supplemental reports for its fiscal year 2020; (b) failed to maintain the minimum required adjusted net worth throughout its fiscal year 2020; (c) failed to timely notify FHA of its minimum adjusted net worth deficiency for its fiscal year 2020; (d) failed to timely notify FHA of an operating loss in a fiscal quarter that exceeded 20 percent of its net worth in its fiscal year 2020; (e) failed to file the required quarterly financial statements subsequent to an operating loss exceeding 20 percent of its quarter-end net worth in its fiscal year 2020; and (f) failed to timely notify FHA of a change in principal ownership in its fiscal year 2020.

6. Beeline Loans, Inc., Providence, RI [Docket No. 21–2136–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Beeline Loans, Inc. (''Beeline'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Beeline: (a) failed to timely notify FHA of an operating loss in a fiscal quarter that exceeded 20 percent of its net worth in its fiscal year 2020; (b) failed to file the required quarterly financial statements subsequent to an operating loss exceeding 20 percent of its quarter-end net worth in its fiscal year 2021; and (c) failed to file the required quarterly financial statements subsequent to an operating loss exceeding 20 percent of its quarter-end net worth in its fiscal year 2021.

7. Bellwether Enterprise Real Estate Capital, Cleveland, OH [Docket No. 21–2229–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Bellwether Enterprise Real Estate Capital (''Bellwether'') that included an administrative payment of $341,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA's requirements: Bellwether obtained loan fees in excess of five percent for five loans that received reduced Mortgage Insurance Premium (''MIP'') rates under the Affordable and Green MIP Programs.

8. BNB Financial, Inc., Glendale, CA [Docket No. 21–2252–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with BNB Financial, Inc. (''BNB'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: BNB (a) failed to timely notify FHA of a state sanction in its fiscal year 2021; and (b) submitted to FHA a false certification concerning its fiscal year 2021.

9. Broker Solutions, Inc., Tustin, CA

Action: On February 24, 2022, the Board voted to concur on a settlement of a False Claims Act lawsuit initiated by a realtor against Broker Solutions, Inc. d/b/a New American Funding (''Broker Solutions'') and that included a payment of $702,000 to FHA. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Broker Solutions (a) improperly compensated employees performing underwriting activities on a commission basis; (b) authorized certain managers or salespersons to override FHA and other government underwriting requirements; (c) took steps to improperly increase the appraised value of properties; (d) manipulated borrower income and debt information to improperly approve loans through TOTAL Mortgage Scorecard; and (e) withheld underwriting deficiencies identified by quality control auditors from FHA and other government entities.

10. Chu & Associates, Inc., d/b/a Fidelity Funding Bancorp, Pasadena, CA [Docket No. 21–2245–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Chu & Associates, Inc. (''Chu'') that included a civil money penalty of $30,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Chu (a) failed to maintain the minimum required adjusted net worth in its fiscal years 2020 and 2021; (b) failed to timely notify FHA of its adjusted net worth deficiency in its fiscal years 2020 and 2021; (c) failed to maintain the minimum required liquid assets in its fiscal year 2020; and (d) failed to timely notify FHA of a liquid asset deficiency in its fiscal year 2020.

11. Cliffco Inc., Uniondale, NY [Docket No. 22–2205–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Cliffco Inc. (''Cliffco'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Cliffco failed to timely notify FHA of a state sanction in its fiscal year 2021.

12. Coastal States Mortgage, Inc., Hilton Head Island, SC [Docket No. 21–2202–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Coastal States Mortgage, Inc. (''Coastal States'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirement. Coastal States (a) failed to report an unresolved finding in its fiscal year 2019; and (b) failed to timely report a state sanction in its fiscal year 2019.

13. Columbus Capital Lending, L.L.C., d/b/a Zoom Loans, Miami, FL [Docket No. 22–2006–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Columbus Capital Lending, L.L.C. d/b/a Zoom Loans (''Zoom Loans'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements. Zoom Loans (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (b) submitted to FHA a false certification concerning its fiscal year 2020.

14. Contour Mortgage Corporation, Garden City, NY [Docket No. 21–2195–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Contour Mortgage Corporation (''Contour'') that included a civil money penalty of $25,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements. Contour (a) failed to timely notify FHA of a state sanction in its fiscal years 2018 and 2020; (b) failed to timely notify FHA of a state sanction against its employee in its fiscal year 2018; and (c) submitted to FHA a false certification concerning its fiscal year 2018.

15. Credence Funding Corporation, Aberdeen, MD [Docket No. 22–2002–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Credence Funding Corporation (''Credence'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Credence (a) failed to timely notify FHA of a state sanction in its fiscal year 2019; and (b) submitted to FHA a false certification concerning its fiscal year 2019.

16. Del Sur Corporation, San Fernando, CA [Docket No. 20–2145–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Del Sur Corporation (''Del Sur'') that included a civil money penalty of $38,977. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Del Sur failed to maintain an escrow account to segregate escrow commitment deposits, work completion deposits, and all periodic payments received for loans or insured mortgages on account of ground rents, taxes, assessments and insurance charges or premiums in its fiscal years 2017, 2018, 2019, and 2020.

17. Dwight Capital LLC, New York, NY [Docket No. 21–2166–MR]

Action: On September 15, 2022, the Board voted to enter into a settlement agreement with Dwight Capital LLC (''Dwight'') that included a civil money penalty of $16,000,000, execution of 24 life-of-loan indemnifications, and a corrective action plan. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Dwight (a) obtained loan fees in excess of five percent for five loans that received reduced MIP rates under FHA's Green MIP Program; (b) engaged in prohibited business practices, (c) failed to adopt a Quality Control (''QC'') Program that fully complied with HUD requirements; (d) failed to comply with its QC Program, (e) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees; (f) failed to disclose identity of interest (''IOI'') relationships; (g) failed to properly disclose and review IOI borrowers; (h) submitted to FHA false statements and false certifications; (i) submitted false information to the Mortgagee Review Board; and (j) violated use and disclosure requirements regarding brokers.

18. Evesham Mortgage L.L.C., Marlton, NJ [Docket No. 21–2246–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Evesham Mortgage L.L.C. (''Evesham'') that included a civil money penalty of $59,567, and execution of five life-of loan indemnifications. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged

violations of FHA requirements: Evesham (a) failed to properly verify and document effective income on two loans; (b) failed to properly document gift funds for nine loans; (c) failed to properly document borrowers' funds to close for two loans; (d) failed to document that a borrower whose underwriting approval relied on the use of retirement account assets was both eligible to make withdrawals and did, in fact, make the withdrawals; (e) failed to include all required documentation in the case binders for two loans; (f) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (g) submitted to FHA a false certification concerning its fiscal year 2020.

19. Fairway Independent Mortgage Corporation, Madison, WI [Docket No. 21–2192–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Fairway Independent Mortgage Corporation (''Fairway'') that included a civil money penalty of $96,960. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Fairway (a) failed to adopt and implement a QC Plan in compliance with FHA requirements; and (b) failed to comply with FHA's self-reporting requirements to ensure it reported to FHA all fraud, misrepresentation, and other findings.

20. Finco Mortgage L.L.C., Scottsdale, AZ [Docket No. 22–2004–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Finco Mortgage L.L.C. d/b/a Minute Mortgage (''Minute Mortgage'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Minute Mortgage (a) failed to maintain the minimum required adjusted net worth in its fiscal year 2021; and (b) failed to timely notify FHA of its minimum adjusted net worth deficiency in its fiscal year 2021.

21. GoodLeap, LLC, Roseville, CA [Docket No. 21–2250–MR]

Action: On September 15, 2022, the Board voted to enter into a settlement agreement with GoodLeap, LLC (''GoodLeap'') that included a civil money penalty of $35,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: GoodLeap (a) failed to timely notify FHA of an operating loss in a fiscal quarter that exceeded 20 percent of its net worth in its fiscal year 2020 and fiscal year 2021; (b) failed to file the required quarterly financial statements subsequent to an operating loss exceeding 20 percent of its quarter-end net worth in its fiscal year 2020 and fiscal year 2021; (c) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (d) submitted to FHA a false certification concerning its fiscal year 2020.

22. Grande Homes, Inc., National City, CA [Docket No. 21–2249–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Grande Homes, Inc. (''Grande Homes'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Grande Homes violated FHA requirements by failing to timely notify FHA of a change of its principal ownership in its fiscal year 2020.

23. Greystone Funding Company L.L.C., Atlanta, GA [Docket No. 22–2019–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Greystone Funding Company L.L.C. (''Greystone'') that included a civil money penalty of $4,801,340 and required Greystone to update its training materials; improve its underwriting processes; institute review by senior staff and, if necessary, its legal department; instruct its team to err on the side of disclosure; expand its IOI screening; and amend its QC plan to clarify it reporting obligations. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Greystone: (a) falsely certified in three instances in each of twenty Section 223(a)(7) refinance applications submitted by Greystone in 2020 and 2021; (b) failed to disclose an ongoing Department of Justice investigation into the borrower's projects and companies; and (c) failed to disclose an IOI with the borrower.

24. Heartland Bank and Trust Company, Bloomington, IL [Docket No. 21–2209–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Heartland Bank and Trust Company (''Heartland'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Heartland violated FHA requirements by failing to timely notify FHA of change in its business structure in fiscal year 2020.

25. Jet Direct Funding Corp. d/b/a Jet Direct Mortgage, Bay Shore, NY [Docket No. 20–2019–MR]

Action: On May 18, 2021, the Board voted to enter into a settlement agreement with Jet Direct Funding Corp. d/b/a Jet Direct Mortgage (''Jet Direct'') that included a civil money penalty of $19,819. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Jet Direct (a) failed to timely notify FHA of a state sanction in its fiscal year 2018; (b) failed to timely notify FHA of a state sanction in its fiscal year 2019; and (c) submitted to FHA a false certification concerning its fiscal year 2018.

26. JSB Mortgage Corporation, La Mirada, CA [Docket No. 20–2067–MR]

Action: On September 21, 2021, the Board voted to impose a civil money penalty of $25,134 against JSB Mortgage Corporation (''JSB'').

Cause: The Board took this action based on the following alleged violations of FHA requirements: JSB (a) failed to timely notify FHA of a state sanction in its fiscal year 2019; (b) submitted to FHA a false certification concerning its fiscal year 2019; and (c) permitted its Officer in Charge to engage in dual employment.

27. Manhattan Financial Group, Inc., Escondido, CA [Docket No. 21–2206–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Manhattan Financial Group, Inc. (''Manhattan Financial'') that included a civil money penalty of $10,067. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Manhattan

Financial failed to timely notify FHA of a state sanction in its fiscal year 2019.

28. Mortgage Clearing Corporation, Tulsa, OK [Docket No. 21–2253–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Mortgage Clearing Corporation (''Mortgage Clearing'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Mortgage Clearing failed to timely notify FHA of a state sanction in its fiscal year 2021.

29. Mortgage Solutions of Colorado L.L.C., Colorado Springs, CO [Docket No. 22–2013–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Mortgage Solutions of Colorado L.L.C. (''Mortgage Solutions'') that included a civil money penalty of $15,366. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Mortgage Solutions (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (b) submitted to FHA a false certification concerning its fiscal year 2020.

30. New England Regional Mortgage Corporation, Salem, NH [Docket No. 22–2009–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with New England Regional Mortgage Corp (''New England Regional'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: New England Regional failed to timely notify FHA of a state sanction in its fiscal year 2021.

31. North American Financial Corporation, Henderson, NV [Docket No. 21–2214–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with North American Financial Corporation (''North American'') that included a civil money penalty of $25,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: North American (a) originated 33 FHA loans between February 8, 2017 and August 27, 2018 without the appropriate state license; and (b) failed to timely notify FHA of a state sanction in its fiscal year 2020.

32. Pacific Horizon Bancorp, La Crescenta, CA [Docket No. 22–2018–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Pacific Horizon Bancorp (''Pacific Horizon'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Pacific Horizon (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (b) submitted to FHA a false certification concerning its fiscal year 2020.

33. Poli Mortgage Group, Norwood, MA [Docket No. 22–2012–MR]

Action: On September 15, 2022, the Board voted to enter into a settlement agreement with Poli Mortgage Group (''Poli'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Poli (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (b) submitted to FHA a false certification concerning its fiscal year 2020.

34. ReNew Lending, Inc., Reno, NV [Docket No. 21–2254–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Renew Lending, Inc. (''ReNew'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: ReNew (a) failed to maintain the minimum required liquid assets in its fiscal year 2020; and (b) failed to timely notify FHA of a liquid assets deficiency in its fiscal year 2020.

35. Residential Acceptance Corporation, L.L.C., Tampa, FL [Docket No. 21–2198–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Residential Acceptance Corporation, L.L.C. (''Residential Acceptance'') that included a civil money penalty of $30,490 and indemnification of one loan. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Residential Acceptance (a) failed to properly validate assets and resolve conflicting information during underwriting; (b) failed to meet FHA requirements in documenting gift funds; and (c) failed to timely notify FHA of two state sanctions in its fiscal year 2021.

36. Residential Mortgage Funding Inc., Orange, CA [Docket No. 22–2003–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Residential Mortgage Funding, Inc. (''Residential Mortgage'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Residential Mortgage (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (b) submitted to FHA a false certification concerning its fiscal year 2020.

37. Ruoff Mortgage Company Inc., Fort Wayne, IN [Docket No. 21–2183–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Ruoff Mortgage Company Inc. (''Ruoff'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Ruoff failed to timely notify FHA of a state sanction in its fiscal year 2020.

38. Rushmore Loan Management Services, L.L.C., Dallas, TX [Docket No. 22–2010–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Rushmore Loan Management Services (''Rushmore'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Rushmore failed to timely notify FHA of a state sanction in its fiscal year 2020.

39. Sente Mortgage Inc., Austin, TX [Docket No. 22–2022–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Sente Mortgage, Inc. (''Sente'') that included a civil money penalty of $15,366. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Sente (a) failed to timely notify FHA in its fiscal year 2021 of a state sanction; and (b) submitted to FHA a false certification concerning its fiscal year 2021.

40. ServiceMac L.L.C., Fort Mill, SC [Docket No. 21–2203–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with ServiceMac, L.L.C. (''ServiceMac'') that included a civil money penalty of $20,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: ServiceMac (a) failed on four occasions to timely notify FHA of an operating loss in a fiscal quarter that exceeded 20 percent of its net worth in its fiscal year 2019; and (b) failed to file the required quarterly financial statements subsequent to an operating loss exceeding 20 percent of its quarter-end net worth in its fiscal year.

41. SouthPoint Financial Services, Inc., Alpharetta, GA [Docket No. 22–2021–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with SouthPoint Financial Services, Inc. (''SouthPoint'') that included a civil money penalty of $10,067 and execution of one 5-year indemnification agreement. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Southpoint failed to adequately document the transfer of gift funds for an FHA insured loan.

42. Statewide Funding Inc., Ontario, CA [Docket No. 21–2215–MR]

Action: On September 15, 2022, the Board voted to enter into a settlement agreement with Statewide Funding, Inc. (''Statewide'') that included a civil money penalty of $25,366 and Statewide's submission of quarterly financial statements to FHA for one year. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Statewide (a) failed to maintain in its fiscal years 2019, 2020, and 2021 the minimum required adjusted net worth; and (b) failed to timely notify FHA of its adjusted net worth deficiency in its fiscal year 2020.

43. Sunmark Credit Union, Latham, NY [Docket No.21–2200–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Sunmark Credit Union (''Sunmark'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Sunmark failed to timely notify FHA of two changes in its business structure (in, respectively, December 2018 and May 2019) involving Sunmark and two non-FHA approved credit unions.

44. Sutherland Mortgage Services Inc., Sugar Land, TX [Docket No. 21–2247–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with Sutherland Mortgage Services Inc. (''Sutherland'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Sutherland (a) failed to maintain the minimum required adjusted net worth for its fiscal year 2020; and (b) failed to timely notify FHA of an adjusted net worth deficiency in its fiscal year 2020.

45. United Security Financial Corp., Murray, UT [Docket No. 21–2207–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with United Security Financial Corp. (''United Security'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: United Security failed to timely notify FHA of a state sanction in its fiscal year 2020.

46. US Direct Lender, La Canada Flintridge, CA [Docket No. 21–2143–MR]

Action: On June 16, 2022, the Board voted to enter into a settlement agreement with US Direct Lender (''US Direct'') that included a civil money penalty of $25,490. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: US Direct (a) falsely certified in its application for FHA approval that it had not been subject to any regulatory actions; (b) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (c) submitted to FHA a false certification concerning its fiscal year 2020.

47. Watermark Capital, Inc., Irvine, CA [Docket No. 22–2034–MR]

Action: On September 15, 2022, the Board voted to enter into a settlement agreement with Watermark Capital, Inc. (''Watermark'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Watermark failed to timely notify FHA of a state sanction in its fiscal year 2021.

48. Western Ohio Mortgage Corporation, Sidney, OH [Docket No. 21–2248–MR]

Action: On February 24, 2022, the Board voted to enter into a settlement agreement with Western Ohio Mortgage Corporation (''Western Ohio'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Western Ohio (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (b) submitted to FHA a false certification concerning its fiscal year 2020.

49. Wyndham Capital Mortgage, Inc., Charlotte, NC [Docket No. 21–2204–MR]

Action: On December 7, 2021, the Board voted to enter into a settlement agreement with Wyndham Capital Mortgage, Inc. (''Wyndham'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Wyndham failed to timely notify FHA of a state sanction in its fiscal year 2020.

II. Lenders That Failed To Timely Meet Requirements for Annual Recertification of FHA Approval but Came Into Compliance.

Action: The Board entered into settlement agreements with the following lenders, which required the lender to pay a civil money penalty without admitting fault or liability.

Cause: The Board took these actions based upon allegations that the listed lenders failed to comply with FHA's annual recertification requirements in a timely manner.

The following lenders paid civil money penalties of $10,366:

1. *Home Financing Center, Inc., Coral Gables, FL [Docket No. 22–2057–MRT]*
2. *Magnolia Bank, Magnolia, KY [Docket No. 22–2032–MRT]*
3. *Obsidian Financial Services, Inc., Melbourne, FL [Docket No. 22–2043–MRT]*
4. *Republic First Bank d/b/a Republic Bank, Philadelphia, PA [Docket No. 22–2063–MRT]*

The following lender paid civil money penalties of $10,245:

Industrial Bank NA, Washington, DC [Docket No. 21–2230–MRT]

The following lenders paid civil money penalties of $5,000.

1. *A Plus Mortgage Services Inc., Muskego, WI [Docket No. 22–2044–MRT]*
2. *Accunet Mortgage L.L.C., Waukesha, WI [Docket No. 22–2046–MRT]*
3. *Advantis Credit Union, Milwaukie, OR [Docket No. 22–2031–MRT]*
4. *Augusta Financial Inc., Santa Clarita, CA [Docket No. 22–2053–MRT]*
5. *Bank, Wapello, IA [Docket No. 22–2033–MRT]*
6. *GenHome Mortgage Corporation f/k/a Beckam Funding Corp., Irvine, CA [Docket No. 21–2237–MRT]*
7. *Devon Bank, Chicago, Il [Docket No. 22–2016–MRT]*
8. *First Service Credit Union, Houston, TX [Docket No. 22–2030–MRT]*
9. *Forbright Bank, Chevy Chase, MD [Docket No. 22–2039–MRT]*
10. *Statebridge Company, L.L.C., Greenwood Village, CO [Docket No. 22–2050–MRT]*
11. *Verve, a Credit Union, Oshkosh, WI [Docket No. 22–2042–MRT]*

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Administration, Mortgagee Review Board, Chairperson.

[FR Doc. 2023–05978 Filed 3–22–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0028; FXES11130400000–223–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Luxer Development, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally threatened sand skink (*Plestiodon reynoldsi*) and the federally threatened blue-tailed mole-skink (*Eumeces egregius lividus*) incidental to the construction of a residential development in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before April 24, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0028 at *https://www.regulations.gov*.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0028.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0028; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by U.S. mail (see **ADDRESSES**), via telephone at 772–469–4234 or by email at *alfredo_begazo@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Luxer Development, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Plestiodon reynoldsi*) and blue-tailed mole-skink (*Eumeces egregius lividus*) (skinks) incidental to the construction and use of a residential development in Polk County, Florida. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as ''low effect,'' and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take the two skink species via the conversion of approximately 13.69 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and use of a residential development on a 114.35-ac parcel in Sections 32 and 33, Township 28 South, Range 28 East in Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 27.38 ac of skink-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any construction of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other

personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project—including the construction of multiple single-family residences, driveways, parking spaces, green areas, stormwater pond, and associated infrastructure (*e.g.,* electric, water, and sewer lines)—would individually and cumulatively have a minor effect on the skinks and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a ''low-effect'' ITP that individually or cumulatively would have a minor effect on the species and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A ''low-effect'' incidental take permit is one that would result in (1) minor or negligible effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 0068768 to Luxer Development, LLC.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Manager, Division of Environmental Review, Florida Ecological Services Office.

[FR Doc. 2023–05950 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2023–N024; FXES11130600000–234–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits, permit renewals, and/or permit amendments to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by April 24, 2023.

ADDRESSES: *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* Smith, PER0123456 or ES056001):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Tom McDowell, Division Manager, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–236–4347 (phone), or *permitsR6ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit No.	Applicant	Species	Location	Activity	Permit action
ES–056079	Colorado State University, Fort Collins, CO.	• Bonytail (*Gila elegans*) ..... • Colorado pikeminnow (*Ptychocheilus lucius*). • Razorback sucker (*Xyrauchen texanus*)	Arizona, Colorado, Utah, and Wyoming.	Survey, capture, handle, electrofish, tag, and release.	Renew and amend.
ES–054317	Interwest Wildlife & Ecological Services, Inc., Richmond, UT.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Colorado and Utah	Play taped vocalizations for surveys.	Renew.
ES–057485	Zion National Park, Springdale, UT.	• Southwestern willow flycatcher (*Empidonax traillii extimus*). • Shivwits milk-vetch (*Astragalus ampullarioides*).	Utah	Play taped vocalizations for surveys and collect plants and parts.	Renew and amend.
ES–00484C	Keith Geluso, Kearney, NE	• Gray bat (*Myotis grisescens*) ..... • Northern Long-Eared Bat (*Myotis septentrionalis*).	Kansas, Nebraska, and South Dakota.	Survey, capture, handle, band, and track.	Amend.
ES–98708A	South Dakota Department of Agriculture and Natural Resources, Rapid City, SD.	• Topeka shiner (*Notropis topeka* (=*tristis*)).	South Dakota	Survey, capture, handle, collect vouchers, and release.	Renew.
ES–210754	Lincoln Children's Zoo, Lincoln, NE.	• Salt Creek Tiger beetle (*Cicindela nevadica lincolniana*).	Nebraska	Survey, capture, handle, propagate in captivity, monitor populations, and release.	Renew.
ES–68706C	Christopher Guy, Bozeman, MT.	• Pallid sturgeon (*Scaphirhynchus albus*)	Montana	Capture, collect biological samples for research, and release.	Renew and amend.
ES–067486	University of Nebraska, Lincoln, NE.	• Pallid sturgeon (*Scaphirhynchus albus*)	Nebraska	Capture, handle, tag, collect biological samples, and release.	Renew and amend.
PER0009566 ...	Colorado Natural Heritage Program, Colorado State University, Fort Collins, CO.	• New Mexico meadow jumping mouse (*Zapus hudsonius luteus*).	Colorado, New Mexico	Capture, handle, tag, collect biological samples, attach radio-transmitters, and release.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Thomas McDowell,

Acting Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2023–05934 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2023–N031; FXES11130300000–234–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the ESA. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before April 24, 2023.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* ESXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email (preferred method): permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. ESXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite

review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE30471C	Randy Mitchell, Akron, OH.	Rusty patched bumble bee (*Bombus affinis*).	OH, WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, and release.	Renew and amend.
PER1867075	Jackson County Conservation Board, Maquoketa, IA.	Rusty patched bumble bee (*Bombus affinis*).	IA	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, and release.	New.
ES181256	Lewis Environmental Consulting, Murray, KY.	Add—Round hickorynut (*Obovaria subrotunda*) and longsolid (*Fusconaia subrotunda*)—to existing authorized species—60 freshwater mussel species.	AL, AR, FL, GA, IL, IN, IA, KY, MI, MO, MS, OH, PA, TN, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, and release.	Amend.
PER1896698	Caleb Knerr, Jefferson City, MO.	Eleven species	AR, IA, IL, KS, KY, MO, NE, OK, TN.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate due to stranding.	New.
TE11145C	Lisa Kleinschmidt, Syracuse, NY.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*).	AL, AR, CT, DE, GA, IA, IL, IN, KS, KY, MD, MA, MI, MN, MS, MO, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VA, VT, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, band, radio-track, collect biosamples, release.	Renew.
ES28570D	Midwest Natural Resources, St. Paul, MN.	Rusty patched bumble bee (*Bombus affinis*), Dakota skipper (*Hesperia dacotae*).	IL, IN, IA, ME, MD, MA, MN, NC, NY, OH, TN, VA, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, temporary hold, release, salvage.	Renew and amend.
PER0039255	Ryan Schwegman, College Corner, OH.	Add—Round hickorynut (*Obovaria subrotunda*) and longsolid (*Fusconaia subrotunda*)—to existing authorized species—11 freshwater mussel species.	AR, DE, IL, IN, IA, KS, KY, MD, MI, MN, MO, NY, OK, OH, PA, TX, VA, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, tag, release.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, USFWS Region 3.

[FR Doc. 2023–05929 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2023–N019; FXES11130500000–234–FF05E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive any written comments on or before April 24, 2023.

ADDRESSES: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant's name and application number (*e.g.,* PER0001234):

- *Email: permitsR5ES@fws.gov.*
- *U.S. Mail:* Abby Gelb, Ecological Services, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Abby Gelb, 413–253–8212 (phone), or *permitsR5ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species, unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
1540434	Steve Tanguay, Hot Springs, VA.	Rusty patched bumble bee (*Bombus affinis*).	Virginia, West Virginia	Presence/absence survey	Capture	New.
60434D–1 ...	Sea Turtle Recovery, West Orange, NJ. William Deerr.	Kemp's ridley sea turtle (*Lepidochelys kempii*), hawksbill sea turtle (*Eretmochelys imbricata*), leatherback sea turtle (*Dermochelys coriacea*), loggerhead sea turtle (*Caretta caretta*), green sea turtle (*Chelonia mydas*).	New Jersey	*Add:* stranding response, nest monitoring and relocation, telemetry.	Salvage, capture, collect.	Amend.
20359D–1 ...	*Add:* Roseate tern (*Sterna dougallii dougallii*).	*Add:* New York	Survey, capture, band, release.	Capture	Amend.	

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
1541732	Emily Pody, Lexington, VA.	Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat, (*Corynorhinus* (=*Plecotus*) *townsendii ingens*), Virginia big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii virginianus*).	Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.	Presence/absence survey, band, collect non-intrusive measurements, tag.	Capture, collect	New.
1541934	Audubon Sea Bird Institute, Bremen, ME. Donald Lyons.	Roseate tern (*Sterna dougallii dougallii*).	Maine, Massachusetts	Telemetry attachment research, capture, band, tag.	Capture	New.
1745522	Zeinab Haidar, Arcata, CA	Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), tricolored bat (*Perimyotis subflavus*).	Pennsylvania, Virginia, West Virginia.	Presence/absence survey, band, collect non-intrusive measurements, tag, wing punch.	Capture, collect	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martin Miller,

Manager, Division of Endangered Species, Ecological Services, Northeast Region.

[FR Doc. 2023–05961 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2023–N020; FXES11130800000–234–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before April 24, 2023.

ADDRESSES:

Document availability and comment submission: Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* XXXXXX or PER0001234).

- *Email: permitsR8ES@fws.gov.*
- *U.S. Mail:* Susie Tharratt, Regional Recovery Permit Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Susie Tharratt, via phone at 916–414–6561, or via email at *permitsR8ES@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct

activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
PER1439930	U.S. Geological Survey, Columbia, Missouri.	• Lost River sucker (*Deltistes luxatus*)	MO	Handle, transport, receive, maintain in captivity, sacrifice, and purposeful retention of live fertilized eggs.	New.
838743	David Faulkner, Rancho Dominguez, California.	• Laguna Mountains skipper (*Pyrgus ruralis lagunae*). • Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). • Quino checkerspot butterfly (*Euphydryas editha quino* (=*E. e. wrighti*)).	CA	Survey by pursuit	Renew.
PER1620290	Spring Strahm, San Diego, California.	• Laguna Mountains skipper (*Pyrgus ruralis lagunae*). • Quino checkerspot butterfly (*Euphydryas editha quino* (=*E. e. wrighti*)).	CA	Survey by pursuit	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Peter Erickson,

Acting Regional Endangered Species Program Manager, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2023–05909 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2023–N025; FXES11140400000–223–FF04E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by April 24, 2023.

ADDRESSES:

Reviewing Documents: Submit requests for copies of applications and other information submitted with the applications to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**). All requests and comments should specify the applicant name and application number (*e.g.,* Mary Smith, ESPER0001234).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- *Email (preferred method): permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.
- *U.S. mail:* U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 404–679–7097 (telephone) or *karen_marlowe@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species

Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies, and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES812344–7	Pennington and Associates, Inc.; Cookeville, TN.	Fishes: amber darter (*Percina antesella*), blackside dace (*Phoxinus cumberlandensis*), blue shiner (*Cyprinella caerulea*), bluemask darter (*Etheostoma akatulo*), boulder darter (*Etheostoma wapiti*), chucky madtom (*Noturus crypticus*), Conasauga logperch (*Percina jenkinsi*), Cumberland darter (*Etheostoma susanae*), duskytail darter (*Etheostoma percnurum*), laurel dace (*Chrosomus saylori*), palezone shiner (*Notropis albizonatus*), pygmy madtom (*Noturus stanauli*), and smoky madtom (*Noturus baileyi*); Mussels: Alabama lampmussel (*Lampsilis virescens*), Alabama moccansinshell (*Medionidus acutissimus*), Appalachian elktoe (*Alasmidonta raveneliana*), Appalachian monkeyface (*Theliderma sparsa*), birdwing pearlymussel (*Lemiox rimosus*), clubshell (*Pleurobema clava*), Coosa moccasinshell (*Medionidus parvulus*), cracking pearlymussel (*Hemistena lata*), Cumberland bean (*Villosa trabalis*), Cumberland elktoe (*Alasmidonta atropurpurea*), Cumberland monkeyface (*Theliderma intermedia*), Cumberland pigtoe (*Pleuronaia gibber*), Cumberlandian combshell (*Epioblasma brevidens*), dromedary pearlymussel (*Dromus dromas*), fanshell (*Cyprogenia stegaria*), finelined pocketbook (*Hamiota altilis*), finerayed pigtoe (*Fusconaia cuneolus*), fluted kidneyshell (*Ptychobranchus subtentus*), Georgia pigtoe (*Pleurobema hanleyianum*), littlewing	Alabama, Georgia, Kentucky, North Carolina, Tennessee, and Virginia.	Presence/probable absence surveys, population estimates, and age class determinations.	Fishes: capture, handle, identify, and release; Mussels: capture, handle, identify, release, and salvage relic shells; Snails: capture, handle, identify, and release; Crustaceans: capture, handle, identify, measure, sex, and release.	Renewal.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
		pearlymussel (*Pegias fabula*), orangefoot pimpleback (*Plethobasus cooperianus*), ovate clubshell (*Pleurobema perovatum*), oyster mussel (*Epioblasma capsaeformis*), pale lilliput (*Toxolasma cylindrellus*), pink mucket (*Lampsilis abrupta*), purple bean (*Villosa perpurpurea*), purple cat's paw (*Epioblasma obliquata*), rayed bean (*Villosa fabalis*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), rough rabbitsfoot (*Quadrula cylindrica strigillata*), scaleshell (*Leptodea leptodon*), sheepnose (*Plethobasus cyphyus*), shiny pigtoe (*Fusconaia cor*), slabside pearlymussel (*Pleuronaia dolabelloides*), snuffbox mussel (*Epioblasma triquetra*), southern acornshell (*Epioblasma othcaloogensis*), southern pigtoe (*Pleurobema georgianum*), spectaclecase (*Cumberlandia monodonta*), tan riffleshell (*Epioblasma florentina walkeri* [=*E. walkeri*]), triangular kidneyshell (*Ptychobranchus greenii*), upland combshell (*Epioblasma metastriata*), white wartyback (*Plethobasus cicatricosus*), and winged mapleleaf (*Quadrula fragosa*); Snails: Anthony's riversnail (*Athearnia anthonyi*) and royal marstonia (*Marstonia ogmorhaphe*); Crustaceans: Nashville crayfish (*Orconectes shoupi*).				
ES11866B–1	Francis Marion and Sumter National Forests, U.S. Forest Service; Columbia, SC.	Red-cockaded woodpecker (*Picoides borealis*) and American chaffseed (*Schwalbea americana*).	South Carolina	Red-cockaded woodpecker: population management and monitoring; American chaffseed: germination and reintroduction.	Red-cockaded woodpecker: capture, band, drill nest cavities, install inserts and restrictors, install snake and squirrel excluders, monitor nest cavities and artificial nest cavities, recapture, and translocate; American chaffseed: collect seeds.	Renewal and amendment.
PER0388631–0	Gordon-Bryon Stuart Marsh; Raleigh, NC.	Amphibians: Neuse River waterdog (*Necturus lewisi*); Fishes: Carolina madtom (*Noturus furiosus*) and Roanoke logperch (*Percina rex*); Mussels: Atlantic pigtoe (*Fusconaia masoni*), dwarf wedgemussel (*Alasmidonta heterodon*), Tar River spinymussel (*Parvaspina steinstansana*), and yellow lance (*Elliptio lanceolata*).	North Carolina and Virginia.	Presence/probable absence surveys.	Amphibians and Fishes: capture, handle, identify, mark, and release; Mussels: capture, handle, identify, mark, release, and salvage relic shells.	New.
ES67197D–2	Tyler Black; Chapel Hill, NC.	Neuse River waterdog (*Necturus lewisi*), Carolina madtom (*Noturus furiosus*), and sickle darter (*Percina williamsi*).	North Carolina, Tennessee, and Virginia.	Presence/probable absence surveys.	Capture, handle, identify, and release.	Amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES206872–12	Joy O'Keefe, University of Illinois at Urbana-Champaign; Urbana, IL.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), tricolored bat (*Perimyotis subflavus*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys, studies to document habitat use, population monitoring, and to evaluate potential impacts of white-nose syndrome or other threats.	Enter hibernacula or maternity roost caves, capture with mist nets or harp traps, handle, identify, band, radio tag, collect hair samples, swab, use tape to collect mites, wing punch, and release.	Renewal and amendment.
ES38792A–3	U.S. Army; Fort Gordon, GA.	Red-cockaded woodpecker (*Picoides borealis*).	Fort Gordon, Fort Stewart, and Fort Benning, Georgia; Apalachicola and Ocala National Forests, Florida; and Fort Bragg, North Carolina.	Population management and monitoring.	Capture, band, drill nest cavities, install inserts and restrictors, install snake and squirrel excluders, monitor nest cavities and artificial nest cavities, recapture, and translocate.	Renewal and amendment.
ES05565B–2	UT-Battelle Corp.; Oak Ridge, TN.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and tricolored bat (*Perimyotis subflavus*).	Oak Ridge Reservation, Tennessee.	Presence/probable absence surveys.	Capture with mist nets, handle, identify, band, wing punch, salvage, and release.	Renewal and amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES56515D–1	Leslie Meade; Richmond, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	Arkansas, Connecticut, Delaware, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys, studies to document habitat use, population monitoring, and studies to evaluate potential impacts of white-nose syndrome or other threats.	Enter hibernacula or maternity roost caves, capture with harp traps, collect hair samples, wing punch, swab, and release.	Amendment.
ES089074–5	Corblu Ecology Group, LLC; Woodstock, GA.	Fishes: amber darter (*Percina antesella*), blue shiner (*Cyprinella caerulea*), Cherokee darter (*Etheostoma scotti*), Conasauga logperch (*Percina jenkinsi*), Etowah darter (*Etheostoma etowahae*), and goldline darter (*Percina aurolineata*); Mussels: Alabama moccasinshell (Medionidus acutissimus), Coosa moccasinshell (*Medionidus parvulus*), fat threeridge (*Amblema neislerii*), finelined pocketbook (*Hamiota altilis*), Georgia pigtoe (*Pleurobema hanleyianum*), Gulf moccasinshell (*Medionidus penicillatus*), oval pigtoe (*Pleurobema pyriforme*), purple bankclimber (*Elliptoideus sloatianus*), shinyrayed pocketbook (*Hamiota subangulata*), southern clubshell (*Pleurobema decisum*), southern pigtoe (*Pleurobema georgianum*), and triangular kidneyshell (*Ptychobranchus greenii*).	Alabama and Georgia.	Presence/probable absence surveys and population monitoring.	Fishes: capture, handle, identify, and release; Mussels: capture, handle, identify, release, and salvage relic shells.	Renewal.
ES054973–7	Nicholas Haddad, Michigan State University; Hickory Corners, MI.	Mitchell's satyr butterfly (*Neonympha mitchellii mitchellii*).	Alabama, Michigan, Mississippi, and North Carolina.	Scientific research.	Collect caterpillars and sacrifice or retain all lab-reared caterpillars.	Amendment.
ES56746B–5	Joseph Johnson; Cincinnati, OH.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), tricolored bat (*Perimyotis subflavus*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	Alabama, Kentucky, Ohio, Pennsylvania, and West Virginia.	Presence/probable absence surveys, investigate impacts of white-nose syndrome and habitat management on bat communities, migration studies, and genetic analyses.	Enter hibernacula and maternity roost caves, capture with mist nets or harp traps, handle, identify, band, radio tag, wing punch, and release.	Renewal and amendment.
ES37652B–3	Blue Ridge Parkway, National Park Service; Asheville, NC.	Spruce-fir moss spider (*Microhexura montivaga*) and rusty patched bumble bee (*Bombus affinis*).	North Carolina and Virginia.	Presence/probable absence surveys.	Spruce-fir moss spider: lift bryophyte mats; rusty patched bumble bee: capture, handle, identify, and release.	Amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES060988–5	U.S. Army; Fort Jackson, SC.	Red-cockaded woodpecker (*Picoides borealis*).	South Carolina	Population management and monitoring.	Capture, band, monitor nest cavities, construct and monitor artificial nest cavities and restrictors, translocate, recapture, and release.	Renewal and amendment.
ES43261B–1	Ann Altman; Columbia, SC.	Carolina heelsplitter (*Lasmigona decorata*)	North Carolina and South Carolina.	Presence/probable absence surveys.	Capture, handle, identify, release, and salvage relic shells.	Renewal.
ES79580A–4	Jason Butler; Midway, KY.	Mammals: gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), and northern long-eared bat (*Myotis septentrionalis*); Fishes: blackside dace (*Phoxinus cumberlandensis*) and Cumberland darter (*Etheostoma susanae*).	Kentucky, Tennessee, Virginia, and West Virginia.	Presence/probable absence surveys.	Mammals: enter hibernacula or maternity roost caves, capture with mist nets or harp traps, handle, identify, band, radio tag, salvage dead bats, and release; Fishes: capture, handle, identify, and release.	Renewal.
ES100626–10	Selby Environmental, Inc.; Decatur, AL.	Reptiles: flattened musk turtle (*Sternotherus depressus*); Fishes: amber darter (*Percina antesella*), blue shiner (*Cyprinella caerulea*), boulder darter (*Etheostoma wapiti*), Cahaba shiner (*Notropis cahabae*), chucky madtom (*Noturus crypticus*), Cumberland darter (*Etheostoma susanae*), goldline darter (*Percina aurolineata*), laurel dace (*Chrosomus saylori*), palezone shiner (*Notropis albizonatus*), rush darter (*Etheostoma phytophilum*), spring pygmy sunfish (*Elassoma alabamae*), vermilion darter (*Etheostoma chermocki*), and watercress darter (*Etheostoma nuchale*); Mussels: Alabama lampmussel (*Lampsilis virescens*), Alabama moccasinshell (*Medionidus acutissimus*), Alabama pearlshell (*Margaritifera marrianae*), Altamaha spinymussel (*Elliptio spinosa*), Appalachian elktoe (*Alasmidonta raveneliana*), Appalachian monkeyface (*Theliderma sparsa*), black clubshell (*Pleurobema curtum*), Chipola slabshell (*Elliptio chipolaensis*), Choctaw bean (*Obovaria choctawensis*), clubshell (*Pleurobema clava*), Coosa moccasinshell (*Medionidus parvulus*), cracking pearlymussel (*Hemistena lata*), Cumberland bean (*Villosa trabalis*), Cumberland elktoe (*Alasmidonta atropurpurea*), Cumberland monkeyface (*Theliderma intermedia*), Cumberland pigtoe (*Pleuronaia gibber*), Cumberlandian combshell	Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.	Presence/probable absence surveys.	Reptiles: flattened musk turtle: capture, identify, measure, and release; Fishes: capture, handle, identify, and release; Mussels: capture, handle, identify, release, and salvage relic shells; Snails: capture, handle, identify, release, collect vouchers, and salvage relic shells; Crustaceans: Nashville crayfish: capture, identify, measure, sex, and release.	Renewal.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
		(*Epioblasma brevidens*), dark pigtoe (*Pleurobema furvum*), dromedary pearlymussel (*Dromus dromas*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), fat threeridge (*Amblema neislerii*), finelined pocketbook (*Hamiota altilis*), finerayed pigtoe (*Fusconaia cuneolus*), flat pigtoe (*Pleurobema marshalli*), fluted kidneyshell (*Ptychobranchus subtentus*), fuzzy pigtoe (*Pleurobema strodeanum*), Georgia pigtoe (*Pleurobema hanleyianum*), green blossom (*Epioblasma torulosa gubernaculum*), Gulf moccasinshell (*Medionidus penicillatus*), heavy pigtoe (*Pleurobema taitianum*), inflated heelsplitter (*Potamilus inflatus*), littlewing pearlymussel (*Pegias fabula*), narrow pigtoe (*Fusconaia escambia*), Neosho mucket (*Lampsilis rafinesqueana*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), orangefoot pimpleback (*Plethobasus cooperianus*), orangenacre mucket (*Hamiota perovalis*), Ouachita rock pocketbook (*Arcidens wheeleri*), oval pigtoe (*Pleurobema pyriforme*), ovate clubshell (*Pleurobema perovatum*), pale lilliput (*Toxolasma cylindrellus*), pink mucket (*Lampsilis abrupta*), purple bean (*Villosa perpurpurea*), purple cat's paw (*Epioblasma obliquata*), rabbitsfoot (*Quadrula cylindrica cylindrica*), rayed bean (*Villosa fabalis*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), round ebonyshell (*Reginaia rotulata*), rought rabbitsfoot (*Quadrula cylindrica strigillata*), scaleshell (*Leptodea leptodon*), shiny pigtoe (*Fusconaia cor*), shinyrayed pocketbook (*Hamiota subangulata*), slabside pearlymussel (*Pleuronaia dolabelloides*), southern acornshell (*Epioblasma othcaloogensis*), southern clubshell (*Pleurobema decisum*), southern combshell (*Epioblasma penita*), southern kidneyshell (*Ptychobranchus jonesi*), southern pigtoe (*Pleurobema georgianum*), southern sandshell (*Hamiota australis*), spectaclecase (*Cumberlandia monodonta*), stirrupshell (*Quadrula stapes*), tapered pigtoe (*Fusconaia burkei*), triangular kidneyshell (*Ptychobranchus greenii*), tubercled blossom (*Epioblasma torulosa torulosa*), turgid blossom (*Epioblasma turgidula*), upland combshell (*Epioblasma metastriata*), white wartyback (*Plethobasus cicatricosus*), and winged mapleleaf (*Quadrula fragosa*); Snails: Anthony's riversnail (*Athearnia anthonyi*), armored snail (*Marstonia pachyta*), cylindrical lioplax (*Lioplax cyclostomaformis*), diamond tryonia (*Pseudotryonia adamantina*), flat pebblesnail (*Lepyrium showalteri*), Gonzales tryonia (*Tryonia circumstriata* [=*stocktonensis*]), interrupted rocksnail (*Leptoxis foremani*), lacy elimia (*Elimia crenatella*), painted rocksnail (*Leptoxis taeniata*), Pecos assimenia snail (*Assiminea pecos*), phantom tryonia (*Tryonia cheatumi*), plicate rocksnail (*Leptoxis plicata*), rough hornsnail (*Pleurocera foremani*), round rocksnail (*Leptoxis ampla*), royal marstonia (*Marstonia ogmorhaphe*), slender campeloma (*Campeloma decampi*), and tulotoma snail (*Tulotoma magnifica*); Crustaceans: Nashville crayfish (*Orconectes shoupi*).			
PER1408431–0	Carnivorous Plant Nursery; Smithsburg, MD.	*Sarracenia oreophila* (green pitcher-plant), *Sarracenia rubra* ssp. *alabamensis* (Alabama canebrake pitcher-plant), and *Sarracenia rubra* ssp. *jonesii* (mountain sweet pitcher-plant).	Maryland	Interstate commerce.	Sell artificially propagated plants in interstate commerce.	New.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES38397A–2	Kathryn Craven; Savannah, GA.	Green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's ridley sea turtle (*Lepidochelys kempii*), leatherback sea turtle (*Dermochelys coriacea*), and loggerhead sea turtle (*Caretta caretta*).	Georgia	Monitor and evaluate nest hatching success and conduct scientific research.	Salvage hatched eggs, inviable eggs, and dead embryos, and collect cloacal swabs from wild or captive individuals.	Renewal and amendment.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

John Tirpak,

Deputy Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2023–05907 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2022–0147; FXES11140300000–234]

Draft Environmental Assessment and Proposed Habitat Conservation Plan for Crescent Wind Project, Hillsdale County, Michigan; Reopening of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, are reopening the public comment period on our January 27, 2023, notice that announced our draft environmental assessment evaluating an incidental take permit (ITP) application received from Consumers Energy Company (applicant). The ITP application includes the Crescent Wind Project Habitat Conservation Plan, which is also under review. The applicant is requesting incidental take coverage of the Indiana bat and the northern long-eared bat. We invite comment from the public and local, State, Tribal, and Federal agencies. Comments previously submitted need not be resubmitted, because they will be fully considered.

DATES: The comment period for the draft habitat conservation plan and draft environmental assessment, notice of which was published on January 27, 2023 (88 FR 5372), is reopened. Comments submitted online at *https://www.regulations.gov* must be received or postmarked on or before April 6, 2023.

ADDRESSES:

Document availability: Electronic copies of the documents this notice announces, along with public comments received, are available online in Docket No. FWS–R3–ES–2022–0147 at *https://www.regulations.gov.*

Comment submission: Please specify whether your comment addresses the proposed habitat conservation plan, draft environmental assessment, any combination of the aforementioned documents, or other documents. You may submit written comments by one of the following methods:

- *Online: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R3–ES–2022–0147.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2022–0147; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Scott Hicks, Field Supervisor, Michigan Ecological Services Field Office, by email at *scott_hicks@fws.gov,* or by telephone at 517–351–6274; or Andrew Horton, Regional HCP Coordinator, Midwest Region, by email at *andrew_horton@fws.gov,* or by telephone at 612–713–5337. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On January 27, 2023 (88 FR 5372), we, the U.S. Fish and Wildlife Service, published a **Federal Register** notice announcing the availability for public comment of an application from Consumers Energy Company for an incidental take permit (ITP) under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), for its Crescent Wind Project (project). The comment period closed on February 27, 2023.

If approved, the ITP would be for a 30-year period and would authorize the incidental take of two endangered species, the Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*). The applicant prepared a habitat conservation plan (HCP) that

describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the Indiana bat and northern long-eared bat.

With this notice, we are reopening the public comment period on the EA and HCP to provide requested appendices to the HCP not originally provided during the initial comment period (see **DATES** and **ADDRESSES**).

Availability of Public Comments

You may submit comments by one of the methods shown in **ADDRESSES**. We will post on *https://www.regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2023–05952 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2023–N077; FXES11130100000C4–234–FF01E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 133 Species in Oregon, Washington, Idaho, Montana, California, Nevada, Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews for 133 species in Oregon, Washington, Idaho, Montana, California, Nevada, Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands under the Endangered Species Act of 1973. Two of these species also occur outside of United States jurisdiction in Canada and Palau. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last reviews.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than May 22, 2023. However, we will continue to accept new information about any species at any time.

ADDRESSES: *Submitting Information on Species:*

- Columbia Basin pygmy rabbit:
  - ➢ *U.S. mail:* State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Dr. Southeast, Suite 102, Lacey, WA 98503; or
  - ➢ *Email: WFWO_LR@fws.gov.*
- Any of the seven species occurring in Oregon:
  - ➢ *U.S. mail:* State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266; or
  - ➢ *Email: fw1ofwo@fws.gov.*
- White sturgeon, Banbury Springs limpet, and Bliss Rapids snail:
  - ➢ *U.S. mail:* State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, ID 83709; or
  - ➢ *Email: ifwo@fws.gov.*
- Any of the 122 species occurring in Hawaii, Guam, and/or the Commonwealth of the Northern Mariana Islands:
  - ➢ *U.S. mail:* Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96850; or
  - ➢ *Email: pifwo_admin@fws.gov.*

FOR FURTHER INFORMATION CONTACT: For general information, please contact Grant Canterbury at 503–231–6151. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

For information about the following specific species, contact the following people:

- *Columbia Basin pygmy rabbit:* Rose Agbalog, Washington Fish and Wildlife Office, 564–200–2124; *WFWO_LR@fws.gov.*
- *Any of the seven species occurring in Oregon:* Jennifer Siani, Oregon Fish and Wildlife Office, 503–231–6179; *fw1ofwo@fws.gov.*
- *White sturgeon, Banbury Springs limpet, and Bliss Rapids snail:* Greg Burak, Idaho Fish and Wildlife Office, 208–378–5243; *ifwo@fws.gov.*
- *Any of the 122 species occurring in Hawaii, Guam, and/or the Commonwealth of the Northern Mariana Islands:* Megan Laut, Pacific Islands Fish and Wildlife Office, 808–792–9400, *pifwo_admin@fws.gov.*

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year status reviews?

Under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531, *et seq.*), we maintain lists of endangered and threatened wildlife and plant species (referred to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2) of the Act requires us to review each listed species' status at least once every 5 years. For additional information about 5-year status reviews, refer to our factsheet at *https://www.fws.gov/project/five-year-status-reviews.*

What information do we consider in our review?

A 5-year status review considers all new information available at the time of

the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status reviews, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year status review and will also be useful in evaluating the ongoing recovery programs for these species.

Which species are under review?

This notice announces our active review of 133 species, including 4 mammals, 13 birds, 3 fishes, 2 snails, 4 insects, 2 crustaceans, and 105 plants, as listed in the table below.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
ANIMALS				
Mammals:				
Columbia Basin pygmy rabbit [Columbia Basin DPS].	*Brachylagus idahoensis*	Endangered	Washington	68 FR 10388, 3/5/2003.
Pacific sheath-tailed bat	*Emballonura semicaudata rotensis*	Endangered	Guam, Commonwealth of the Northern Mariana Islands.	80 FR 59423, 10/1/2015.
Hawaiian hoary bat	*Lasiurus cinereus semotus*	Endangered	Hawaii	35 FR 16047, 10/13/1970.
Mariana fruit bat (=fanihi, Mariana flying fox).	*Pteropus mariannus mariannus*	Threatened	Guam, Commonwealth of the Northern Mariana Islands.	49 FR 33881, 8/27/1984; 70 FR 1190, 1/6/2005.
Birds:				
Nightingale reed warbler (old world warbler).	*Acrocephalus luscinia*	Endangered	Guam, Commonwealth of the Northern Mariana Islands.	35 FR 8491, 6/2/1970; 35 FR 18319, 12/2/1970.
Mariana gray swiftlet	*Aerodramus vanikorensis bartschi*	Endangered	Guam, Commonwealth of the Northern Mariana Islands.	49 FR 33881, 8/27/1984.
Hawaiian crow (‘alala)	*Corvus hawaiiensis*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Mariana crow (=aga)	*Corvus kubaryi*	Endangered	Guam, Commonwealth of the Northern Mariana Islands.	49 FR 33881, 8/27/1984.
Mariana common moorhen	*Gallinula chloropus guami*	Endangered	Guam, Commonwealth of the Northern Mariana Islands.	49 FR 33881, 8/27/1984.
Guam Micronesian kingfisher (=Guam kingfisher, sihek).	*Halcyon cinnamomina cinnamomina.* [=*Todiramphus cinnamominus*]	Endangered	Guam	49 FR 33881, 8/27/1984; 69 FR 62943, 10/28/2004.
‘Akiapola‘au	*Hemignathus wilsoni*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Palila (honeycreeper)	*Loxioides bailleui*	Endangered	Hawaii	32 FR 4001, 3/11/1967
Hawaii ‘ākepa	*Loxops coccineus*	Endangered	Hawaii	35 FR 16047, 10/13/1970.
Micronesian megapode	*Megapodius laperouse*	Endangered	Guam, Commonwealth of the Northern Mariana Islands, Palau.	35 FR 8491, 6/2/1970.
Hawaii creeper	*Oreomystis mana*	Endangered	Hawaii	40 FR 44149, 9/25/1975.
Guam rail	*Rallus owstoni*	Endangered	Guam	49 FR 14354, 4/11/1984; 49 FR 33881, 8/27/1984; 54 FR 43966, 10/30/1989.
Rota bridled white-eye	*Zosterops rotensis*	Endangered	Commonwealth of the Northern Mariana Islands.	69 FR 3022, 1/22/2004.
Fishes:				
White sturgeon [Kootenai River DPS].	*Acipenser transmontanus*	Endangered	Idaho, Montana, Canada (British Columbia).	59 FR 45989, 9/6/1994.
Warner sucker	*Catostomus warnerensis*	Threatened	California, Nevada, Oregon	50 FR 39117, 9/27/1985.
Hutton tui chub	*Gila bicolor* ssp.	Threatened	Oregon	50 FR 12302, 3/28/1985.
Snails:				
Bliss Rapids snail	*Taylorconcha serpenticola*	Threatened	Idaho	57 FR 59244, 12/14/1992.
Banbury Springs limpet	*Lanx sp.*	Endangered	Idaho	57 FR 59244, 12/14/1992.
Insects:				
Hawaiian picture-wing fly	*Drosophila digressa*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
Hawaiian picture-wing fly	*Drosophila heteroneura*	Endangered	Hawaii	71 FR 26835, 5/9/2006.
Hawaiian picture-wing fly	*Drosophila mulli*	Threatened	Hawaii	71 FR 26835, 5/9/2006.
Hawaiian picture-wing fly	*Drosophila ochrobasis*	Endangered	Hawaii	71 FR 26835, 5/9/2006.
Crustaceans:				
Anchialine pool Shrimp	*Procaris hawaiana*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Anchialine pool shrimp	*Vetericaris chaceorum*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
PLANTS				
Flowering Plants:				
Liliwai	*Acaena exigua*	Endangered	Hawaii	57 FR 20772, 5/15/1992.
No common name	*Achyranthes mutica*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
Mauna Loa silversword	*Argyroxiphium kauense*	Endangered	Hawaii	58 FR 18029, 4/7/1993.
‘Ahinahina	*Argyroxiphium sandwicense* ssp. *sandwicense.*	Endangered	Hawaii	51 FR 9814, 3/1/1986.
Ko‘oko‘olau	*Bidens campylotheca* ssp. *pentamera.*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Ko‘oko‘olau	*Bidens campylotheca* ssp. *waihoiensis.*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Ko‘oko‘olau	*Bidens conjuncta*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Ko‘oko‘olau	*Bidens hillebrandiana* ssp. *hillebrandiana.*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Ko‘oko‘olau	*Bidens micrantha* ssp. *ctenophylla*	Endangered	Hawaii	78 FR 64637, 10/29/2013.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
ʻOha wai	*Clermontia drepanomorpha*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
ʻOha wai	*Clermontia lindseyana*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
ʻOha wai	*Clermontia peleana*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
ʻOha wai	*Clermontia pyrularia*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Haha	*Cyanea asplenifolia*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea copelandii* ssp. *copelandii*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Haha	*Cyanea duvalliorum*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea hamatiflora* ssp. *carlsonii*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Haha nui	*Cyanea horrida*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea kunthiana*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea maritae*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea marksii*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
Haha	*Cyanea mauiensis*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea munroi*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea obtusa*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
ʻAkuʻaku	*Cyanea platyphylla*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
Haha	*Cyanea profuga*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea shipmanii*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Popolo	*Cyanea solanacea*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haha	*Cyanea stictophylla*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
ʻAku	*Cyanea tritomantha*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
No common name	*Cyperus fauriei*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Haʻiwale	*Cyrtandra ferripilosa*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haʻiwale	*Cyrtandra filipes*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haʻiwale	*Cyrtandra giffardii*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Haʻiwale	*Cyrtandra nanawaleensis*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
Haʻiwale	*Cyrtandra oxybapha*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Haʻiwale	*Cyrtandra tintinnabula*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Haʻiwale	*Cyrtandra wagneri*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
Willamette daisy	*Erigeron decumbens*	Endangered	Oregon	65 FR 3875, 1/25/2000.
No common name	*Festuca molokaiensis*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Nohoanu	*Geranium hanaense*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Nohoanu	*Geranium hillebrandii*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Honohono	*Haplostachys haplostachya*	Endangered	Hawaii	44 FR 62468, 10/30/1979.
Hau kuahiwi	*Hibiscadelphus giffardianus*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
Hau kuahiwi	*Hibiscadelphus hualalaiensis*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
Aupaka	*Isodendrion hosakae*	Endangered	Hawaii	56 FR 1454, 1/14/1991.
Kioʻele	*Kadua coriacea*	Endangered	Hawaii	57 FR 20772, 5/15/1992.
Kokiʻo	*Kokia drynarioides*	Endangered	Hawaii	49 FR 47397, 12/4/1984.
Large-flowered woolly meadowfoam.	*Limnanthes pumila* ssp. *grandiflora*	Endangered	Oregon	67 FR 68004, 11/7/2002.
Nehe	*Lipochaeta venosa*	Endangered	Hawaii	44 FR 62468, 10/30/1979.
Cook's lomatium	*Lomatium cookii*	Endangered	Oregon	67 FR 68004, 11/7/2002.
Kincaid's lupine	*Lupinus sulphureus* ssp. *kincaidii*	Threatened	Oregon, Washington	65 FR 3875, 1/25/2000.
No common name	*Maesa walkeri*	Threatened	Guam, Commonwealth of the Northern Mariana Islands.	80 FR 59423, 10/1/2015.
Alani	*Melicope zahlbruckneri*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
Sea bean	*Mucuna sloanei* var. *persericea*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Kolea	*Myrsine vaccinioides*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
No common name	*Neraudia ovata*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
No common name	*Nervilia jacksoniae*	Threatened	Guam, Commonwealth of the Northern Mariana Islands.	80 FR 59423, 10/1/2015.
No common name	*Nesogenes rotensis*	Endangered	Commonwealth of the Northern Mariana Islands.	69 FR 18499; 04/08/2004.
ʻAiea	*Nothocestrum breviflorum*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
No common name	*Osmoxylon mariannense*	Endangered	Commonwealth of the Northern Mariana Islands.	69 FR 18499; 04/08/2004.
ʻAla ʻala wai nui	*Peperomia subpetiolata*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
No common name	*Phyllostegia bracteata*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
No common name	*Phyllostegia floribunda*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
No common name	*Phyllostegia haliakalae*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
No common name	*Phyllostegia helleri*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Phyllostegia pilosa*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Kiponapona	*Phyllostegia racemosa*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
No common name	*Phyllostegia stachyoides*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Phyllostegia velutina*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
No common name	*Phyllostegia warshaueri*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
Hoawa	*Pittosporum halophilum*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Hoawa	*Pittosporum hawaiiense*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
Kuahiwi laukahi	*Plantago hawaiensis*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
No common name	*Platydesma remyi*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
Hala pepe	*Pleomele fernaldii*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Hala pepe	*Pleomele hawaiiensis*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
Poʻe	*Portulaca sclerocarpa*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Loulu	*Pritchardia aylmer-robinsonii*	Endangered	Hawaii	61 FR 41020, 8/7/1996.
Loulu	*Pritchardia lanigera*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
Loulu	*Pritchardia maideniana*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Loulu	*Pritchardia schattaueri*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
No common name	*Schiedea diffusa* ssp. *macraei*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
Maʻoliʻoli	*Schiedea hawaiiensis*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
No common name	*Schiedea jacobii*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
No common name	*Schiedea laui*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
No common name	*Schiedea salicaria*	Endangered	Hawaii	78 FR 32013, 5/28/2013.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
Hayun lagu	*Serianthes nelsonii*	Endangered	Guam, Commonwealth of the Northern Mariana Islands.	52 FR 4907, 2/18/1987; 52 FR 6651, 5/4/1987.
ʻAnunu	*Sicyos albus*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
No common name	*Silene hawaiiensis*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Popolo ku mai	*Solanum incompletum*	Endangered	Hawaii	59 FR 56333, 10/10/1994.
No common name	*Stenogyne angustifolia* var. *angustifolia.*	Endangered	Hawaii	44 FR 62468, 10/30/1979.
No common name	*Stenogyne cranwelliae*	Endangered	Hawaii	78 FR 64637, 10/29/2013.
No common name	*Stenogyne kaalae* ssp. *sherffii*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Stenogyne kauaulaensis*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
Malheur wire-lettuce	*Stephanomeria malheurensis*	Endangered	Oregon	47 FR 50881, 11/10/1982.
No common name	*Tetramolopium arenarium*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Hawaiian vetch	*Vicia menziesii*	Endangered	Hawaii	43 FR 17910, 4/26/1978.
No common name	*Vigna o-wahuensis*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
No common name	*Wikstroemia skottsbergiana*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Wikstroemia villosa*	Endangered	Hawaii	78 FR 32013, 5/28/2013.
A‘e	*Zanthoxylum dipetalum* var. *tomentosum.*	Endangered	Hawaii	61 FR 53137, 10/10/1996.
Ferns and Allies:				
No common name	*Asplenium peruvianum* var. *insulare.*	Endangered	Hawaii	59 FR 49025, 9/26/1994.
No common name	*Diplazium molokaiense*	Endangered	Hawaii	59 FR 49025, 9/26/1994.
Wawae‘iole	*Huperzia mannii*	Endangered	Hawaii	57 FR 20772, 5/15/1992.

Request for New Information

To ensure that a 5-year status review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

If you wish to provide information for any species listed in the table, please submit your comments and materials to the appropriate contact in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Completed and Active Reviews

A table including hyperlinks to the most recently completed 5-year status review for each listed species, as well as notices of 5-year status reviews that are currently in progress, is available at *https://ecos.fws.gov/ecp/report/species-five-year-review.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Hugh Morrison,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–05928 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0029; FXES11140400000–212–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Caracara, Brevard County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Forestar (USA) Real Estate Group (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally threatened Audubon’s crested caracara (*Polyborus plancus audubonii*), a raptor, incidental to the construction of a proposed residential development in Brevard County, Florida. We request public comment on the application, which includes the applicant’s proposed habitat conservation plan (HCP), and on the Service’s preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality’s National Environmental Policy Act (NEPA) regulations, the Department of the Interior’s (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before April 24, 2023.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0029 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0029.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0029; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by U.S. mail (see **ADDRESSES**), via phone at 904–731–312, or by email at e*rin_gawera@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Forestar (USA) Real Estate Group (Cypress Bay West @Waterstone Phase III) (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally threatened Audobon's crested caracara (*Polyborus plancus audubonii*) (caracara) incidental to the construction of a residential development (project) in Brevard County, Florida. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as ''low effect,'' and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior (DOI) NEPA regulations (43 CFR 46), and the DOI Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 10-year ITP to take caracaras through the conversion of approximately 27.6 acres (ac) of occupied caracara primary buffer zone habitat incidental to the construction of a residential development on a 190.28-ac parcel in Sections 4 and 5, Township 30 South, Range 37 East, Brevard County, Florida, identified by Tax Account Numbers 3000217 and 3000219. The applicant proposes to mitigate for take of the caracaras by donating $80,000.00 to the Allen Broussard Conservancy (ABC) Land Acquisition Fund; these funds will be used to purchase and permanently conserve approximately 27.6 ac to support known territories of two breeding/nesting pairs of caracaras within the limits of the ABC. The applicant will also make a $20,000.00 monetary donation to the ABC to aid in financing habitat management and enhancement activities that will occur on the same 27.6-ac area, for a period of 10 years. The Service would require the applicant to purchase the credits prior to engaging in construction activities associated with the project on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project—including land clearing, infrastructure building, landscaping, and other ground disturbance and site preparation activities—and the proposed mitigation measures would individually and cumulatively have a minor effect on the human environment. We have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a ''low-effect'' ITP that individually or cumulatively would have a minor effect on the caracara and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations (40 CFR 1501.4), DOI's NEPA regulations, and the DOI Departmental Manual (516 DM 8.5(C)(2)). A ''low-effect'' incidental take permit is one that would result in (1) minor or negligible effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER0046193 to Forestar (USA) Real Estate Group.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2023–05949 Filed 3–22–23; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1326]

Certain Robotic Pool Cleaners and Components Thereof; Notice of a Commission Determination Not To Review Two Initial Determinations Terminating the Remaining Respondents and the Investigation in Its Entirety; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations (''IDs'') (Order Nos. 15 and 16) of the presiding administrative law judge (''ALJ'') terminating certain respondents based on a consent order, terminating the remaining respondents based on partial withdrawal of the complaint, and terminating the investigation in its entirety. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On September 1, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as supplemented, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Zodiac Pool Systems LLC of Carlsbad, California and Zodiac Pool Care Europe,

ZA La Balme of Belberaud, France (collectively, ''Complainants''). *See* 87 FR 53788–89 (Sept. 1, 2022). The complaint alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain robotic pool cleaners and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,393,029 and 8,393,031. *Id.* at 53789. The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names four respondents, including Wybotics Co. Ltd. d/b/a Winny Pool Cleaner, f/k/a Tianjin Wangyuan, Environmental Protection and Technology Co., Ltd. of Tianjin, China and Tianjin Pool & Spa Corporation of Commerce, California (collectively, ''Wybotics''), as well as Shenzhen Aiper Intelligent Co., Ltd. of Guangdong Province, China; Aiper Intelligent, LLC of Roswell, Georgia; and Aiper, Inc. of Los Angeles, California (collectively, ''the Aiper Entities''). *Id.*

On February 17, 2023, Complainants filed an unopposed motion to terminate this investigation with respect to the Aiper Entities based on a consent order stipulation and proposed consent order. No responses to the motion were filed.

On February 20, 2023, Complainants filed an unopposed motion to partially withdraw the complaint and terminate this investigation with respect to Wybotics, the remaining respondents. No responses to the motion were filed.

On February 21, 2023, the ALJ issued the two subject IDs. *See* Order No. 15 (Feb. 21, 2023); Order No. 16 (Feb. 21, 2023). The first subject ID (Order No. 15) grants the motion to terminate the Aiper Entities and finds that the unopposed motion, consent order stipulation, and proposed consent order satisfy the requirements of Commission Rules 210.21(c)(3) and (c)(4) (19 CFR 210.21(c)(3), (c)(4)). The first ID also finds that termination of the Aiper Entities would not be contrary to the public interest. The second subject ID (Order No. 16) grants the motion to terminate the Wybotics respondents, and thus the investigation in its entirety. The second subject ID finds that Complainants meet the requirements of Commission Rule 210.21(a) (19 CFR 210.21(a)) and there are no extraordinary circumstances that would prevent the requested termination of the investigation. The second subject ID also finds that termination of the investigation would not be contrary to the public interest.

On February 27, 2023, Wybotics filed a petition for limited review of Order No. 16. Specifically, Wybotics seeks review of the quotation of Complainants' statement that Wybotics ''will no longer import or sell the Accused Products.'' Wybotics did not seek review of the finding that the investigation should be terminated. On March 3, 2023, Complainants filed a response opposing Wybotics petition.

The Commission has determined not to review the subject IDs (Order Nos. 15 and 16). The Commission has issued a consent order directed to the Aiper Entities. The investigation is terminated.

The Commission vote for this determination took place on March 17, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 17, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05936 Filed 3–22–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1301]

Certain Mobile Phones and Tablet Computers, All With Switchable Connectivity; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 38) of the presiding Administrative Law Judge (''ALJ'') granting a joint motion to terminate the investigation based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 24, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by Ericsson Inc. of Plano, Texas and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (collectively, ''Ericsson'' or ''Complainants''). 87 FR 10386–87 (Feb. 24, 2022). The complaint, as supplemented, alleged a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile phones and tablet computers, all with switchable connectivity, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 8,792,454 (''the '454 patent''); 10,880,794 (''the '794 patent''); and 8,472,999 (''the '999 patent''). *Id.* at 10386. The complaint also alleged the existence of a domestic industry.

The notice of investigation named as a respondent Apple Inc. of Cupertino, California (''Apple''). *Id.* The Commission's Office of Unfair Import Investigations (''OUII'') is also named as a party in this investigation. *Id.* at 10386–87.

Subsequently, the Commission terminated all asserted claims of the '794 patent and claims 11–17 of the '999 patent from this investigation by reason of withdrawal of the complaint allegations under 19 CFR 210.21(a). *See* Order No. 23 (Aug. 3, 2022), *unreviewed by* Notice (Sept. 1, 2022). On July 13, 2022, Ericsson filed a renewed motion (''Motion'') with an accompanying memorandum (''Memo'') seeking a summary determination that it satisfies the economic prong. The motion was granted. Order No. 15 (Jun. 28, 2022). The Commission determined to review Order No. 15 in part. Specifically, the Commission determined to review the Order No. 15's finding that Ericsson met the economic prong of the domestic industry requirement as to the '794 patent under 19 U.S.C. 1337(a)(3) subparagraphs (A) and (B). Comm'n Notice (Sept. 9, 2022). Because the '794 patent was withdrawn from the investigation, the Commission determined to vacate as moot Order No. 15's finding that Ericsson met the

economic prong of the domestic industry requirement as to the '794 patent under 19 U.S.C. 1337(a)(3) subparagraphs (A) and (B). The Commission determined not to review Order No. 15's finding that Ericsson met the economic prong of the domestic industry requirement as to the '454 and '999 patents under 19 U.S.C. 1337(a)(3) subparagraph (A). *Id.*

On February 6, 2023, complainants Ericsson and respondent Apple moved pursuant to 19 CFR 210.21(b) to terminate the investigation based on a settlement agreement. On February 7, 2023, OUII filed a statement in support.

On February 16, 2023, the ALJ issued the subject ID (Order No. 38) granting the motion. The ID found that the subject motion complies with the Commission rules and that there are no extraordinary circumstances that warrant denying the motion. ID at 2. The ID also found that there is no evidence indicating that terminating this investigation based on the settlement agreement would be contrary to the public interest. *Id.*

No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. Accordingly, the investigation is terminated in its entirety.

The Commission vote for this determination took place on March 20, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 20, 2023.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2023–06013 Filed 3–22–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1279]

Certain Flocked Swabs, Products Containing Flocked Swabs, and Methods of Using Same; Notice of a Commission Determination To Review in Part a Final Initial Determination; and, on Review, To Find No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's (''ALJ'') final initial determination (''ID'') issued on October 28, 2022, finding no violation of section 337, in the above-referenced investigation. On review, the Commission has determined to find no violation of section 337. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On September 2, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by Copan Italia S.p.A. and Copan Industries, Inc. (''Copan,'' or ''Complainants''). 86 FR 49343–44 (Sept. 2, 2021). The complaint alleged a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flocked swabs, products containing flocked swabs, and methods of using same by reason of infringement of claims 1, 6–9, 11–14, 16–19, and 21–22 of U.S. Patent No. 9,011,358 (''the '358 patent''); claims 1, 4–6, 8, 9, 11–13, 16–20, and 22–24 of U.S. Patent No. 9,173,779 (''the '779 patent''); and claims 1, 3, 5, 7–10, 18, and 20 of U.S. Patent No. 10,327,741 (''the '741 patent''). The complaint also alleged the existence of a domestic industry.

The notice of investigation named numerous respondents, including Han Chang Medic of Chungnam, Republic of Korea (''HCM''); Wuxi NEST Biotechnology Co., Ltd. of Wuxi, Jiangsu, China; NEST Scientific Inc. and NEST Scientific USA, both of Rahway, New Jersey (collectively, ''NEST''); Miraclean Technology Co., Ltd. of Shenzhen, Guangdong, China (''Miraclean''); Vectornate Korea Ltd. of Jangseong, Republic of Korea and Vectornate USA, Inc. of Mahwah, New Jersey (collectively, ''Vectornate''); Innovative Product Brands, Inc. of Highland, California (''Innovative''); Thomas Scientific, Inc. of Swedesboro, New Jersey (''TSI''); Thomas Scientific, LLC (''TSL'') and Stellar Scientific, LLC (''Stellar''), both of Owings Mills, Maryland; Cardinal Health, Inc. of Dublin, Ohio (''Cardinal''); KSL Biomedical, Inc. and KSL Diagnostics, Inc., both of Williamsville, New York (collectively, ''KSL''); Jiangsu Changfeng Medical Industry Co., Ltd. of Yangzhou, Jiangsu, China (''JCM''); No Borders Dental Resources, Inc., dba MediDent Supplies of Queen Creek, Arizona (''MediDent''); BioTeke Corporation (Wuxi) Co., Ltd. of Wuxi, Jiangsu, China (''BioTeke''); Fosun Pharma USA Inc. of Princeton, New Jersey (''Fosun''); Hunan Runmei Gene Technology Co., Ltd. of Changsha, Hunan, China (''HRGT''); VWR International, LLC of Radnor, Pennsylvania (''VWR''); and Slmp, LLC dba StatLab Medical Products of McKinney, Texas (''StatLab''). *Id.* at 49343–44. The Commission's Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation. *Id.* at 49344. After institution, Huachenyang (Shenzhen) Technology Co., Ltd. (''HCY'') and HCY USA, LLC (''HCY USA'') were allowed to intervene as respondents in this investigation. Order No. 30 (Dec. 7, 2021), *unreviewed by* Notice (Jan. 6, 2021).

On June 15, 2022, a Claim Construction Order (Order No. 51) issued construing claim terms from the asserted patents. Pursuant to the parties' request, that Order was amended with respect to the definition of level of a person of ordinary skill in the art in Order No. 66 (July 1, 2022). An evidentiary hearing was held on June 27–July 1, 2022.

During the course of the investigation, a number of respondents were terminated from the investigation or were found in default. *See* ID at 7 n.5 (noting termination of the investigation as to KSL, VWR, Cardinal, Innovative, Vectornate, TSL, TSI, Stellar, HCY USA, StatLab, and Fosun); ID at 7 n.6 (citing Order No. 27 (Nov. 15, 2021), *unreviewed,* Comm'n Notice (Dec. 6, 2021) (finding HRGT in default); Order No. 31 (Dec. 15, 2021), *unreviewed,* Comm'n Notice (Jan. 10, 2022) (finding HCM and MediDent in default)). The following respondents remain in the investigation: NEST, JCM, BioTeke, Miraclean, and HCY (collectively, ''Respondents'').

Also, during the course of the investigation, Complainants withdrew their allegations with respect to claims 7–9, 11–14, 16–19, 21, and 22 of the '358 patent, claims 4–6, 8, 11–13, 16–20, and 22–24 of the '779 patent, and claims 5, 7–9, and 20 of the '741 patent, and the investigation was terminated as to these claims. Thus, claims 1 and 6 of the '358 patent, claims 1 and 9 of the '779 patent, and claims 1, 3, 10, and 18 of the '741 patent remain in the investigation.

On October 28, 2022, the ALJ issued a final ID, finding no violation of section 337 in this investigation. Specifically, the final ID terminated claim 18 of the '741 patent after Complainants did not proceed with this claim at the hearing. With respect to the remaining asserted claims of the '358, '779, and '741 patents, the final ID found no violation based on Complainants' failure of proof with respect to infringement and the technical prong of the domestic industry requirement. The final ID also determined that the asserted patent claims have not been shown to be invalid. The final ID further found that if the asserted domestic industry products satisfy the technical prong of the domestic industry requirement, Complainants have shown that the economic prong of the domestic industry requirement is satisfied with respect to all the asserted patents under section 337(a)(3)(A). On November 14, 2022, the ALJ issued a recommended determination on remedy, the public interest, and bonding.

Also on November 14, 2022, Complainants, Respondents, and OUII filed separate petitions for review of the final ID. On November 22, 2022, they filed separate replies to the petitions for review.

No submissions were received in response to the Commission's notice soliciting submissions from the public on the public interest issues raised by the recommended determination. 87 FR 70863 (Nov. 21, 2022).

Having reviewed the record of the investigation, including the final ID, the Claim Construction Order, and the parties' submissions, the Commission has determined to review in part the final ID and, on review, affirm the final ID's finding of no violation of section 337 with the supplemental reasoning discussed below. In particular, the Commission has determined to review and adopt the ALJ's claim constructions, including the term ''perpendicularly'' in the '358 and '779 patent claims and the term ''oriented manner'' in the '741 patent claims, based on the reasoning provided in the Claim Construction Order and the final ID. The Commission supplements the ID's construction of the term ''perpendicularly'' with the inventor's statements during prosecution at RX–0309.0270–0271, which further supports the ID's finding at page 50 that the fibers of prior art Griffiths were not flocked in an ordered arrangement normal to the surface although Griffiths employs electrostatic flocking. Copan does not challenge the final ID's findings that Respondents' accused products do not infringe and that the domestic industry products do not practice these limitations under the ALJ's claim constructions. Having failed to show that its alleged domestic industry products practice any of the asserted patents, Copan has necessarily failed to show the existence of a domestic industry under section 337(a)(3) for the asserted patents. Accordingly, the Commission has determined to review and take no position on the economic prong of the domestic industry requirement.

The Commission has also determined to review and adopt the final ID's findings that the JCM accused products do not infringe and that Copan's domestic industry products do not practice the absorption ''by capillarity'' limitations of the '358 and '779 patents based on the reasoning provided in the final ID. The Commission supplements the ID's reasoning with the inventor's statements made during prosecution of the '779 patent. In particular, in an August 11, 2014 reply to an office action from June 11, 2014, the inventor argued that a ''brush'' disclosed in the prior art, Hedberg (U.S. Patent No. 5,623,941) (RX–0141), ''does not provide an appreciable capillary action of the fiber layer, since the quantity of liquid collected *by dipping the brush in a liquid* (please note that a collection of liquid by dipping a device into the liquid does not require a capillary action, since also a spoon can collect liquid when dipped into a liquid container, despite the fact that a spoon evidently has no capillary action) was easily lost by the swab, thus showing the absence of a capillary effect . . . .'' JX–0005.1555 (emphasis in original). The Commission finds the inventor's statements during prosecution further support the ID's finding that Dr. Michielsen's testing, which included collecting liquid after dipping an accused swab into beet juice, did not reliably show liquid absorbed solely by capillarity. *See, e.g.,* ID at 103. Thus, the Commission finds the record evidence supports the ID's finding that Dr. Michielsen's testing does not show, by a preponderance of the evidence, that the absorption ''by capillarity'' limitation is met by the JCM accused products and Copan's domestic industry products. *See* ID at 103–106, 111, 128–29, 131.

Among other findings, the Commission has determined not to review the final ID's findings that BioTeke's redesigned products should be adjudicated and are not infringing and that the asserted claims have not been shown to be invalid.

In addition, the Commission corrects a typographical error on page 151 of the ID. The sentence should read as follows: ''the evidence does *not* show, clearly and convincingly, obviousness of any asserted claim . . . .''

Accordingly, the Commission has determined to affirm the ID's finding of no violation of section 337 with the supplemental reasoning discussed above. The investigation is terminated in its entirety.

The Commission vote for this determination took place on March 17, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 17, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05935 Filed 3–22–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Amended Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Portable Battery Jump Starters and Components Thereof, DN 3669;* the Commission is soliciting comments on any public interest issues raised by the amended complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Designated Secretary Name, Acting/Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be

accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of The NOCO Company on March 14, 2023. The original complaint was filed on February 13, 2023 and a notice of receipt of complaint; solicitation of comments relating to the public interest published in the **Federal Register** on February 21, 2023. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable battery jump starters and components thereof. The amended complaint names as respondents: Shenzhen Winplus Shenzhen Pinwang Industrial Technology Co., Ltd. of China; Tacklife Tools (Kushigo Limited also d/b/a ''Shenzhen Take Tools Co. Ltd.'') of China; and Gooloo Technologies LLC of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the amended complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3669'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 20, 2023.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2023–05972 Filed 3–22–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0097]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Supplemental Information on Water Quality Considerations—ATF Form 5000.30

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit 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. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until May 22, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Shawn Stevens, Explosives Industry Liaison, Federal Explosives Licensing Center, by mail at 244 Needy Road, Martinsburg, WV 25427, email at *FELC@atf.gov,* or telephone at 304–616–4400.

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;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; 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 (check justification or form 83):* Extension without Change of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Supplemental Information on Water Quality Considerations.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5000.30.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit, Farms.

Other (if applicable): None.

Abstract: A person engaged in the business of manufacturing explosives is required to have a license under the provisions of 18 U.S.C. 843. The Federal Water Pollution Control Act, 33 U.S.C. 1341, authorizes the execution of the Supplemental Information on Water Quality Considerations—ATF 5000.30, during the application process, in order to ensure compliance with the Act.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 680 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 340 hours, which is equal to 680 (# of respondents) * .5 (30 minutes).

If additional information is required contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: March 17, 2023.

John Carlson,

Department Clearance Officer, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–05926 Filed 3–22–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1161]

Importer of Controlled Substances Application: Scottsdale Research Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Scottsdale Research Institute has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2023. Such persons may also file a written request for a hearing on the application on or before April 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 12, 2023, Scottsdale Research Institute, 12815 North Cave Creek Road, Phoenix, Arizona 85022, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to import Marihuana Extract (7350), Marihuana (7360), and Tetrahydrocannabinols (7370) as flowering plants to support analytical purposes, research, and the manufacturing of dosage forms for clinical trials. This notice does not constitute an evaluation or determination of the merits of the company's application. The company plans to import fungi material from which Psilocybin (7437) and Psilocyn (7438) will be produced for further manufacturing prior to use in research and clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05920 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1170]

Importer of Controlled Substances Application: Lonza Tampa, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Lonza Tampa, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2023. Such persons may also file a written request for a hearing on the application on or before April 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 10, 2023, Lonza Tampa, LLC, 4901 West Grace Street, Tampa, Florida 33607–3805, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I

The company plans to import drug code 7437 (Psilocybin) as finished dosage for clinical trials, research, and analytical purposes. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05940 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1168]

Importer of Controlled Substances Application: Caligor Coghlan Pharma Services

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Caligor Coghlan Pharma Services has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2023. Such persons may also file a written request for a hearing on the application on or before April 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator,

8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 8, 2023, Caliqor Coghlan Pharma Services, 1500 Business Park Drive, Unit B, Bastrop, Texas 78602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic Acid Diethylamide.	7315	I
5-Methoxy-N, N-dimethyltryptamine.	7431	I
Tapentadol	9780	II

The company plans to import the listed controlled substances as finished dosage units for use in clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05938 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1166]

Bulk Manufacturer of Controlled Substances Application: Patheon Pharmaceuticals Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Patheon Pharmaceuticals Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 22, 2023. Such persons may also file a written request for a hearing on the application on or before May 22, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on February 1, 2023, Patheon Pharmaceuticals Inc., 2110 East Galbraith Road, Cincinnati, Ohio 45237, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma-hydroxybutyric acid.	2010	I

The company plans to manufacture the above-listed controlled substance as Active Pharmaceutical Ingredient (API) that will be further synthesized into Food and Drug Administration-approved dosage forms. No other activities for this drug code are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05944 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1154]

Importer of Controlled Substances Application: Meridian Medical Technologies, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Meridian Medical Technologies, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2023. Such persons may also file a written request for a hearing on the application on or before April 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 28, 2022, Meridian Medical Technologies, LLC, 2555 Hermelin Drive, Saint Louis, Missouri 63144, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Morphine	9300	II

The company plans to import the controlled substance for analytical and research purposes. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-

approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05911 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1159]

Importer of Controlled Substances Application: Lipomed

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Lipomed has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2023. Such persons may also file a written request for a hearing on the application on or before April 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 9, 2023 Lipomed, 150 Cambridepark Drive, Suite 705, Cambridge, Massachusetts 02140–2300, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3–FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4–FMC)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4–MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR–18 (Also known as RCS–8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB–FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR–144 and XLR11 ([1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone)	7011	I
AB–FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB–FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB–AMB, MMB–FUBINACA, AMB–FUBINACA (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate)	7021	I
AB–PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-)3-carboxamide	7023	I
THJ–2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	7024	I
5F–AB–PINACA (N-(1-amino-3methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7025	I
AB–CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB–CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F–AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F–ADB; 5F–MDMB–PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB–PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido) 3,3-dimethylbutanoate)	7036	I
MDMB–CHMICA, MMB–CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7042	I
MMB–CHMICA, AMB–CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate)	7044	I
N-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide)	7047	I
APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	7048	I
5F–APINACA, 5F–AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH–081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
1-(5-Fluoropentyl)-1H-indazole-3-carboxamide	7083	I
5F–CUMYL–P7AICA (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4–CN–CUMYL–BUTINACA, 4-cyano-CUMYL–BUTINACA, 4–CN–CUMYL BINACA, CUMYL–4CN–BINACA, SGT–78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboximide).	7089	I
SR–19 (Also known as RCS–4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I

Controlled substance	Drug code	Schedule
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR–144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)	7144	I
JWH–073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7221	I
PB–22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F–PB–22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-methyl-alpha-ethylaminopentiophenone (4–MEAP)	7245	I
N-ethylhexedrone	7246	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP–47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7)	7348	I
Marihuana extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Parahexyl	7374	I
Mescaline	7381	I
2C–T–2, (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N–N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4-chloro-alpha-pyrrolidinovalerophenone (4-chloro-a-PVP)	7443	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-MePPP (4-Methyl-alphapyrrolidinopropiophenone)	7498	I
2C–D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine)	7508	I
2C–E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine)	7509	I
2C–H (2-(2,5-Dimethoxyphenyl) ethanamine)	7517	I
2C–I (2-(4-iodo-2,5-dimethoxyphenyl) ethanamine)	7518	I
2C–C (2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine)	7519	I
2C–N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine)	7521	I
2C–P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine)	7524	I
2C–T–4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
25B–NBOMe (2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7536	I
25C–NBOMe (2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7537	I
25I–NBOMe (2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
N-Ethylpentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543	I
α-PHP, alpha-Pyrrolidinohexanophenone	7544	I
α-PVP (alpha-pyrrolidinopentiophenone)	7545	I
α-PBP (alpha-pyrrolidinobutiophenone)	7546	I
PV8, alpha-Pyrrolidinoheptaphenone	7548	I
AM–694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I

Controlled substance	Drug code	Schedule
Norfentanyl	8366	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Cyprenorphine	9054	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphinol	9301	I
Methyldesorphine	9302	I
Methyldihydromorphine	9304	I
Morphine methylbromide	9305	I
Morphine methylsulfonate	9306	I
Morphine-N-oxide	9307	I
Myrophine	9308	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Pholcodine	9314	I
Thebacon	9315	I
Acetorphine	9319	I
Drotebanol	9335	I
U–47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH–7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
MT–45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine))	9560	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betacetylmethadol	9607	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Clonitazene	9612	I
Dextromoramide	9613	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimenoxadol	9617	I
Dimepheptanol	9618	I
Dimethylthiambutene	9619	I
Dioxaphetyl butyrate	9621	I
Dipipanone	9622	I
Ethylmethylthiambutene	9623	I
Etonitazene	9624	I
Etoxeridine	9625	I
Furethidine	9626	I
Hydroxypethidine	9627	I
Ketobemidone	9628	I
Levomoramide	9629	I
Levophenacylmorphan	9631	I
Morpheridine	9632	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Norpipanone	9636	I
Phenadoxone	9637	I
Phenampromide	9638	I
Phenoperidine	9641	I
Piritramide	9642	I
Proheptazine	9643	I
Properidine	9644	I
Racemoramide	9645	I
Trimeperidine	9646	I
Phenomorphan	9647	I
Propiram	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Tilidine	9750	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I

Controlled substance	Drug code	Schedule
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-Methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Para-fluorobutyryl fentanyl	9823	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Para-chloroisobutyryl fentanyl	9826	I
Isobutyryl fentanyl	9827	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyryl fentanyl	9837	I
Ocfentanil	9838	I
Valeryl fentanyl	9840	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide)	9843	I
Cyclopropyl Fentanyl	9845	I
Cyclopentyl fentanyl	9847	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Dronabinol in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration (FDA).	7365	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
ANPP (4-Anilino-N-phenethyl-4-piperidine)	8333	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II
Cocaine	9041	II
Codeine	9050	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine-intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Metazocine	9240	II
Methadone	9250	II
Methadone intermediate	9254	II
Metopon	9260	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Dihydroetorphine	9334	II
Levo-alphacetylmethadol	9648	II
Oxymorphone	9652	II
Noroxymorphone	9668	II

Controlled substance	Drug code	Schedule
Phenazocine	9715	II
Thiafentanil	9729	II
Piminodine	9730	II
Racemethorphan	9732	II
Racemorphan	9733	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Bezitramide	9800	II
Fentanyl	9801	II
Moramide-intermediate	9802	II

The company plans to import analytical reference standards for distribution to its customers for research and analytics purposes. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized in 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05916 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1169]

Importer of Controlled Substances Application: Purisys, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Purisys, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2023. Such persons may also file a written request for a hearing on the application on or before April 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 15, 2023, Purisys, LLC, 1550 Olympic Drive, Athens, Georgia 30601–1602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Nabilone	7379	II
Phenylacetone	8501	II
Ecgonine	9180	II
Levorphanol	9220	II
Thebaine	9333	II
Opium, raw	9600	II
Opium, powdered	9639	II
Opium, granulated	9640	II
Noroxymorphone	9668	II
Poppy Straw Concentrate	9670	II
Tapentadol	9780	II

The company plans to import Opium, Raw (9600), Opium, Powered (9639) and Opium, Granulated (9640) to manufacture an Active Pharmaceutical Ingredient (API) only for distribution to its customers. The company plans to import Phenylacetone (8501) and Poppy Straw Concentrate (9670), to bulk manufacture other Controlled substances for distribution to its customers. The company plans to import impurities of buprenorphine that have been determined by DEA to be captured under Thebaine (9333). In reference to Marihuana Extract (7350), Marihuana (7360) and Tetrahydrocannabinols (7370) the company plans to import as synthetic. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05939 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1145]

Importer of Controlled Substances Application: Myonex Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Myonex Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2023. Such persons may also file a written request for a hearing on the application on or before April 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 21, 2022, Myonex Inc.. 100 Progress Drive, Horsham, Pennsylvania 19044, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Morphine	9300	II
Oxymorphone	9652	II
Fentanyl	9801	II

The company plans to import the listed controlled substances in dosage form for clinical trials, research, and analytical purposes. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05913 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1162]

Bulk Manufacturer of Controlled Substances Application: Scottsdale Research Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Scottsdale Research Institute, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 22, 2023. Such persons may also file a written request for a hearing on the application on or before May 22, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 10, 2023, Scottsdale Research Institute, 5436 East Tapekim Road, Cave Creek, Arizona 85331, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances for internal research and analytical development purposes. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05921 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1163]

Bulk Manufacturer of Controlled Substances Application: Sigma Aldrich Research Biochemicals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sigma Aldrich Research Biochemicals, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 22, 2023. Such persons may also file a written request for a hearing on the application on or before May 22, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal,

which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 13, 2023, Sigma Aldrich Research Biochemical, Inc., 400–600 Summit Drive, Burlington, Massachusetts 01803, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cathinone	1235	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
Methaqualone	2565	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole)	7201	I
Lysergic acid diethylamide	7315	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
2,5-Dimethoxyamphetamine	7396	I
3,4-Methylenedioxymethamphetamine	7405	I
Alpha-methyltryptamine	7432	I
Dimethyltryptamine	7435	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
N-Benzylpiperazine	7493	I
2C–H 2-(2,5-Dimethoxyphenyl)ethanamine	7517	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Heroin	9200	I
Normorphine	9313	I
Norlevorphanol	9634	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Amphetamine	1100	II
Methylphenidate	1724	II
Nabilone	7379	II
Phencyclidine	7471	II
Cocaine	9041	II
Codeine	9050	II
Ecgonine	9180	II
Levorphanol	9220	II
Meperidine	9230	II
Methadone	9250	II
Morphine	9300	II
Thebaine	9333	II
Levo-alphacetylmethadol	9648	II
Noroxymorphone	9668	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to manufacture the listed controlled substances as reference standards. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–05943 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Report of Construction Contractor's Wage Rates

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-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 April 24, 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 Davis-Bacon Act (DBA), requires the payment of minimum prevailing wages determined by the Department of Labor to laborers and mechanics working on federal contracts in excess of $2,000 for the construction, alteration, or repair, including painting and decorating, of public buildings and public works. The DBA delegates to the Secretary of Labor the responsibility to determine the wage rates that are ''prevailing'' for each classification of covered laborers and mechanics on similar projects ''in the civil subdivision of the State in which the work is to be performed.'' 40 U.S.C. 3142(b). The Department is responsible for issuing these wage determinations (WDs). The implementing regulations provide that the Administrator of WHD will conduct a continuing program for obtaining and compiling wage rate information for issuing WDs. As a part of this program, the regulation provides that the Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials, and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. See 29 CFR 1.3(a). Form WD–10 is used by the Department to solicit construction project data from contractor associations, contractors, and unions. The wage data is used to determine locally prevailing wages under the Davis-Bacon and Related Acts. A new pre-survey, WD–10A, requests that general contractors and subcontractors supply a list of their subcontractors to whom WHD may send notification of the survey. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 15, 2022 (87 FR 36152).

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–WHD.

Title of Collection: Report of Construction Contractor's Wage Rates.

OMB Control Number: 1235–0015.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 3,641.

Total Estimated Number of Responses: 21,939.

Total Estimated Annual Time Burden: 7,161 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: March 17, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–05946 Filed 3–22–23; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before April 24, 2023.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2023–0014 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0014.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2023–008–C.

Petitioner: American Consolidated Natural Resources, Inc., 46226 National Road, St. Clairsville, Ohio 43950.

Mines: Harrison County Mine, MSHA ID No. 46–01318, located in Harrison County, West Virginia; Marion County Mine, MSHA ID No. 46–01433, located

in Marion County, West Virginia; Ohio County Mine, MSHA ID No. 46–01436, located in Marshall County, West Virginia; and Marshall County Mine, MSHA ID No. 46–01437, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit use of the CleanSpace EX Powered Respirator, a nonpermissible battery powered air-purifying respirator (PAPR), in or inby the last open crosscut.

The petitioner states that:

(a) The petitioner has approved petitions for modification for 30 CFR 75.507–1(a) and 75.1002(a) to permit the use of the CleanSpace EX in areas where permissible equipment is required.

(b) The petitioner previously used 3M Airstream helmet PAPRs to provide miners with respirable dust protection on the longwall faces.

(c) 3M discontinued the Airstream helmet, and there are no other MSHA-approved PAPRs.

(d) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions for use in mines with the potential for methane accumulation.

(e) The CleanSpace EX Power Unit has been determined to be intrinsically safe under IECEx and other countries' standards.

The petitioner proposes the following alternative method:

(a) The equipment shall be examined at least weekly by a qualified person in accordance with 30 CFR 75.512–2. Examination results shall be recorded weekly and may be expunged after 1 year.

(b) The petitioner shall comply with 30 CFR 75.323.

(c) A qualified person under 30 CFR 75.151 shall monitor for methane in the affected area of the mine as is required by the standard.

(d) When not in operation, batteries for the PAPR shall be charged on the surface or underground in intake air and not in or inby the last open crosscut.

(e) The following battery charging products shall be used: PAF–0066 and PAF–1100.

(f) Qualified miners shall receive training regarding safe use of, care for, and inspection of the PAPR, and on the Proposed Decision and Order before using equipment in the relevant part of the mine. A record of the training shall be kept and be made available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2023–05945 Filed 3–22–23; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[23–024]

Name of Information Collection: NASA Software Release Request System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by April 24, 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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292, or *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Software Release Request System (SRS) is a workflow tool that allows Agency Software Release Authorities (SRAs) to easily develop and route software release documents, such as the Software Release Request Authorization (SRRA) and Section 508 Compliance Matrix in an automated fashion. SRAs have the added ability to perform parallel routing, including the use of time-based email reminders, tracking and reporting progress on the processing of the software release requests so they can effectively manage this process at their respective centers. Software owners/developers can submit the Software Release Requests or view their submitted Software Release Requests that may need their attention.

II. Methods of Collection

Online.

III. Data

Title: NASA Software Release Request System.

OMB Number: 2700–0175.

Type of review: Information Collection renewal.

Affected Public: NASA Funded Contractors and Government Employees.

Average Expected Annual Number of Activities: On average 94 software packages are released per year.

Average number of Respondents per Activity: At least one respondent will complete the form per activity (software release) which will result in approximately 94 respondents.

Annual Responses: 94.

Frequency of Responses: As needed.

Average minutes per Response: 240 minutes.

Burden Hours: 504.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–06014 Filed 3–22–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Advanced Cyberinfrastructure (Spring 2023) (#25150) (Hybrid Meeting).

Date and Time: April 17, 2023, 10:00 a.m.–3:30 p.m. (Eastern), April 18, 2023, 10:00 a.m.–4:00 p.m. (Eastern).

Place: NSF, 2415 Eisenhower Avenue, Room E3410, Alexandria, VA 22314 (Hybrid).

The final meeting agenda and instructions to register and attend the meeting will be posted on the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

Type of Meeting: Open.

Contact Persons: Amy Walton, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–4538.

Minutes: May be obtained from Christine Christy, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (783) 878–0375 and will be posted within 90-days after the meeting end date to the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities in the OAC community. To provide advice to the Director/NSF on issues related to long-range planning.

Agenda: Updates on NSF wide OAC activities.

Dated: March 17, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–05923 Filed 3–22–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's ad hoc Committee on Nominating the NSB Class of 2024–2030 hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, March 29, 2023, from 8:00–9:00 a.m. EDT.

PLACE: This meeting will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: To provide the ad hoc committee with a general overview of the NSB nominations process, determine the desired attributes for the NSB class of 2024–2030, and discuss the renomination procedures for members of the NSB class of 2018–2024.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–06197 Filed 3–21–23; 4:15 pm]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97159; File No. SR–CboeEDGX–2023–008]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Its Fee Schedule

March 17, 2023.

On February 1, 2023, Cboe EDGX Exchange, Inc. (''EDGX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Fee Schedule. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on February 21, 2023.[4] On March 9, 2023, EDGX withdrew the proposed rule change (SR-CboeEDGX–2023–008).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–05912 Filed 3–22–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97156; File No. SR–MRX–2023–04]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Exchange Pricing Schedule at Options 7, Section 3

March 17, 2023.

On January 30, 2023, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the maker fees assessed to market makers. The proposed rule change was published for comment in the **Federal Register** on February 21, 2023.[3]

On March 1, 2023, MRX withdrew the proposed rule change (SR–MRX–2023–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–05914 Filed 3–22–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97158; File No. SR–NYSEARCA–2022–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade the Shares of the Breakwave Tanker Shipping ETF

March 17, 2023.

I. Introduction

On September 13, 2022, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 96914 (February 14, 2023), 88 FR 10605.

[5] 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. 96924 (February 14, 2023), 88 FR 10585.

[4] 17 CFR 200.30–3(a)(12).

to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares (''Shares'') of the Breakwave Tanker Shipping ETF (''Fund'') under NYSE Arca Rule 8.200–E, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on September 27, 2022.[4]

On November 2, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On December 8, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[7] to determine whether to approve or disapprove the proposed rule change.[8] On March 6, 2023, the Exchange filed Amendment No. 1, which amended and replaced the proposed rule change in its entirety.[9] The Commission has received no comments on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 95853 (Sept. 21, 2022), 87 FR 58552 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 96213, 87 FR 67513 (Nov. 8, 2022).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 96469, 87 FR 76524 (Dec. 14, 2022).

[9] In Amendment No. 1, the Exchange: (1) clarified information regarding the markets for Freight Futures (as defined herein) and exchange-traded options on Freight Futures; (2) clarified the correlation between the Benchmark Portfolio (as defined herein) and the Fund's portfolio and the adjustments and rebalancing of the Fund's portfolio; (3) provided additional background information on the freight futures markets, generally, and additional supporting information on the liquidity of the Freight Futures markets, specifically; (4) clarified the types of instruments and other holdings in which the Fund will not invest; (5) expanded its description of the surveillance applicable to the Shares, Freight Futures, and exchange-listed options on Freight Futures; (6) added a representation that, prior to the commencement of trading of the Shares, it will inform its ETP Holders (as defined herein) in an Information Bulletin of the special characteristics and risks associated with trading the Shares, among other information; and (7) made other technical amendments. Because the amendment does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2022-61/srnysearca202261-20158810-326900.pdf*.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

As described in more detail in Amendment No 1 to the proposed rule change,[10] the Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts on the Exchange. The Fund will be a series of ETF Managers Group Commodity Trust I (''Trust),[11] and the Fund and the Trust will be managed and controlled by their sponsor and investment manager, ETF Managers Capital LLC (''Sponsor'').[12]

According to the Exchange, the Fund's investment objective will be to provide investors with exposure to the daily change in the price of tanker freight futures,[13] before expenses and liabilities of the Fund, by tracking the performance of a portfolio (''Benchmark Portfolio'') consisting of positions in the three-month strip of the nearest calendar quarter of futures contracts on specified indexes (individually, ''Reference Index'') that measure prices for shipping crude oil (''Freight Futures'').[14] Each Reference Index is published each U.K. business day by the London-based Baltic Exchange[15] and measures the charter rate for shipping crude oil in a specific size category of cargo ship and for a specific route. The two Reference Indexes are: (1) the TD3C Index: Persian Gulf to China 270,000 metric tons cargo (Very Large Crude Carrier or VLCC tankers); and (2) the TD20 Index: West Africa to Europe, 130,000 metric tons cargo (Suezmax tankers).[16] The value of each of the TD3C Index and TD20 Index is disseminated daily at 4:00 p.m., London Time by the Baltic Exchange.[17] Such Reference Index information also is publicly available and widely disseminated by Reuters, Bloomberg, and/or other major market data vendors. Freight Futures reflect market expectations for the future cost of transporting crude oil.[18]

The Fund will seek to achieve its objective by purchasing Freight Futures. The Fund also may hold exchange-traded options on Freight Futures. Currently, the exclusive markets for Freight Futures and options on Freight Futures are ICE Futures Europe (''ICE'') and the Chicago Mercantile Exchange (''CME''). The applicable exchange acts as a counterparty for each member for

[10] *See id*. Additional information about the tanker freight industry, including tanker vessel supply, demand for seaborne oil transportation, calculation of NAV (as defined herein), dissemination of IFV (as defined herein), creation and redemption of Shares, general availability of information, trading halts, trading rules, surveillance, and information bulletin, among other things, can be found in the proposed rule change, as modified by Amendment No. 1.

[11] The Exchange states that on July 1, 2022, the Trust submitted to the Commission on a confidential basis its draft registration statement on Form S–1 (''Registration Statement'') under the Securities Act of 1933.

[12] The Sponsor is registered with the Commodity Futures Trading Commission (''CFTC'') as a commodity pool operator and is a member of the National Futures Association. Breakwave Advisors LLC (''Breakwave'') is registered as a commodity trading advisor with the CFTC and will serve as the Fund's commodity trading advisor. ETFMG Financial LLC will be the Fund's distributor, and US Bancorp Fund Services LLC will be the Fund's administrator and transfer agent (''Administrator'' and ''Transfer Agent'').

[13] According to the Exchange, freight futures contracts mainly exist for dry bulk and tanker freight rates. The Fund's exposure will be to tanker (not dry bulk) freight futures.

[14] According to the Exchange, Freight Futures are primarily traded through broker members of the Forward Freight Agreement Brokers Association (''FFABA''). Members of the FFABA must be members of the Baltic Exchange and must be regulated by the Financial Conduct Authority if resident in the U.K., or if not resident in the U.K., by an equivalent body if required by the authorities in the jurisdiction. Freight Futures are quoted in U.S. dollars per metric ton, with a minimum lot size of 1,000 metric tons. One lot represents freight costs to transport in U.S. dollars. The nominal value of a contract is simply the product of lots and Freight Futures prices.

[15] The Baltic Exchange, which is a wholly-owned subsidiary of the Singapore Exchange, is a membership organization and an independent source of maritime market information for the trading and settlement of physical and derivative shipping contracts.

[16] The Reference Indexes are published by the Baltic Exchange's subsidiary company, Baltic Exchange Information Services Ltd (''Baltic''), which publishes a wide range of market reports, fixture lists, and market rate indicators on a daily and (in some cases) weekly basis. The Baltic indices, which include the Reference Indexes, are an assessment of the price of moving the major raw materials by sea. The indices are based on assessments of the cost of transporting various bulk cargoes, both wet (*e.g.,* crude oil and oil products) and dry (*e.g.,* coal and iron ore), made by leading shipbroking houses located around the world on a per ton and daily hire basis. The information is collated and published by the Baltic Exchange. Procedures relating to administration of the Baltic indices are set forth in ''The Baltic Exchange, Guide to Market Benchmarks'' November 2016, including production methods, calculation, confidentiality and transparency, duties of panelists, code of conduct, audits, and quality control.

[17] Freight futures, including tanker Freight Futures, settle monthly over the arithmetic average of spot index assessments in the contract month for the relevant underlying product, rounded to three decimal places. The daily Reference Index publication, against which Freight Futures settle, is published by the Baltic Exchange.

[18] Generally, Freight Futures trade from approximately 3:00 a.m. Eastern Time (''E.T.'') to approximately 1:00 p.m. E.T. The great majority of trading volume occurs during London business hours, from approximately 4:00 a.m. E.T. time to approximately 12:00 p.m. E.T. Some limited trading takes place during Asian business hours as well (12:00 a.m. to 3:00 a.m. E.T.). The final closing prices for settlement are published daily around 12:30 p.m. E.T. Final cash settlement occurs the first business day following the expiry day.

clearing purposes. The Fund's investments in Freight Futures will be cleared by ICE and/or CME.[19]

According to the Exchange, although freight derivatives have been used in the shipping industry for more than 30 years, freight futures (including tanker Freight Futures) have been clearing on exchanges since 2005. In addition, the Exchange represents that the liquidity of tanker Freight Futures (clean and dirty) has been increasing, in lot terms, over the last five years.[20] For example, in 2021, approximately 560,000 lots in Freight Futures traded. As of 2022, open interest in Freight Futures stood at approximately 145,000 lots across all asset classes representing an estimated value of more than $2 billion. Of such open interest in 2022, TD3C contracts accounted for approximately 50% in lots of all tanker Freight Futures.

The Fund will invest substantially all of its assets in Freight Futures constituting the Benchmark Portfolio, and at any given time, the average maturity of the futures held by the Fund will be approximately 50 to 70 days. The Fund's portfolio will be traded with a view to reflecting the performance of the Benchmark Portfolio, whether the Benchmark Portfolio is rising, falling, or flat over any particular period. The Benchmark Portfolio, which is maintained by Breakwave and will be rebalanced annually, will hold long positions in Freight Futures corresponding to the TD3C Index and TD20 Index. The Benchmark Portfolio's initial allocation will be approximately 90% TD3C contracts and 10% TD20 contracts, based on contract value, not number of lots. The Benchmark Portfolio will consist of positions in the three-month strip of the nearest calendar quarter of Freight Futures and roll them constantly to the next calendar quarter. The three-month strip of each of the four-calendar quarters are January, February, and March (Q1); April, May, and June (Q2); July, August, and September (Q3); and October, November, and December (Q4). The Benchmark Portfolio will hold all positions to maturity and settle them in cash. During any given calendar quarter, the Benchmark Portfolio will progressively increase its position to the next calendar quarter three-month strip, thus maintaining constant long exposure to the Freight Futures market as positions mature.

To track the Benchmark Portfolio, the Fund will attempt to roll positions in the nearby calendar quarter, on a pro rata basis. For example, if the Fund was currently holding the Q1 calendar quarter comprising the January, February and March monthly contracts, each week in the month of February, the Fund will attempt to purchase Q2 contracts in an amount equal to approximately one quarter of the expiring February positions. As a result, by the end of February, the Fund would have rolled the February position to Q2 freight contracts, leaving the Fund with March and Q2 contracts. At the end of March, the Fund will have completed the roll and will then hold only Q2 exposure comprising April, May, and June monthly contracts.

During the month of December of each year, the Fund will rebalance its portfolio in order to bring the allocation of assets back to the initial allocation levels (*i.e.,* 90% and 10% in accordance with the Benchmark Portfolio construction). Given each asset's individual price movements during the year, such percentages might deviate from the targeted allocation. To maintain the correlation between the Fund and the change in the Benchmark Portfolio with regard to the performance of near-dated versus longer-dated futures (*i.e.,* based on contract duration), the Sponsor may adjust the Fund's portfolio of investments on a daily basis in response to creation and redemption orders or otherwise as required. For example, if needed, the Fund will sell current month Freight Futures and buy next calendar quarter futures to maintain a balance in terms of average duration, but also sell TD3C futures and buy TD20 futures to maintain the initial allocation levels (*i.e.,* 90%; 10%). The Sponsor anticipates that the Fund's Freight Futures positions will be held to expiration and settle in cash against the respective Reference Index as published by the Baltic Exchange and ICE or CME. Because Freight Futures contracts are cash settled, the Fund need not close out of existing contracts. Rather, it will hold such contracts to expiration and apply the above methodology in order acquire the nearby calendar contract.

When establishing positions in Freight Futures, the Fund will be required to deposit initial margin with a value of approximately 10% to 40% of the notional value of each Freight Futures position at the time it is established. These margin requirements are established and subject to change from time to time by the relevant exchanges, clearing houses, or the Fund's futures commission merchant (''FCM''). On a daily basis, the Fund will be obligated to pay, or entitled to receive, variation margin in an amount equal to the change in the daily settlement level of its overall Freight Futures positions. Any assets not required to be posted as margin with the FCM will be held at the Fund's custodian in cash or cash equivalents.[21] Like other investors in Freight Futures, the Fund will place purchase orders for Freight Futures with an execution broker. The broker will identify a selling counterparty and, simultaneously with the completion of the transaction, will submit the block traded Freight Futures to the relevant exchange or clearing house for clearing, thereby completing and creating a cleared futures transaction. If the exchange or clearing house does not accept the transaction for any reason, the transaction will be considered null and void and of no legal effect.

The Exchange represents that not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures and exchange-traded options on Freight Futures will consist of Freight Futures and exchange-traded options on Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have in place a comprehensive surveillance sharing agreement (''CSSA''). In addition, while the Fund maintains the right to invest in other maturities of Freight Futures, if such strategy is deemed necessary, according to the Exchange, the Benchmark Portfolio will not include, and the Fund will not invest in, swaps or other over-the-counter derivative instruments.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with: (1) Section 6(b)(5) of the Exchange

[19] The Exchange represents that CME and ICE are members of the Intermarket Surveillance Group (''ISG'').

[20] Tanker Freight Futures are quoted in U.S. Dollars per metric ton, with a minimum lot size of 1,000 metric tons. One lot represents freight costs to transport in U.S. Dollars. The nominal value of a contract is simply the product of lots and Freight Futures prices. There are futures contracts of up to 72 consecutive months, starting with the current month, available for trading for each vessel class.

[21] The Fund will hold cash or cash equivalents, such as U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities for direct investment or as collateral for the U.S. Treasuries and for other liquidity purposes, and to meet redemptions that may be necessary on an ongoing basis.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Act,[23] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and (2) Section 11A(a)(1)(C)(iii) of the Exchange Act,[24] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

As stated in the proposal, the Fund will seek to achieve its objective by purchasing Freight Futures (and exchange-traded options on Freight Futures) that are cleared through major exchanges and, currently, the exclusive markets for Freight Futures (and options on Freight Futures) are ICE and CME, both of which are members of ISG and are regulated in the U.S. by the CFTC.[25] The Exchange further states that, although freight derivatives have been used in the shipping industry for more than 30 years, freight futures (including tanker Freight Futures) have been clearing on exchanges since 2005. In summary, Freight Futures are cleared on well-established, regulated markets that are members of the ISG.[26] The Commission finds that the Exchange will be able to obtain and share surveillance information with a significant regulated market in Freight Futures.

To be listed and traded on the Exchange, the Shares must comply with the requirements of NYSE Arca Rule 8.200–E, Commentary .02 thereto on an initial and continuing basis. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The intraday, closing prices, and settlement prices of the Freight Futures will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors. Complete real-time data for Freight Futures is available by subscription through on-line information services. Trading prices for the Freight Futures and exchange-traded options on Freight Futures will be disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. CME and ICE provide on a daily basis transaction volumes, transaction prices, and open interest on their respective websites. Daily settlement prices and historical settlement prices are available through a subscription service to the Baltic Exchange, ICE, and CME; however, these exchanges provide the daily settlement price change of Freight Futures on their respective websites. Certain Freight Futures brokers provide real time pricing information to the general public either through their websites or through data vendors, such as Bloomberg or Reuters. Most Freight Futures brokers provide, upon request, individual electronic screens that market participants can use to transact, place orders, or only monitor Freight Futures market price levels.

In addition, the Fund's website will display the applicable end of day closing net asset value (''NAV''). The daily holdings of the Fund will be disclosed on the Fund's website before 9:30 a.m. E.T. each day. The Fund's website disclosure of portfolio holdings will include, as applicable: (1) the composite value of the total portfolio; (2) the quantity and type of each holding (including the ticker symbol, maturity date, or other identifier, if any) and other descriptive information including, in the case of an option, its strike price; (3) the percentage weighting of each holding in the Fund's portfolio; (4) the number of Freight Futures contracts and the value of each Freight Futures (in U.S. dollars); (5) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent; and (6) the amount of cash held in the Fund's portfolio.

The daily closing Benchmark Portfolio level and the percentage change in the daily closing level for the Benchmark Portfolio will be publicly available from one or more major market data vendors. The intraday value of the Benchmark Portfolio, updated every 15 seconds, will be available through major market data vendors during those times that the hours trading in Freight Futures overlap with trading hours on NYSE Arca (*i.e.,* between 9:00 a.m. and 1:00 p.m. E.T.). The indicative fund value (''IFV''), which will be calculated by using the prior day's closing NAV per Share of the Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the futures and/or options held by the Fund, will be disseminated on a per Share basis every 15 seconds during regular NYSE Arca Core Trading Session hours of 9:30 a.m. E.T. to 4:00 p.m. E.T.[27] The Administrator will calculate the NAV of the Fund on each NYSE Arca trading day. The NAV for a particular trading day will be released after 4:00 p.m. E.T., and the NAV for the Shares will be disseminated daily to all market participants at the same time.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the intraday value of the Benchmark Portfolio occurs; if the interruption to the dissemination of the IFV or the value of the Benchmark Portfolio persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Moreover, trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit holders (''ETP Holders'') acting as registered Market Makers in Trust

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] *See supra* note 19.

[26] *See supra* notes 19–20 and accompanying text.

[27] The Exchange represents that the customary trading hours of Freight Futures trading are 3:00 a.m. E.T. to 1:00 p.m. E.T. This means that there is a gap in time at the end of each day during which the Fund's Shares will be traded on the NYSE Arca, but real-time trading prices for contracts are not available. During such gaps in time the IFV will be calculated based on the end of day price of such contracts from the Baltic Exchange's, CME's, and ICE's immediately preceding settlement prices.

Issued Receipts to facilitate surveillance.

Under the proposal, the Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Freight Futures, and options on Freight Futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.

In support of this proposal, the Exchange also represents that:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in creation baskets and redemption baskets (and that Shares are not individually redeemable); (c) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV is disseminated; (e) how information regarding portfolio holdings is disseminated; (f) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to, or concurrently with, the confirmation of a transaction; and (g) trading information.

(5) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[28] as provided by NYSE Arca Rule 5.3–E.

(6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(7) The Fund will invest substantially all of its assets in Freight Futures currently constituting the Benchmark Portfolio, and not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures and exchange-traded options on Freight Futures will consist of Freight Futures and exchange-traded options on Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

(8) The Benchmark Portfolio will not include, and the Fund will not invest in, swaps or other over-the-counter derivative instruments.

(9) Statements and representations made in this filing regarding (a) the description of the Reference Indexes and portfolios, (b) limitations on portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.

(10) The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[29] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in Amendment No. 1 to the proposed rule change.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(5) and 11A(a)(1)(C)(iii) of the Act[30] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[31] that the proposed rule change (SR–NYSEARCA–2022–61), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–05915 Filed 3–22–23; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 240.10A–3.

[29] The Commission notes that certain other proposals for the listing and trading of exchange-traded products include a representation that the listing exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77620 (Apr. 14, 2016), 81 FR 23339 (Apr. 20, 2016) (SR–BATS–2015–124). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[30] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k–1(a)(1)(C)(iii).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 12019]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: Exhibition of ''Statue of the Capitoline Aphrodite''

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary exhibition or display at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made

pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–06011 Filed 3–22–23; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2023–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2023 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2023 RCAF (Unadjusted) is 1.004. The second quarter 2023 RCAF (Adjusted) is 0.403. The second quarter 2023 RCAF–5 is 0.385.

DATES: *Applicability Date:* March 23, 2023.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available at *www.stb.gov.*

Decided: March 20, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2023–06017 Filed 3–22–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2021–1188]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA uses the information collected on form 7460–1 to determine the effect a proposed construction or alteration would have on air navigation and the National Airspace System (NAS) and the information collected on form 7460–2 to measure the progress of actual construction.

DATES: Written comments should be submitted by April 8, 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.

By mail: Obstruction Evaluation Group, ATTN: David Maddox, Federal Aviation Administration, 1305 East West Highway, Room 4434, Silver Spring, MD 20910.

By fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: David Maddox by email at: *david.maddox@faa.gov;* phone: (202) 267–4525.

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: 2120–0001.

Title: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration.

Form Numbers: FAA Forms 7460–1 and 7460–2.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 3, 2022 (87 FR 6228). 49 U.S.C. 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity. These notice requirements are contained in 14 CFR 77. The information is collected via FAA Forms 7460–1 and 7460–2.

Respondents: Approximately 85,000 registered respondents including individuals or organizations that propose construction or alteration projects and are required to provide adequate notification to the FAA of that construction or alteration.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Approximately 15 minutes.

Estimated Total Annual Burden: 58,858 hours.

Issued in Washington, DC, on March 7, 2023.

Michael Helvey,

Manager, Obstruction Evaluation Group, AJV–A500.

[FR Doc. 2023–05953 Filed 3–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: IBM Skillsbuild Training Program Application—Pilot Program

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved

collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 22, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: White House Cyber Initiative, as supported by VA Principal Deputy Under Secretary for VA Benefits, Mr. Michael Frueh.

Title: IBM Skillsbuild Training Program Application—Pilot Program, VAF 22–10282.

OMB Control Number: 2900–NEW.

Type of Review: New Pilot Training Program.

Abstract: The IBM SkillsBuild Program is an IBM-sponsored training program administered by VA to provide free virtual Information Technology (IT) training. SkillsBuild is a free online learning platform that provides adult learners with the opportunity to gain or improve IT skills that meet the needs of employers in the High-Technology industry. VA will provide the opportunity for Veterans, Service members, and their families to access free, self-paced, virtual training and credentials in Cybersecurity and Data Analytics. This virtual training in the field of Cybersecurity and Data Analytics is an enhanced resource for Veterans and transitioning Service members who are seeking job training and credentials to pursue a career in Technology. The IBM Skillsbuild Training Program Intake Form, VA Form 22–10282 will allow eligible candidates to apply and register on a first-come, first-served basis to participate in the program and the form will be received electronically via Email to be submitted to *Vettecpartners@va.gov.,* for processing.

Affected Public: Individuals or Households.

Estimated Annual Burden: 100 hours.

Estimated Average Burden Time per Respondent: 10 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 600.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–05979 Filed 3–22–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Office of Information and Technology (OIT), Department of Veterans Affairs (VA).

ACTION: Rescindment of a system of records notice.

SUMMARY: The Customer User Provisioning System (CUPS) is a Graphical User Interface (GUI) that provisions mainframe accounts. It is used for requesting and monitoring user access to the Austin Information Technology Center (AITC) computer resources. CUPS uses functional tasks to provide access to computer systems, data files, and other software tools. CUPS is available 24/7, allowing field facility CUPS Points of Contact (POC) to register employees by entering Infrastructure and Operations (IO) System Access Request (e9957), at any time. CUPS processes requests immediately, registering employees for access to specific computer systems and data in real time, seven days a week. CUPS System Managers of Record (SMR), and SMR designees, use CUPS to monitor registration activity. The business owner of CUPS is the VA Data Center Operations (DCO), AITC.

DATES: This system was decommissioned on 11/30/2022. Comments on this rescindment notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the rescindment will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to 87VA005OP-Customer User Provisioning System (CUPS)-VA. Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stanley, Nina *nina.stanley@va.gov* (512) 364–4230; Adesokan, Kehinde *Kehinde.Adesokan@va.gov* (512) 567–3764; Tumuluri, Ganesh *ganesh.tumuluri@va.gov* (407) 480–6577.

SUPPLEMENTARY INFORMATION: CUPS should not have been a System of Record since it does not store personal information that is retrieved by any personal identifier within CUPS. The system has been decommissioned as of 11/30/2022 and there is no data remaining in the system. CUPS is a tool that creates virtual accounts. The accounts are created by data automatically retrieved from the Active Directory (*i.e.,* first/last name, email, mail routing number) and Functional Task Code data manually taken from Form 9957 submissions. The information gathered is then passed to the mainframe system to electronically validate as a new or existing account. CUPS do not serve as a repository for records, it simply passes existing data from one system to another.

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 March 18, 2023 for publication.

Dated: March 20, 2023.

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:

''Customer User Provisioning System-VA'' (87VA005OP).

HISTORY:

81 FR 3862 January 22, 2016.

[FR Doc. 2023–05960 Filed 3–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health 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, ''Income Verification Records-VA'' (89VA10NB). This system is used to verify the household income of certain Veterans and, if relevant, their spouses or dependents receiving VA health care benefits. The information in this system of records is also used to validate Veterans' and their spouses' Social Security numbers; provide educational materials related to income verification; respond to Veteran and non-Veteran inquiries related to income verification; and compile management reports.

DATES: Comments on this amended 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 the 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 ''Income Verification Records-VA'' (89VA10NB). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA is amending the system of records by revising the System Number; System Location; System Manager; Categories of Records in the System; Records Source Categories; Routine Uses of Records Maintained in the System; and Policies and Practices for Retention and Disposal of Records. VA is republishing the system notice in its entirety.

The System Number is being updated from 89VA10NB to 89VA10 to reflect the current VHA organizational routing symbol.

The System Location is being updated to remove language that shows that records are also stored at contracted locations in McLean, Virginia and Atlanta, Georgia. This section will now include language that shows that backup records are also stored at Disaster Recovery sites located in Hines, Illinois and Philadelphia, Pennsylvania.

The System Manager is being updated to remove the following language: Official responsible for policies and procedures: Chief Business Office (10NB2A), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. Official maintaining the system: Director, Health Eligibility Center, 2957 Clairmont Road, Atlanta, Georgia 30329. Telephone number 202–461–4239. This section will now reflect the following language: VHA Member Services, Health Eligibility Center, Income Verification Division Program Office. Questions related to the Income Verification program may be referred to the Health Eligibility Center Income Verification Division by telephone at 1–800–929–8387 (this is not a toll-free number), by email at *VHAHECIVDMgmt@va.gov,* or postal service at Department of Veterans Affairs, Health Eligibility Center Income Verification Division, 2957 Clairmont Road, Suite 200, Atlanta, Georgia 30329–1647.

The Categories of Records in the System is being updated to include demographics on individuals, such as name, address, date of birth and Internal Control Number (ICN).

The Records Source Categories is being updated to replace 24VA10P2 with 24VA10A7, and 147VA16 with 147VA10. Veterans and Beneficiaries Identification and Records Location Subsystem-VA'' (38VA23) is being removed from this section. This section will include Internal Revenue Services (IRS) and Social Security Administration (SSA).

The language in Routine Use #7 is being updated. It previously reflected the following language: VA may disclose information in this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

Routine Use #7 will now read as follows: DOJ, Litigation, Administrative Proceeding: 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 official 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.

Routine use #20 is being added to state, ''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.''

Policies and Practices for Retention and Disposal of Records is being updated to remove the previous language in that section and replace it with: Records in this system are retained and disposed of in accordance with the scheduled approved by the Archivist Records Control Schedule (RCS) 10–1, Item Numbers 1250.1, 1250.2, 1250.3. (DAA–0015–2018–0001, items 0001–0003)

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

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 February 10, 2023 for publication.

Dated: March 17, 2023.

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:

''Income Verification Records—VA'' (89VA10)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are located at VA's Health Eligibility Center (HEC) in Atlanta, Georgia and the Austin Information Technology Center (AITC) in Austin, Texas. Back up records are also stored at Disaster Recovery sites located in Hines, Illinois and Philadelphia, Pennsylvania.

SYSTEM MANAGER(S):

Official responsible for policies and procedures: VHA Member Services, Health Eligibility Center, Income Verification Division Program Office. Questions related to the Income Verification program may be referred to the Health Eligibility Center Income Verification Division by telephone at 1–800–929–8387 (this is not a toll-free number), by email at *VHAHECIVDMgmt@va.gov,* or postal service at Department of Veterans Affairs, Health Eligibility Center Income Verification Division, 2957 Clairmont Road, Suite 200 Atlanta, Georgia 30329–1647.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501(a), 1705, 1710, 1722, and 5317.

PURPOSE(S) OF THE SYSTEM:

The purpose of these records is to verify the household income of certain Veterans and, if relevant, their spouses or dependents receiving VA health care benefits. The information in this system of records is also used to validate Veterans' and their spouses' Social Security numbers; provide educational materials related to income verification; respond to Veteran and non-Veteran inquiries related to income verification; and compile management reports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information on Veterans who have applied for or have received VA health care benefits under 38 U.S.C. 17; Veterans' spouses and other dependents as provided for in other provisions of 38 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

The category of records in the system includes:

Federal Tax Information (FTI) and Social Security information generated as a result of computer matching activity with records from the Internal Revenue Services (IRS) and Social Security Administration (SSA). The records may also include, but are not limited to, demographics on individuals, such as name, address, date of birth and Internal Control Number (ICN); correspondence between HEC, Veterans, their family members, and Veterans' representatives such as Veterans Service Officers (VSO); copies of death certificates; Notice of Separation; disability award letters; IRS documents (*e.g.,* Form 1040s, Form 1099s, W–2s); workers compensation forms; and various annual earnings statements, as well as pay stubs and miscellaneous receipts.

Note: VA may not disclose to any person in any manner any document that contains FTI received from IRS or SSA in accordance with the Internal Revenue Code (IRC) 26 U.S.C. 6103(l)(7). In addition, VA may not allow access to FTI by any contractor or subcontractor.

RECORD SOURCE CATEGORIES:

Information in this system of records may be provided by the applicant, applicant's spouse or other family members; accredited representatives or friends; employers and other payers of earned income; financial institutions and other payers of unearned income; health insurance carriers; other Federal agencies, such as IRS and SSA; ''Patient Medical Records—VA'' (24VA10A7); ''Enrollment and Eligibility Records—VA'' (147VA10); and ''VA Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA''(58VA21/22/28)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information of VHA or any of its business associates, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in both 38 U.S.C. 7332 and 45 CFR parts 160, 161, and 164.

1. *Congress:* 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.

2. *Claims Representatives:* To accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, except FTI, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA upon the request of the claimant and provided that the disclosure is limited to information relevant to a claim, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information.

3. *Law Enforcement:* 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, except FTI, provided that the disclosure, is limited to 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. 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.

4. *Guardians, Courts, for Incompetent Veterans:* To a court, magistrate, or administrative tribunal, except FTI, in matters of guardianship, inquests, and commitments; to private attorneys representing Veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; or to probation and parole officers in connection with court-required duties.

5. *Guardians Ad Litem, for Representation:* To a fiduciary or guardian ad litem in relation to his or her representation of a claimant in any legal proceeding as relevant and necessary, except FTI, to fulfill the duties of the fiduciary or guardian ad litem.

6. *Attorneys, Insurers, Employers:* To attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and courts, boards, or commissions as relevant and necessary, except FTI, to aid VA in the preparation, presentation, and prosecution of claims authorized by law.

7. *DOJ, Litigation, Administrative Proceeding:* 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.

8. *NARA:* To the National Archives and Records Administration (NARA), except FTI, 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.

9. *Consumer Reporting Agencies:* To a consumer reporting agency, except FTI, for the purpose of locating the individual, obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States, or assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(2) and (4) have been met, provided that the disclosure is limited to information that is reasonably necessary to identify such individual or concerning that individual's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the Department.

10. *Treasury, to Report Waived Debt as Income:* To the Department of the Treasury as a report of income under 26 U.S.C. 61(a)(12), provided that the disclosure is limited to information concerning an individual's indebtedness that is waived under 38 U.S.C. 3102, compromised under 4 CFR part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired.

11. *Federal Agencies, Security Review Purposes:* To other source Federal agencies, except FTI, for information security review purposes who are parties to computer matching agreements involving the information maintained in this system, but only to the extent that the information is necessary and relevant to the review.

12. *Reported Payers of Earned, Unearned Income:* To reported payers of earned or unearned income in order to verify the identifier address, income paid, period of employment, and health insurance information provided on the means test, and to confirm income and demographic data provided by other Federal agencies during income verification computer matching.

13. *Federal Agencies, for Computer Matches:* To other Federal agencies, except FTI, for the purpose of conducting computer matches to obtain information, to determine or verify eligibility of Veterans receiving VA benefits or medical care under title 38, U.S.C.

14. *SSA, HHS, for SSN Validation:* To the Social Security Administration and the Department of Health and Human Services for the purpose of conducting computer matches to obtain information to validate the Social Security numbers maintained in VA records.

15. *Contractors:* 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. *Note:* This routine use does not authorize disclosure of FTI received from the IRS or the SSA to contractors or subcontractors.

16. *Data Breach Response and Remediation, for VA:* 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 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, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

17. *MSPB:* To the Merit Systems Protection Board (MSPB), except FTI, in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as otherwise authorized by law.

18. *FLRA:* To the Federal Labor Relations Authority (FLRA), except FTI, in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

19. *Federal Agencies, Fraud and Abuse:* To other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

20. *Data Breach Response and Remediation, for Another Federal Agency:* 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are currently maintained on magnetic tape, magnetic disk, optical disk, and paper at secure off-site facilities in Atlanta, Georgia and Austin, Texas. In January 2013, VA implemented a new electronic data transmission process called Direct Connect, which is a secure VPN tunnel to transmit and receive Veterans' household income from IRS. It only affects the means in which the data is transmitted; it does not affect the storage of the data.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records (or information contained in records) maintained on paper documents are indexed and are retrieved by the applicant's name, Social Security number or case number and filed in case order number. Automated records are indexed and retrieved by the Veteran's name, Social Security number, Internal Control Number, or case number. The spouse's name or Social Security number may be retrieved from the automated income verification record.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist, VA Records Control Schedule (RCS) 10–1, Item Numbers 1250.1, 1250.2, 1250.3. (DAA–0015–2018–0001, items 0001–0003).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Electronic data transmissions between VA health care facilities, HEC, and AITC are safeguarded by using VA's secure wide area network. The transmission of electronic data between SSA and AITC is safeguarded through the use of a secured, encrypted connection. Back-up of magnetic media containing FTI is transported between AITC and the off-site location in a locked storage container by an off-site vendor. Vendor personnel do not have key access to the locked container. The locked storage container is stored in a safe in a secured room at the off-site storage location. Access to the secured room and the safe is limited to authorized VA Information Technology staff only.

2. The software programs at HEC, AITC, and VA health care facilities automatically flag records or events for transmission via electronic messages based upon functionality requirements. The recipients of the messages are controlled and/or assigned to the mail group based on their role or position. Server jobs at each facility run continuously to check for incoming and outgoing data to be transmitted which needs to be parsed to files on the receiving end. All messages containing data transmissions include header information that is used for validation purposes. Consistency checks in the software are used to validate the transmission, and electronic acknowledgment messages are returned to the sending application. The VA Office of Cyber Security has oversight responsibility for planning and implementing computer security.

3. Working spaces and record storage areas at the HEC are secured during all business hours, as well as during non-business hours. All entrance doors require an electronic pass card, issued by the HEC Personal Card Issuer, for entry when unlocked, and entry doors are locked outside normal business hours. The card has restricted access capability, which allows restriction of unauthorized personnel to secured areas. Visitors are required to present identification and sign-in at a specified location. Visitors are issued a pass card which allows access to non-sensitive areas and are escorted by staff through restricted areas. At the end of the visit, visitors are required to turn in their card. The building is equipped with an intrusion alarm system which is activated during non-business hours. This alarm system is monitored by a private security service vendor. The HEC office space occupied by employees with access to Veteran records is secured with an electronic locking system, which requires a card for entry and exit of that office space. Access to the AITC is generally restricted to AITC staff, VA Headquarters employees, custodial personnel, Federal Protective Service, and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

4. A number of other security measures are implemented to enhance security and safeguard of electronic records such as automatic timeout after a short period of inactivity and device locking after a pre-set number of invalid logon attempts, for example.

5. Electronic data, except FTI, is transmitted from HEC and AITC to VA health care facilities over VA secure wide area network.

6. Employees at the health care facility level do not have access to FTI, nor do they have the ability to edit or view income tests received from HEC as a result of the income match with IRS.

7. Only specific key staff and the ISO are authorized access to the computer room. Programmer access to AITC and HEC databases, which contain FTI, is restricted only to staff whose official duties require that level of access. Contractor staff are not authorized access to the production database.

8. On-line data, including FTI, reside on magnetic media in AITC computer room which are highly secured. Backup media are stored in a combination lock safe in a secured room within the same building and access to the safe is restricted to the IT staff. Backup media are stored by an off-site media storage vendor who picks up the media on a weekly basis from HEC and AITC and returns the media to the off-site storage via a locked storage container. Vendor personnel do not have key access to the locked container.

9. Any sensitive information that may be downloaded to a personal computer or printed to hard copy format is provided the same level of security as the electronic records. All paper documents and informal notations containing sensitive data are shredded prior to disposal. All magnetic media (primary computer system) and personal computer disks are degaussed prior to disposal or released off site for repair.

10. HEC and AITC fully comply with the Tax Information Security Guidelines for Federal, State and Local Agencies (Department of Treasury IRS Publication 1075) as it relates to access and protection of such data. These guidelines define the management of magnetic media, paper and electronic records, and physical and electronic security of the data.

11. All new HEC employees receive initial information security and privacy training and refresher training are provided to all employees on an annual basis. HEC's ISO performs an Annual Information Security (AIS) audit. This annual audit includes the primary computer information system, the telecommunication system, and local area networks. Additionally, the IRS performs periodic on-site inspections to ensure the appropriate level of security is maintained for FTI. HEC and AITC's ISO and AIS administrator additionally perform periodic reviews to ensure security of the system and databases.

12. Identification codes and codes used to access HEC automated communications systems and records systems, as well as security profiles and possible security violations, are maintained on magnetic media in a secure environment by the HEC ISO. For contingency purposes, database back-ups on removable magnetic media are

stored off-site by a licensed and bonded media storage vendor.

13. VA field facilities do not receive FTI from AITC or HEC.

14. Contractors and subcontractors are required to adhere to HEC's safeguard and security requirements.

ACCESS:

1. In accordance with national and locally established data security procedures, access to the HEC Legacy system and the Enrollment Database is controlled by unique entry codes (access and verification codes). The user's verification code is set to be changed automatically every 90 days. User access to data is controlled by role-based access as determined necessary by supervisory and information security staff as well as by management of option menus available to the employee. Determination of such access is based upon the role or position of the employee and functionality necessary to perform the employee's assigned duties.

2. On an annual basis, employees are required to sign a computer access agreement acknowledging their understanding of confidentiality requirements. In addition, all employees receive annual privacy awareness and information security training. Access to electronic records is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally and locally established security measures.

3. Access to the AITC is generally restricted to AITC staff, VA Headquarters employees, custodial personnel, Federal Protective Service, and authorized operational personnel through electronic locking devices.

4. Specific key staffs are authorized access to HEC computer room and all other persons gaining access to the computer rooms are escorted. Programmer access to the information systems is restricted only to staff whose official duties require that level of access.

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.

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.

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:

59 FR 8677 (February 23, 1994), 66 FR 27752 (May 18, 2001), 73 FR 26192 (May 8, 2008), 78 FR 76897 (December 19, 2013).

[FR Doc. 2023–05925 Filed 3–22–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey Off North Carolina in the Northwest Atlantic Ocean; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC686]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey Off North Carolina in the Northwest Atlantic Ocean

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Lamont-Doherty Earth Observatory (L–DEO) for authorization to take marine mammals incidental to a marine geophysical survey off North Carolina in the Northwest Atlantic Ocean. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 24, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Wachtendonk@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

Accordingly, NMFS plans to adopt the National Science Foundation's (NSF) Environmental Assessment (EA), provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the IHA. NSF's EA was made available for public comment from January 27, 2023 to February 26, 2023, additionally, notice was sent to the South and Mid Atlantic Fishery Management Councils, the North Carolina state clearing house, the North Carolina Coastal Zone Management Program Office, and North Carolina Department of Environment and Natural Resources. NSF's EA can be viewed at *https://www.nsf.gov/geo/oce/envcomp/north-carolina-2023/LDEO-NC-EA-7-Oct2022.pdf.*

Summary of Request

On October 12, 2022, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to a marine geophysical survey off the coast of North Carolina in the northwest Atlantic Ocean. The application was deemed adequate and complete on January 13, 2023. L–DEO's request is for the take of 30 species of marine mammals by Level B harassment and, for 2 of these species, by Level A harassment. Neither L–DEO, nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to L–DEO for similar work in the same region (79 FR 57512; November 25, 2014). L–DEO complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA.

Description of Proposed Activity

Overview

Researchers from the University of Texas at Austin (UT) and L–DEO, with funding from the NSF, and in collaboration with international and domestic researchers including the United States Geological Survey (USGS), propose to conduct research, including high-energy seismic surveys using airguns as the acoustic source, from the research vessel (R/V) *Marcus G. Langseth* (*Langseth*). The surveys would occur off North Carolina in the northwestern Atlantic Ocean during Spring/Summer 2023. The proposed multi-channel seismic (MCS) reflection survey would occur within the Exclusive Economic Zone (EEZ) of the United States and in International Waters, in depths ranging from 200 to

5,500 meters (m). To complete this survey, the R/V *Langseth* would tow an 18-airgun array consisting of Bolt airguns ranging from 40–360 cubic inch (in^3) each on two strings spaced 6 m apart, with a total discharge volume of 3,300 in^3. The acoustic source would be towed at 6 m deep along the survey lines, while the receiving system would consist of a 5 kilometer (km) solid-state hydrophone streamer towed at a depth of 6 m and a 600 m long solid-state hydrophone streamer towed at a depth of 2 to 3 m.

The proposed study would acquire high-resolution two-dimensional (2–D) seismic reflection data to examine large submarine landslide behavior over the past 23 million years in the Cape Fear submarine slide complex off North Carolina, which has experienced large, recent submarine landslides. Additional data would be collected using echosounders, piston cores, and magnetic, gravity, and heat flow measurements. No take of marine mammals is expected to result from use of this equipment.

Dates and Duration

The proposed survey is expected to last for 33 days, with approximately 28 days of seismic operations, 3 days of piston coring and heat flow measurements, and 2 days of transit. R/V *Langseth* would likely leave from and return to port in Norfolk, VA, during spring/summer 2023.

Specific Geographic Region

The proposed survey would occur within ~31–35° N, ~72–75° W off the coast of North Carolina in the Northwest Atlantic Ocean. The closest point of approach of the proposed survey area to the coast would be approximately 40 km (from Cape Hatteras, North Carolina). The region where the survey is proposed to occur is depicted in Figure 1; the tracklines could occur anywhere within the polygon shown in Figure 1. Representative survey tracklines are shown, however, some deviation in actual tracklines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. The surveys are proposed to occur within the EEZ of the U.S. and in international waters, in depths ranging from 200–5,500 m deep.

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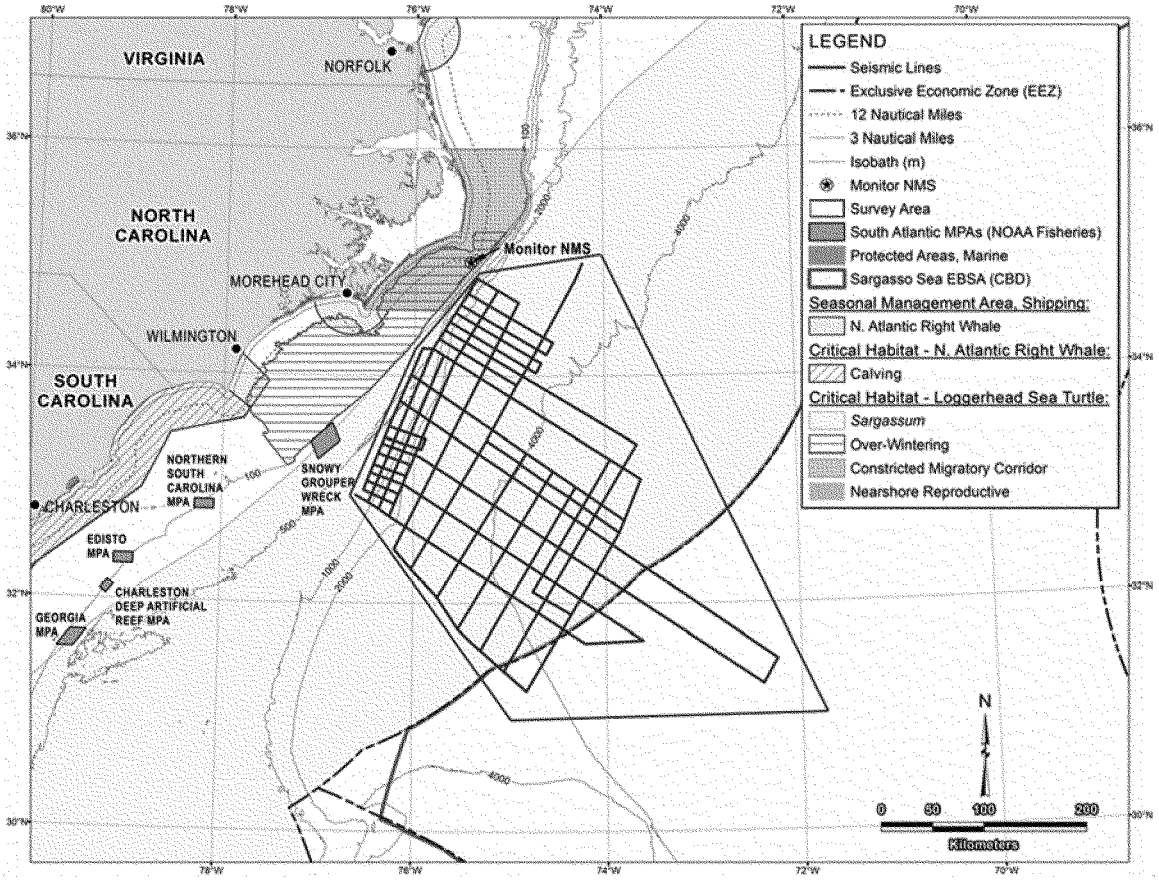

Figure 1. Location of the proposed North Carolina seismic surveys, marine conservation areas, and marine critical habitat in the Northwest Atlantic Ocean. Representative survey tracklines are included in the figure; however, the tracklines could occur anywhere within the survey area. MPA = marine protected area; EBSA = Ecologically or Biologically Significant Marine Areas. CBD = Convention on Biological Diversity.

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Detailed Description of the Specified Activity

The procedures to be used for the proposed surveys would be similar to those used during previous seismic surveys by L–DEO and would use conventional seismic methodology. The surveys would involve one source vessel, R/V *Langseth,* which is owned and operated by L–DEO. R/V *Langseth* would deploy eighteen 40 to 360 in^3 Bolt airguns on two strings as an energy source with a total volume of ~3300 in^3. The 2 airgun strings would be spaced 6 m apart and distributed across an area of 6 x 16 m behind the R/V *Langseth* and would be towed approximately 140 m behind the vessel. The array would be towed at a depth of 6 m, and the shot interval would be 25 m (~10 seconds (s)). The airgun array configuration is illustrated in Figure 2–13 of NSF and USGS's Programmatic Environmental Impact Statement (PEIS; NSF–USGS, 2011). (The PEIS is available online at: *www.nsf.gov/geo/oce/envcomp/usgs-nsf-marine-seismic-research/nsf-usgs-final-eis-oeis-with-appendices.pdf*). The receiving system would consist of a 5 km solid-state hydrophone streamer (solid flexible polymer) towed at a depth of 6 m and a 600 m long solid-state hydrophone streamer towed at a depth of 2 to 3 m. As the airguns are towed along the survey lines, the hydrophone streamer would transfer data to the on-board processing system.

Approximately 6,083 km of transect lines are proposed for the study area. All survey effort would occur in water deeper than 100 m, with 10 percent (629 km) in intermediate water (100–1,000 m) and 90 percent (5,454 km) in deep water (>1,000 m). Approximately 10 percent of seismic acquisition would occur in International Waters beyond the U.S. Exclusive Economic Zone. In addition to the operations of the airgun array, the ocean floor would be mapped with the Kongsberg EM 122 multibeam echosounder (MBES) and a Knudsen Chirp 3260 sub-bottom profiler (SBP). A Teledyne RDI 75 kilohertz (kHz) Ocean Surveyor Acoustic Doppler Current Profiler (ADCP) would be used to measure water current velocities.

Approximately 10–20 cores would be collected throughout the survey area above locations where strong Bottom Simulating Reflectors (BSR) have been imaged and/or near the locations of seafloor gas seeps; the locations would be determined during the cruise based on the seismic data collected. Coring operations would include collection of gravity and piston cores at coring sites. The piston corer would consist of a 12 m long core pipe that takes a core sample 10 centimeter (cm) in diameter, and a weight stand. The core pipe would weigh about 70 kilograms (kg) and the weight stand would weigh approximately 1,270 kg and is 90 cm in diameter. A piston corer would be lowered by wire to near the seabed where a tripping mechanism would release the corer and allow it to fall to the seabed, where the heavy weight stand would drive the core pipe into the seabed. A sliding piston inside the core barrel would reduce inside wall friction with the sediment and assist in the evacuation of displaced water from the top of the corer. The gravity corer would consist of a 3 m long core pipe that takes a core sample 10 cm in diameter, a head weight about 45 cm in diameter, and a stabilizing fin. It would ''free fall'' from the vessel, and its stabilizing fin would ensure that the corer penetrates the seabed in a straight line. The coring equipment would be deployed over the side of the vessel with standard oceanographic wire. The wire would be taut with the weight of the equipment preventing species entanglements. Thermal data would be collected with outrigger temperature probes mounted to the outside of a piston core barrel.

All planned geophysical data acquisition activities would be conducted by L–DEO with on-board assistance by the scientists who have proposed the studies. The vessel would be self-contained, and the crew would live aboard the vessel. Take of marine mammals is not expected to occur incidental to use of the MBES, SBP and ADCP, whether or not the airguns are operating simultaneously with the other sources. Given their characteristics (*e.g.,* narrow downward-directed beam), marine mammals would experience no more than one or two brief ping exposures, if any exposure were to occur. NMFS does not expect that the use of these sources presents any reasonable potential to cause take of marine mammals.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of L–DEO's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*). NMFS refers the reader to the application and to the aforementioned sources for general information regarding the species listed in Table 1.

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2019, 2020, 2022). All values presented in Table 1 are the most recent available (including the draft 2022 SARs) at the time of publication and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; N	1,396 (0; 1,380; 2016)	22	12.15
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 East Coast	-/-; N	21,968 (0.31; 17,002; 2016).	170	10.6
Blue whale	*Balaenoptera musculus*	Western North Atlantic	E/D;Y	unk (unk; 402; 1980–2008).	0.8	0
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 Kogiidae:						
Pygmy sperm whale	*Kogia breviceps*	Western North Atlantic	-/-; N	7,750 (0.38; 5,689; 2016)	46	0
Dwarf sperm whale	*Kogia sima*	Western North Atlantic	-/-; N	7,750 (0.38; 5,689; 2016)	46	0
Family Ziphiidae (beaked whales):						
Cuvier's beaked Whale	*Ziphius cavirostris*	Western North Atlantic	-/-; N	5,744 (0.36, 4,282, 2016)	43	0.2
Blainville's beaked Whale	*Mesoplodon densirostris*	Western North Atlantic	-/-; N	10,107 (0.27; 8,085; 2016).	81	0
True's beaked whale	*Mesoplodon mirus*	Western North Atlantic	-/-; N	10,107 (0.27; 8,085; 2016).	81	0
Gervais' beaked whale	*Mesoplodon europaeus*	Western North Atlantic	-/-; N	10,107 (0.27; 8,085; 2016).	81	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-; N	39,215 (0.30; 30,627; 2016).	306	9
Short finned pilot whale	*Globicephala macrorhynchus*	Western North Atlantic	-/-;Y	28,924 (0.24; 23,637; 2016).	236	136
Rough-toothed dolphin	*Steno bredanensis*	Western North Atlantic	-/-; N	136 (1.0; 67; 2016)	0.7	0
Bottlenose dolphin	*Tursiops truncates*	Western North Atlantic Offshore	-/-; N	62,851 (0.23; 51,914, 2016).	519	28
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	-/-; N	93,233 (0.71; 54,443; 2016).	544	27
Pantropical spotted dolphin	*Stenella attenuate*	Western North Atlantic	-/-; N	6,593 (0.52; 4,367; 2016)	44	0
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-/-; N	39,921 (0.27; 32,032; 2016).	320	0
Spinner dolphin	*Stenella longirostris*	Western North Atlantic	-/-; N	4,102 (0.99; 2,045; 2016)	21	0
Clymene dolphin	*Stenella clymene*	Western North Atlantic	-/-; N	4,237 (1.03; 2,071; 2016)	21	0
Striped dolphin	*Stenella coeruleoalba*	Western North Atlantic	-/-; N	67,036 (0.29; 52,939; 2016).	529	0
Fraser's dolphin	*Lagenodelphis hosei*	Western North Atlantic	-/-; N	unk	unk	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-; N	35,215(0.19; 30,051; 2016).	301	34
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-; N	172,947 (0.21; 145,216; 2016).	1,452	390
Melon-headed whale	*Peponocephala electra*	Western North Atlantic	-/-; N	unk	unk	0
Pygmy killer whale	*Feresa attenuate*	Western North Atlantic	-/-; N	unk	unk	0
False killer whale	*Pseudorca crassidens*	Western North Atlantic	-/-; N	1,791 (0.56; 1,154; 2016)	12	0
Killer whale	*Orcinus orca*	Western North Atlantic	-/-; N	unk	unk	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; 2016).	851	164

[1] Endangered Species Act (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.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all 30 species in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Species that could potentially occur in the proposed research area but are not likely to be harassed due to the rarity of their occurrence (*i.e.,* are considered extralimital or rare visitors to the waters off North Carolina), or because their known migration through the area does not align with the proposed survey dates, are described briefly but omitted from further analysis. These generally include species that do not normally occur in the area, but for which there are one or more occurrence records that are considered beyond the normal range of the species. These species include northern bottlenose whales (*Hyperoodon ampullatus*), Sowerby's

beaked whales (*Mesoplodon bidens*), white-beaked dolphins (*Lagenorhynchus albirostris*), harp seals (*Pagophilus groenlandicus*), hooded seals (*Cystophora cristata*), gray seals (*Halichoerus grypus*), and harbor seals (*Phoca vitulina*), which are all typically distributed further north on the eastern coast of the United States.

This also includes the North Atlantic right whale (*Eubalaena glacialis*), as their migration through waters directly adjacent to the study area does not align with the proposed survey dates. Based on the timing of migratory behavior relative to the proposed survey, in conjunction with the location of the survey in primarily deep waters beyond the shelf, no right whales would be expected to be subject to take incidental to the survey. A quantitative, density-based analysis confirms these conclusions (see Estimated Take, later in this notice).

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 20 of the mortalities thus far. As of February 14, 2023, a total of 36 confirmed dead stranded whales (21 in Canada; 15 in the United States) have been documented. The cumulative total number of animals in the North Atlantic right whale UME has been updated to 57 individuals to include both the confirmed mortalities (dead stranded or floaters) (n=36) and seriously injured free-swimming whales (n=22) to better reflect the confirmed number of whales likely removed from the population during the UME and more accurately reflect the population impacts. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-north-atlantic-right-whale-unusual-mortality-event.*

The offshore waters of North Carolina, including waters adjacent to the survey area, are used as part of the migration corridor for right whales. Right whales occur here during seasonal movements north or south between their feeding and breeding grounds (Firestone *et al.* 2008; Knowlton *et al.* 2002). Right whales have been observed in or near North Carolina waters from October through December, as well as in February and March, which coincides with the migratory timeframe for this species (Knowlton *et al.* 2002). They have been acoustically detected off Georgia and North Carolina in 7 of 11 months monitored (Hodge *et al.* 2015) and other recent passive acoustic studies of right whales off the Virginia coast demonstrate their year-round presence in Virginia (Salisbury *et al.* 2018), with increased detections in fall and late winter/early spring. They are typically most common in the spring (late March) when they are migrating north and, in the fall (*i.e.,* October and November) during their southbound migration (NOAA Fisheries 2017).

There are no seasonal management areas (SMA) designated within the proposed survey area, however vessel transit routes do spatially overlap with one SMA, which exists from November 1 through April 30 within a 20-nautical mile (nmi) (37 km) radius of the entrance to the Chesapeake Bay, which leads to the port in Norfolk, VA. L–DEO intends to complete the survey before November 1, 2023, and NMFS proposes that use of airguns be limited to the period May 1 through October 31. The regulations identifying SMAs (50 CFR 224.105) also establish a process under which dynamic management areas (DMA) can be established based on North Atlantic right whale sightings. NMFS established a Slow Zone program in 2020 that notifies vessel operators of areas where maintaining speeds of 10 knots (kn) or less can help protect North Atlantic right whales from vessel collisions. Right Whale Slow Zones are established around areas where right whales have been recently seen or heard; these areas are identical to DMAs when triggered by right whale visual sightings but they can also be established when right whale detections are confirmed from acoustic receivers. More information on SMAs, DMAs, and Slow Zones can be found at: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales#:~:text=Right%20Whale%20Slow%20Zones%20is,right%20whales%20have%20been%20detected.*

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 UME (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. 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 L–DEO if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

The proposed survey area is also adjacent to the migratory corridor Biologically Important Area (BIA) identified for North Atlantic right whales that extends from Massachusetts to Florida in March–April and November–December (LeBrecque *et al.,* 2015). This important migratory area is approximately 269,488 km^2 in and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts. During their migration, North Atlantic right whales prefer shallower waters, with the majority of sightings occurring within 56 km of the coast and in water depths shallower than 45 m. When whales are seen further offshore, it is in the northern part of their migratory path south of New England. Comparatively, this survey would occur at a minimum of 40 km off the coast in water depths ranging from 200 m to 5,550 m, with 90 percent of the survey taking place in depths greater than 1,000 m. No critical habitat is designated within the survey area.

Humpback Whale

Humpback whales are found worldwide in all oceans. The worldwide population is divided into northern and southern ocean populations, but genetic analyses suggest some gene flow (either past or present) between the North and South Pacific (*e.g.,* Jackson *et al.,* 2014; Bettriddge *et al.,* 2015). Although considered to be mainly a coastal species, humpback whales often traverse deep pelagic areas while migrating (Calambokidis *et al.,* 2001; Garrigue *et al.,* 2002; Zerbini *et al.,* 2011). Humpbacks migrate between summer feeding grounds in high latitudes and winter calving and breeding grounds in tropical waters

(Clapham and Mead 1999). In the western North Atlantic, humpback whales feed during spring, summer and fall over a geographic range encompassing the eastern coast of the United States (including the Gulf of Maine), the Gulf of St. Lawrence, Newfoundland/Labrador, and western Greenland (Katona and Beard 1990). The whales that feed on the eastern coast of the United States are recognized as a distinct feeding stock, known as the Gulf of Maine stock (Palsbøll *et al.* 2001; Vigness-Raposa *et al.* 2010). During winter, these whales mate and calve in the West Indies, where spatial and genetic mixing among feeding stocks occurs (Katona and Beard 1990; Clapham *et al.* 1993; Palsbøll *et al.* 1997; Stevick *et al.* 1998; Kennedy *et al.* 2013).

Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS re-evaluated the status of the species in 2015, and on September 8, 2016, divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed 4 DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. Only one DPS occurs in the proposed survey area, the West Indies DPS, which is not listed under the ESA.

The Gulf of Maine stock of humpback whales, a feeding population of the West Indies DPS, occurs primarily in the southern Gulf of Maine and east of Cape Cod during summers to feed (Clapham *et al.* 1993; Hayes *et al.* 2020). Off North Carolina, most sightings of humpback whales have been reported for winter and mostly nearshore (DoN 2008a,b; Conley *et al.* 2017); there were fewer sightings in spring, most along the shelf break or in deep, offshore water (DoN 2008a,b). There were no sightings in summer, and several sightings occurred nearshore during fall (DoN 2008a,b). Summer surveys by the Northeast Fisheries Science Center (NEFSC) and Southeast Fisheries Science Center (SEFSC) show no sightings of humpback whales for North Carolina (Hayes *et al.* 2020). One satellite-tagged humpback whale transited through the study area during January 2021 (DoN 2022). Davis *et al.* (2020) detected humpback whales acoustically off North Carolina during all seasons, with the greatest number of detections during winter and spring. Summer (May–July) and fall (August–October) had fewer detections. There are three records in the Ocean Biodiversity Information System (OBIS) database for the proposed survey area—one each during April, May, and July (OBIS 2022). Humpback whales present in waters off the U.S. Mid-Atlantic are members of the West Indies DPS, but could be from multiple feeding populations (*i.e.,* are not necessarily part of the Gulf of Maine stock).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 187 known cases. 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. NMFS is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Minke Whale

The minke whale has a cosmopolitan distribution that spans from tropical to polar regions in both hemispheres (Jefferson *et al.,* 2015). In the Northern Hemisphere, the minke whale is usually seen in coastal areas, but can also be seen in pelagic waters during its northward migration in spring and summer and southward migration in autumn (Stewart and Leatherwood, 1985). The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45 °W) to the Gulf of Mexico (Hayes *et al.,* 2020). Little is known about minke whales' specific movements through the Mid-Atlantic region; however, there appears to be a strong seasonal component to minke whale distribution, with acoustic detections indicating that they migrate south in mid-October to early November, and return from wintering grounds starting in March through early April (Hayes *et al.,* 2020). Northward migration appears to track the warmer waters of the Gulf Stream along the continental shelf, while southward migration is made farther offshore (Risch *et al.,* 2014).

Since January 2017, elevated minke whale mortalities have occurred along the U.S. Atlantic coast from Maine through South Carolina, with a total of 140 known strandings. This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa) while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2–s) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes

important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;

- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- *Anthropogenic:* Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of this dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). 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 Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

Acoustic Effects

Here, we discuss the effects of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound [1]—Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment; non-auditory physical or physiological effects; behavioral disturbance; stress; and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing, if it occurs at all, will occur almost exclusively in cases where a noise is within an animal's hearing frequency range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological response. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from

[1] Please refer to the information given previously (''Description of Active Acoustic Sound Sources'') regarding sound, characteristics of sound types, and metrics used in this document.

impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). Threshold shift can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not typically consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

Temporary TS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Finneran *et al.* (2015)[2] measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects was likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There is no direct data available on noise-induced hearing loss for mysticetes.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007, 2019), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more

[2] Note that, in the following discussion, we refer in many cases to Finneran (2015), a review article concerning studies of noise-induced hearing loss conducted from 1996–2015. For study-specific citations, please see Finneran (2015).

sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific, and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007, 2019; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect disruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Visual tracking, passive acoustic monitoring (PAM), and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007, 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence

of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs or amplitude of calls (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004; Holt *et al.,* 2012), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.,* (2014) used PAM to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each 10 minutes sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.,* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 hours of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μPa^2-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk-pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute cumulative sound exposure level (SEL_{cum}) of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Humpback whales show avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

Forney *et al.* (2017) detail the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking, noting that a lack of observed response does not imply absence of fitness costs and that apparent tolerance of disturbance may have population-level impacts that are less obvious and difficult to document. Avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts. Forney *et al.* (2017) state that, for these animals, remaining in a disturbed area may reflect a lack of alternatives rather than a lack of effects. The authors discuss several case studies in which a small population of mysticetes believed to be adversely affected by oil and gas development off Sakhalin Island, Russia (Weller *et al.,* 2002; Reeves *et al.,* 2005). Forney *et al.* (2017) also discuss beaked whales, noting that anthropogenic effects in areas where they are resident could cause severe biological consequences, in part because displacement may adversely affect foraging rates, reproduction, or health, while an overriding instinct to remain could lead to more severe acute effects.

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in

reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors, such as sound exposure, are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 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). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When arrays of large airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during, and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, significant masking could disrupt behavioral patterns, which in turn could affect fitness for survival and reproduction. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in predicting any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their

vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking may be less in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.* 2011, 2016; Klinck *et al.* 2012; Guan *et al.* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.,* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source. Based on measurements in deep water of the Southern Ocean, Gedamke (2011) estimated that the slight elevation of background levels during intervals between pulses reduced blue and fin whale communication space by as much as 36–51 percent when a seismic survey was operating 450–2,800 km away. Based on preliminary modeling, Wittekind *et al.* (2016) reported that airgun sounds could reduce the communication range of blue and fin whales 2000 km from the seismic source. Nieukirk *et al.* (2012) and Blackwell *et al.* (2013) noted the potential for masking effects from seismic surveys on large whales.

Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls usually can be heard between the pulses (*e.g.,* Nieukirk *et al.* 2012; Thode *et al.* 2012; Bröker *et al.* 2013; Sciacca *et al.* 2016). As noted above, Cerchio *et al.* (2014) suggested that the breeding display of humpback whales off Angola could be disrupted by seismic sounds, as singing activity declined with increasing received levels. In addition, some cetaceans are known to change their calling rates, shift their peak frequencies, or otherwise modify their vocal behavior in response to airgun sounds (*e.g.,* Di Iorio and Clark 2010; Castellote *et al.* 2012; Blackwell *et al.* 2013, 2015). The hearing systems of baleen whales are undoubtedly more sensitive to low-frequency sounds than are the ears of the small odontocetes that have been studied directly (*e.g.,* MacGillivray *et al.,* 2014). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

Ship Noise

Vessel noise from the *Langseth* could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. Sounds produced by large vessels generally dominate ambient noise at frequencies from 20 to 300 Hz (Richardson *et al.,* 1995). However, some energy is also produced at higher frequencies (Hermannsen *et al.,* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.,* 2015). Increased levels of ship noise have been shown to affect foraging by porpoise (Teilmann *et al.,* 2015; Wisniewska *et al.,* 2018); Wisniewska *et al.* (2018) suggest that a decrease in foraging success could have long-term fitness consequences.

Ship noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.,* 2009; Jensen *et al.,* 2009; Gervaise *et al.,* 2012; Hatch *et al.,* 2012; Rice *et al.,* 2014; Dunlop 2015; Erbe *et al.,* 2015; Jones *et al.,* 2017; Putland *et al.,* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.,* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.,* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking. In order to compensate for increased ambient noise, some cetaceans are known to increase the source levels of their calls in the presence of elevated noise levels from shipping, shift their peak frequencies, or otherwise change their vocal behavior (*e.g.,* Martins *et al.,* 2016; O'Brien *et al.,* 2016; Tenessen and Parks 2016). Harp seals did not increase their call frequencies in environments with increased low-frequency sounds (Terhune and Bosker 2016). Holt *et al.* (2015) reported that changes in vocal modifications can have increased energetic costs for individual marine mammals. A negative correlation between the presence of some cetacean species and the number of vessels in an area has been demonstrated by several studies (*e.g.,* Campana *et al.* 2015; Culloch *et al.* 2016).

Baleen whales are thought to be more sensitive to sound at these low frequencies than are toothed whales (*e.g.,* MacGillivray *et al.* 2014), possibly causing localized avoidance of the proposed survey area during seismic operations. Reactions of gray and humpback whales to vessels have been studied, and there is limited information available about the reactions of right whales and rorquals (fin, blue, and minke whales). Reactions of humpback whales to boats are variable, ranging from approach to avoidance (Payne 1978; Salden 1993). Baker *et al.,* (1982, 1983) and Baker and Herman (1989) found humpbacks often move away when vessels are within several kilometers. Humpbacks seem less likely to react overtly when actively feeding than when resting or engaged in other activities (Krieger and Wing 1984, 1986). Increased levels of ship noise have been shown to affect foraging by

humpback whales (Blair *et al.,* 2016). Fin whale sightings in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015). Minke whales and gray seals have shown slight displacement in response to construction-related vessel traffic (Anderwald *et al.,* 2013).

Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to ships (Richardson *et al.* 1995). Dolphins of many species tolerate and sometimes approach vessels (*e.g.,* Anderwald *et al.,* 2013). Some dolphin species approach moving vessels to ride the bow or stern waves (Williams *et al.,* 1992). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just ship noise, disturbed the foraging activity of bottlenose dolphins. Sightings of striped dolphin, Risso's dolphin, sperm whale, and Cuvier's beaked whale in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.,* 2015).

There is little data on the behavioral reactions of beaked whales to vessel noise, though they seem to avoid approaching vessels (*e.g.,* Würsig *et al.,* 1998) or dive for an extended period when approached by a vessel (*e.g.,* Kasuya 1986). Based on a single observation, Aguilar Soto *et al.* (2006) suggest foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels.

Sounds emitted by the *Langseth* are low frequency and continuous, but would be widely dispersed in both space and time. Vessel traffic associated with the proposed survey is of low density compared to traffic associated with commercial shipping, industry support vessels, or commercial fishing vessels, and would therefore be expected to represent an insignificant incremental increase in the total amount of anthropogenic sound input to the marine environment, and the effects of vessel noise described above are not expected to occur as a result of this survey. In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

Ship Strike

Vessel collisions with marine mammals, 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 may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

The *Langseth* will travel at a speed of 5 kn while towing seismic survey gear. At this speed, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = 0–5.5×10^{-6}; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we propose a robust ship strike avoidance protocol (see Proposed Mitigation), which we believe eliminates any foreseeable risk of ship strike during transit. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the proposed mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the

presence of marine mammal observers, the possibility of ship strike is discountable and, further, were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Stranding —When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that a marine mammal is dead and is on a beach or shore of the United States; or in waters under the jurisdiction of the United States (including any navigable waters); or a marine mammal is alive and is on a beach or shore of the United States and is unable to return to the water; on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

There is no conclusive evidence that exposure to airgun noise results in behaviorally-mediated forms of injury. Behaviorally-mediated injury (*i.e.,* mass stranding events) has been primarily associated with beaked whales exposed to mid-frequency active (MFA) naval sonar. Tactical sonar and the alerting stimulus used in Nowacek *et al.* (2004) are very different from the noise produced by airguns. One should therefore not expect the same reaction to airgun noise as to these other sources. As explained below, military MFA sonar is very different from airguns, and one should not assume that airguns will cause the same effects as MFA sonar (including strandings).

To understand why military MFA sonar affects beaked whales differently than airguns do, it is important to note the distinction between behavioral sensitivity and susceptibility to auditory injury. To understand the potential for auditory injury in a particular marine mammal species in relation to a given acoustic signal, the frequency range the species is able to hear is critical, as well as the species' auditory sensitivity to frequencies within that range. Current data indicate that not all marine mammal species have equal hearing capabilities across all frequencies and, therefore, species are grouped into hearing groups with generalized hearing ranges assigned on the basis of available data (Southall *et al.,* 2007, 2019). Hearing ranges as well as auditory sensitivity/susceptibility to frequencies within those ranges vary across the different groups. For example, in terms of hearing range, the high-frequency cetaceans (*e.g., Kogia* spp.) have a generalized hearing range of frequencies between 275 Hz and 160 kHz, while mid-frequency cetaceans—such as dolphins and beaked whales—have a generalized hearing range between 150 Hz to 160 kHz. Regarding auditory susceptibility within the hearing range, while mid-frequency cetaceans and high-frequency cetaceans have roughly similar hearing ranges, the high-frequency group is much more susceptible to noise-induced hearing loss during sound exposure, *i.e.,* these species have lower thresholds for these effects than other hearing groups (NMFS, 2018). Referring to a species as behaviorally sensitive to noise simply means that an animal of that species is more likely to respond to lower received levels of sound than an animal of another species that is considered less behaviorally sensitive. So, while dolphin species and beaked whale species—both in the mid-frequency cetacean hearing group—are assumed to generally hear the same sounds equally well and be equally susceptible to noise-induced hearing loss (auditory injury), the best available information indicates that a beaked whale is more likely to behaviorally respond to that sound at a lower received level compared to an animal from other mid-frequency cetacean species that are less behaviorally sensitive. This distinction is important because, while beaked whales are more likely to respond behaviorally to sounds than are many other species (even at lower levels), they cannot hear the predominant, lower frequency sounds from seismic airguns as well as sounds that have more energy at frequencies that beaked whales can hear better (such as military MFA sonar).

Military MFA sonar affects beaked whales differently than airguns do because it produces energy at different frequencies than airguns. Mid-frequency cetacean hearing is generically thought to be best between 8.8 to 110 kHz, *i.e.,* these cutoff values define the range above and below which a species in the group is assumed to have declining auditory sensitivity, until reaching frequencies that cannot be heard (NMFS, 2018). However, beaked whale hearing is likely best within a higher, narrower range (20–80 kHz, with best sensitivity around 40 kHz), based on a few measurements of hearing in stranded beaked whales (Cook *et al.,* 2006; Finneran *et al.,* 2009; Pacini *et al.,* 2011) and several studies of acoustic signals produced by beaked whales (*e.g.,* Frantzis *et al.,* 2002; Johnson *et al.,* 2004, 2006; Zimmer *et al.,* 2005). While precaution requires that the full range of audibility be considered when assessing risks associated with noise exposure (Southall *et al.,* 2007, 2019a2019), animals typically produce sound at frequencies where they hear best. More recently, Southall *et al.* (2019) suggested that certain species in the historical mid-frequency hearing group (beaked whales, sperm whales, and killer whales) are likely more sensitive to lower frequencies within the group's generalized hearing range than are other species within the group, and state that the data for beaked whales suggest sensitivity to approximately 5 kHz. However, this information is consistent with the general conclusion that beaked whales (and other mid-frequency cetaceans) are relatively insensitive to the frequencies where most energy of an airgun signal is found. Military MFA sonar is typically considered to operate in the frequency range of approximately 3–14 kHz (D'Amico *et al.,* 2009), *i.e.,* outside the range of likely best hearing for beaked whales but within or close to the lower bounds, whereas most energy in an airgun signal is radiated at much lower frequencies, below 500 Hz (Dragoset, 1990).

It is important to distinguish between energy (loudness, measured in dB) and

frequency (pitch, measured in Hz). In considering the potential impacts of mid-frequency components of airgun noise (1–10 kHz, where beaked whales can be expected to hear) on marine mammal hearing, one needs to account for the energy associated with these higher frequencies and determine what energy is truly ''significant.'' Although there is mid-frequency energy associated with airgun noise (as expected from a broadband source), airgun sound is predominantly below 1 kHz (Breitzke *et al.,* 2008; Tashmukhambetov *et al.,* 2008; Tolstoy *et al.,* 2009). As stated by Richardson *et al.* (1995), ''[. . .] most emitted [seismic airgun] energy is at 10–120 Hz, but the pulses contain some energy up to 500–1,000 Hz.'' Tolstoy *et al.* (2009) conducted empirical measurements, demonstrating that sound energy levels associated with airguns were at least 20 dB lower at 1 kHz (considered ''mid-frequency'') compared to higher energy levels associated with lower frequencies (below 300 Hz) (''all but a small fraction of the total energy being concentrated in the 10–300 Hz range'' [Tolstoy *et al.,* 2009]), and at higher frequencies (*e.g.,* 2.6–4 kHz), power might be less than 10 percent of the peak power at 10 Hz (Yoder, 2002). Energy levels measured by Tolstoy *et al.* (2009) were even lower at frequencies above 1 kHz. In addition, as sound propagates away from the source, it tends to lose higher-frequency components faster than low-frequency components (*i.e.,* low-frequency sounds typically propagate longer distances than high-frequency sounds) (Diebold *et al.,* 2010). Although higher-frequency components of airgun signals have been recorded, it is typically in surface-ducting conditions (*e.g.,* DeRuiter *et al.,* 2006; Madsen *et al.,* 2006) or in shallow water, where there are advantageous propagation conditions for the higher frequency (but low-energy) components of the airgun signal (Hermannsen *et al.,* 2015). This should not be of concern because the likely behavioral reactions of beaked whales that can result in acute physical injury would result from noise exposure at depth (because of the potentially greater consequences of severe behavioral reactions). In summary, the frequency content of airgun signals is such that beaked whales will not be able to hear the signals well (compared to MFA sonar), especially at depth where we expect the consequences of noise exposure could be more severe.

Aside from frequency content, there are other significant differences between MFA sonar signals and the sounds produced by airguns that minimize the risk of severe behavioral reactions that could lead to strandings or deaths at sea, *e.g.,* significantly longer signal duration, horizontal sound direction, typical fast and unpredictable source movement. All of these characteristics of MFA sonar tend towards greater potential to cause severe behavioral or physiological reactions in exposed beaked whales that may contribute to stranding. Although both sources are powerful, MFA sonar contains significantly greater energy in the mid-frequency range, where beaked whales hear better. Short-duration, high energy pulses—such as those produced by airguns—have greater potential to cause damage to auditory structures (though this is unlikely for mid-frequency cetaceans, as explained later in this document), but it is longer duration signals that have been implicated in the vast majority of beaked whale strandings. Faster, less predictable movements in combination with multiple source vessels are more likely to elicit a severe, potentially anti-predator response. Of additional interest in assessing the divergent characteristics of MFA sonar and airgun signals and their relative potential to cause stranding events or deaths at sea is the similarity between the MFA sonar signals and stereotyped calls of beaked whales' primary predator: the killer whale (Zimmer and Tyack, 2007). Although generic disturbance stimuli—as airgun noise may be considered in this case for beaked whales—may also trigger antipredator responses, stronger responses should generally be expected when perceived risk is greater, as when the stimulus is confused for a known predator (Frid and Dill, 2002). In addition, because the source of the perceived predator (*i.e.,* MFA sonar) will likely be closer to the whales (because attenuation limits the range of detection of mid-frequencies) and moving faster (because it will be on faster-moving vessels), any antipredator response would be more likely to be severe (with greater perceived predation risk, an animal is more likely to disregard the cost of the response; Frid and Dill, 2002). Indeed, when analyzing movements of a beaked whale exposed to playback of killer whale predation calls, Allen *et al.* (2014) found that the whale engaged in a prolonged, directed avoidance response, suggesting a behavioral reaction that could pose a risk factor for stranding. Overall, these significant differences between sound from MFA sonar and the mid-frequency sound component from airguns and the likelihood that MFA sonar signals will be interpreted in error as a predator are critical to understanding the likely risk of behaviorally-mediated injury due to seismic surveys.

The available scientific literature also provides a useful contrast between airgun noise and MFA sonar regarding the likely risk of behaviorally-mediated injury. There is strong evidence for the association of beaked whale stranding events with MFA sonar use, and particularly detailed accounting of several events is available (*e.g.,* a 2000 Bahamas stranding event for which investigators concluded that MFA sonar use was responsible; Evans and England, 2001). D'Amico *et al.,* (2009) reviewed 126 beaked whale mass stranding events over the period from 1950 (*i.e.,* from the development of modern MFA sonar systems) through 2004. Of these, there were two events where detailed information was available on both the timing and location of the stranding and the concurrent nearby naval activity, including verification of active MFA sonar usage, with no evidence for an alternative cause of stranding. An additional ten events were at minimum spatially and temporally coincident with naval activity likely to have included MFA sonar use and, despite incomplete knowledge of timing and location of the stranding or the naval activity in some cases, there was no evidence for an alternative cause of stranding. The U.S. Navy has publicly stated agreement that five such events since 1996 were associated in time and space with MFA sonar use, either by the U.S. Navy alone or in joint training exercises with the North Atlantic Treaty Organization. The U.S. Navy additionally noted that, as of 2017, a 2014 beaked whale stranding event in Crete coincident with naval exercises was under review and had not yet been determined to be linked to sonar activities (U.S. Navy, 2017). Separately, the International Council for the Exploration of the Sea reported in 2005 that, worldwide, there have been about 50 known strandings, consisting mostly of beaked whales, with a potential causal link to MFA sonar (ICES, 2005). In contrast, very few such associations have been made to seismic surveys, despite widespread use of airguns as a geophysical sound source in numerous locations around the world.

A more recent review of possible stranding associations with seismic surveys (Castellote and Llorens, 2016) states plainly that, ''[s]peculation concerning possible links between seismic survey noise and cetacean strandings is available for a dozen events but without convincing causal evidence.'' The authors' ''exhaustive'' search of available information found

ten events worth further investigation via a ranking system representing a rough metric of the relative level of confidence offered by the data for inferences about the possible role of the seismic survey in a given stranding event. Only three of these events involved beaked whales. Whereas D'Amico *et al.,* (2009) used a 1–5 ranking system, in which ''1'' represented the most robust evidence connecting the event to MFA sonar use, Castellote and Llorens (2016) used a 1–6 ranking system, in which ''6'' represented the most robust evidence connecting the event to the seismic survey. As described above, D'Amico *et al.* (2009) found that two events were ranked ''1'' and ten events were ranked ''2'' (*i.e.,* 12 beaked whale stranding events were found to be associated with MFA sonar use). In contrast, Castellote and Llorens (2016) found that none of the three beaked whale stranding events achieved their highest ranks of 5 or 6. Of the 10 total events, none achieved the highest rank of 6. Two events were ranked as 5: 1 stranding in Peru involving dolphins and porpoises and a 2008 stranding in Madagascar. This latter ranking can only be broadly associated with the survey itself, as opposed to use of seismic airguns. An exhaustive investigation of this stranding event, which did not involve beaked whales, concluded that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, which was likely exacerbated by several site- and situation-specific secondary factors. The review panel found that seismic airguns were used after the initial strandings and animals entering a lagoon system, that airgun use clearly had no role as an initial trigger, and that there was no evidence that airgun use dissuaded animals from leaving (Southall *et al.,* 2013).

However, one of these stranding events, involving two Cuvier's beaked whales, was contemporaneous with and reasonably associated spatially with a 2002 seismic survey in the Gulf of California conducted by L–DEO, as was the case for the 2007 Gulf of Cadiz seismic survey discussed by Castellote and Llorens (also involving two Cuvier's beaked whales). However, neither event was considered a ''true atypical mass stranding'' (according to Frantzis (1998)) as used in the analysis of Castellote and Llorens (2016). While we agree with the authors that this lack of evidence should not be considered conclusive, it is clear that there is very little evidence that seismic surveys should be considered as posing a significant risk of acute harm to beaked whales or other mid-frequency cetaceans. We have considered the potential for the proposed surveys to result in marine mammal stranding and have concluded that, based on the best available information, stranding is not expected to occur.

Entanglement—Entanglements occur when marine mammals become wrapped around cables, lines, nets, or other objects suspended in the water column. During seismic operations, numerous cables, lines, and other objects primarily associated with the airgun array and hydrophone streamers will be towed behind the *Langseth* near the water's surface. However, we are not aware of any cases of entanglement of mysticetes in seismic survey equipment. No incidents of entanglement of marine mammals with seismic survey gear have been documented in over 54,000 kt (100,000 km) of previous NSF-funded seismic surveys when observers were aboard (*e.g.,* Smultea and Holst 2003; Haley and Koski 2004; Holst 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a; Haley and Ireland 2006; SIO and NSF 2006b; Hauser *et al.,* 2008; Holst and Smultea 2008). Although entanglement with the streamer is theoretically possible, it has not been documented during tens of thousands of miles of NSF-sponsored seismic cruises or, to our knowledge, during hundreds of thousands of miles of industrial seismic cruises. There are a relative few deployed devices, and no interaction between marine mammals and any such device has been recorded during prior NSF surveys using the devices. There are no meaningful entanglement risks posed by the proposed survey, and entanglement risks are not discussed further in this document.

Anticipated Effects on Marine Mammal Habitat

Physical Disturbance—Sources of seafloor disturbance related to geophysical surveys that may impact marine mammal habitat include placement of anchors, nodes, cables, sensors, or other equipment on or in the seafloor for various activities. Equipment deployed on the seafloor has the potential to cause direct physical damage and could affect bottom-associated fish resources.

Placement of equipment, such as the heat flow probe in the seafloor, could damage areas of hard bottom where direct contact with the seafloor occurs and could crush epifauna (organisms that live on the seafloor or surface of other organisms). Damage to unknown or unseen hard bottom could occur, but because of the small area covered by most bottom-founded equipment and the patchy distribution of hard bottom habitat, contact with unknown hard bottom is expected to be rare and impacts minor. Seafloor disturbance in areas of soft bottom can cause loss of small patches of epifauna and infauna due to burial or crushing, and bottom-feeding fishes could be temporarily displaced from feeding areas. Overall, any effects of physical damage to habitat are expected to be minor and temporary.

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. However, the reaction of fish to airguns depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Several studies have demonstrated that airgun sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017), though the bulk of studies indicate no or slight reaction to noise (*e.g.,* Miller and Cripps, 2013; Dalen and Knutsen, 1987; Pena *et al.,* 2013; Chapman and Hawkins, 1969; Wardle *et al.,* 2001; Sara *et al.,* 2007; Jorgenson and Gyselman, 2009; Blaxter *et al.,* 1981; Cott *et al.,* 2012; Boeger *et al.,* 2006), and that, most commonly, while there are likely to be impacts to fish as a result of noise from nearby airguns, such effects will be temporary. For example, investigators reported significant, short-term declines in commercial fishing catch rate of gadid fishes during and for up to five days after seismic survey operations, but the catch rate subsequently returned to normal (Engas *et al.,* 1996; Engas and Lokkeborg, 2002). Other studies have reported similar findings (Hassel *et al.,* 2004). Skalski *et al.,* (1992) also found a reduction in catch rates—for rockfish (*Sebastes* spp.) in response to controlled airgun exposure—but suggested that the mechanism underlying the decline was not dispersal but rather decreased responsiveness to baited hooks associated with an alarm behavioral response. A companion study showed that alarm and startle responses were not sustained following the removal of the sound source (Pearson *et al.,* 1992). Therefore, Skalski *et al.* (1992) suggested that the effects on fish

abundance may be transitory, primarily occurring during the sound exposure itself. In some cases, effects on catch rates are variable within a study, which may be more broadly representative of temporary displacement of fish in response to airgun noise (*i.e.,* catch rates may increase in some locations and decrease in others) than any long-term damage to the fish themselves (Streever *et al.,* 2016).

Sound pressure levels of sufficient strength have been known to cause injury to fish and fish mortality and, in some studies, fish auditory systems have been damaged by airgun noise (McCauley *et al.,* 2003; Popper *et al.,* 2005; Song *et al.,* 2008). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b. (2012) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long; both of which are conditions unlikely to occur for this survey that is necessarily transient in any given location and likely result in brief, infrequent noise exposure to prey species in any given area. For this survey, the sound source is constantly moving, and most fish would likely avoid the sound source prior to receiving sound of sufficient intensity to cause physiological or anatomical damage. In addition, ramp-up may allow certain fish species the opportunity to move further away from the sound source.

A recent comprehensive review (Carroll *et al.,* 2017) found that results are mixed as to the effects of airgun noise on the prey of marine mammals. While some studies suggest a change in prey distribution and/or a reduction in prey abundance following the use of seismic airguns, others suggest no effects or even positive effects in prey abundance. As one specific example, Paxton *et al.* (2017), which describes findings related to the effects of a 2014 seismic survey on a reef off of North Carolina, showed a 78 percent decrease in observed nighttime abundance for certain species. It is important to note that the evening hours during which the decline in fish habitat use was recorded (via video recording) occurred on the same day that the seismic survey passed, and no subsequent data is presented to support an inference that the response was long-lasting. Additionally, given that the finding is based on video images, the lack of recorded fish presence does not support a conclusion that the fish actually moved away from the site or suffered any serious impairment. In summary, this particular study corroborates prior studies indicating that a startle response or short-term displacement should be expected.

Available data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are likely to detect airgun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.,* 2011; Sole *et al.,* 2013). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.,* 2000b; Samson *et al.,* 2014). Similar to fish, however, the transient nature of the survey leads to an expectation that effects will be largely limited to behavioral reactions and would occur as a result of brief, infrequent exposures.

With regard to potential impacts on zooplankton, McCauley *et al.* (2017) found that exposure to airgun noise resulted in significant depletion for more than half the taxa present and that there were 2 to 3 times more dead zooplankton after airgun exposure compared with controls for all taxa, within 1 km of the airguns. However, the authors also stated that in order to have significant impacts on r-selected species (*i.e.,* those with high growth rates and that produce many offspring) such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned, and it is possible that the findings reflect avoidance by zooplankton rather than mortality (McCauley *et al.,* 2017). In addition, the results of this study are inconsistent with a large body of research that generally finds limited spatial and temporal impacts to zooplankton as a result of exposure to airgun noise (*e.g.,* Dalen and Knutsen, 1987; Payne, 2004; Stanley *et al.,* 2011). Most prior research on this topic, which has focused on relatively small spatial scales, has showed minimal effects (*e.g.,* Kostyuchenko, 1973; Booman *et al.,* 1996; Sætre and Ona, 1996; Pearson *et al.,* 1994; Bolle *et al.,* 2012).

A modeling exercise was conducted as a follow-up to the McCauley *et al.* (2017) study (as recommended by McCauley *et al.*), in order to assess the potential for impacts on ocean ecosystem dynamics and zooplankton population dynamics (Richardson *et al.,* 2017). Richardson *et al.,* (2017) found that for copepods with a short life cycle in a high-energy environment, a full-scale airgun survey would impact copepod abundance up to three days following the end of the survey, suggesting that effects such as those found by McCauley *et al.,* (2017) would not be expected to be detectable downstream of the survey areas, either spatially or temporally.

Notably, a more recently described study produced results inconsistent with those of McCauley *et al.* (2017). Researchers conducted a field and laboratory study to assess if exposure to airgun noise affects mortality, predator escape response, or gene expression of the copepod *Calanus finmarchicus* (Fields *et al.,* 2019). Immediate mortality of copepods was significantly higher, relative to controls, at distances of five m or less from the airguns. Mortality one week after the airgun blast was significantly higher in the copepods placed 10 m from the airgun but was not significantly different from the controls at a distance of 20 m from the airgun. The increase in mortality, relative to controls, did not exceed 30 percent at any distance from the airgun. Moreover, the authors caution that even this higher mortality in the immediate vicinity of the airguns may be more pronounced than what would be observed in free-swimming animals due to increased flow speed of fluid inside bags containing the experimental animals. There were no sublethal effects on the escape performance or the sensory threshold needed to initiate an escape response at any of the distances from the airgun that were tested. Whereas McCauley *et al.* (2017) reported an SEL of 156 dB at a range of 509–658 m, with zooplankton mortality observed at that range, Fields *et al.* (2019) reported an SEL of 186 dB at a range of 25 m, with no reported mortality at that distance. Regardless, if we assume a worst-case likelihood of severe impacts to zooplankton within approximately one km of the acoustic source, the brief time to regeneration of the potentially affected zooplankton populations does not lead us to expect any meaningful follow-on effects to the prey base for marine mammals.

A recent review article concluded that, while laboratory results provide scientific evidence for high-intensity and low-frequency sound-induced physical trauma and other negative effects on some fish and invertebrates, the sound exposure scenarios in some cases are not realistic to those encountered by marine organisms

during routine seismic operations (Carroll *et al.,* 2017). The review finds that there has been no evidence of reduced catch or abundance following seismic activities for invertebrates, and that there is conflicting evidence for fish with catch observed to increase, decrease, or remain the same. Further, where there is evidence for decreased catch rates in response to airgun noise, these findings provide no information about the underlying biological cause of catch rate reduction (Carroll *et al.,* 2017).

In summary, impacts of the specified activity on marine mammal prey species will likely be limited to behavioral responses, the majority of prey species will be capable of moving out of the area during the survey, a rapid return to normal recruitment, distribution, and behavior for prey species is anticipated, and, overall, impacts to prey species will be minor and temporary. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Mortality from decompression injuries is possible in close proximity to a sound, but only limited data on mortality in response to airgun noise exposure are available (Hawkins *et al.,* 2014). The most likely impacts for most prey species in the survey area would be temporary avoidance of the area. The proposed survey would move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once the survey moves out of the area or ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly (McCauley *et al.,* 2000b). The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. While the potential for disruption of spawning aggregations or schools of important prey species can be meaningful on a local scale, the mobile and temporary nature of this survey and the likelihood of temporary avoidance behavior suggest that impacts would be minor.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as these cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

Based on the information discussed herein, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Anticipated takes would primarily be Level B harassment, as use of the described acoustic sources, particularly airgun arrays, is likely to disrupt behavioral patterns of marine mammals. There is also some potential for auditory injury (Level A harassment) to result for low- and high-frequency species due to the size of the predicted auditory injury zones for those species. Auditory injury is less likely to occur for mid-frequency species, due to their relative lack of sensitivity to the frequencies at which the primary energy of an airgun signal is found, as well as such species' general lower sensitivity to auditory injury as compared to high-frequency cetaceans. As discussed in further detail below, we do not expect auditory injury for mid-frequency cetaceans. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. No mortality is anticipated as a result of these activities. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is

also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

L–DEO's proposed survey includes the use of impulsive seismic sources (*e.g.,* Bolt airguns), and therefore the 160 dB re 1 μPa is applicable for analysis of Level B harassment.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to 5 different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). L–DEO's proposed survey includes the use of impulsive seismic sources (*e.g.,* airguns).

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate.

The proposed survey would entail the use of a 18-airgun array with a total discharge of 3300 in^3 at a tow depth of

6 m. L–DEO model results are used to determine the 160 dB_{rms} radius for the 18-airgun array in water depth ranging from 200–5500 m. Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from L–DEO's full 36 airgun array (versus the smaller array planned for use here). Models for the 36-airgun array used a 12-m tow depth, versus the 6-m tow depth planned for this survey. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (~1600 m), intermediate water depth on the slope (~600–1100 m), and shallow water (~50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.* 2009; Diebold *et al.* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to the maximum relevant water depth (~2,000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths at short ranges, sound levels for direct arrivals recorded by the calibration hydrophone and L–DEO model results for the same array tow depth are in good alignment (see Figures 12 and 14 in Appendix H of the NSF–USGS PEIS). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent (see Figures 11, 12, and 16 in Appendix H of the NSF–USGS PEIS). Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

The proposed survey would acquire data with the 18-airgun array at a tow depth of 6 m. For deep water (≤1000 m), we use the deep-water radii obtained from L–DEO model results down to a maximum water depth of 2,000 m for the 18-airgun array. The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (see Figure 16 in Appendix H of PEIS).

L–DEO's modeling methodology is described in greater detail in the IHA application. The estimated distances to the Level B harassment isopleth for the proposed airgun configuration are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM THE R/V *Langseth* SEISMIC SOURCE TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Tow depth (m)	Water depth (m)	Predicted distances (in m) to the Level B harassment threshold
18 airguns, 3300 in^3	6	>1000 m 100–1000 m	[1] 2,886 [2] 4,329

[1] Distance is based on L–DEO model results.
[2] Distance is based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

Table 5 presents the modeled PTS isopleths for each marine mammal hearing group based on L–DEO modeling incorporated in the companion User Spreadsheet (NMFS 2018).

TABLE 5—MODELED RADIAL DISTANCE TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

	LF	MF	HF
PTS SEL_{cum}	**101.9**	0	0.5
PTS Peak	23.3	**11.2**	**116.9**

The largest distance (in bold) of the dual criteria (SEL_{cum} or Peak) was used to estimate threshold distances and potential takes by Level A harassment.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the Nucleus software program and the NMFS User Spreadsheet, described below. The acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2016a). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing

group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The SEL_{cum} for the 18-airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the farfield signature is not an appropriate measure of the sound source level for large arrays. See the application for further detail on acoustic modeling.

Auditory injury is unlikely to occur for mid-frequency cetaceans, given very small modeled zones of injury for those species (all estimated zones less than 15 m for mid-frequency cetaceans), in context of distributed source dynamics. The source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a ''point source.'' For distances within the near-field, *i.e.,* approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant from each element. The effect is destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the relevant peak isopleth distances would in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds the relevant peak SPL thresholds would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the near-field for airgun arrays is considered to extend out to approximately 250 m.

In order to provide quantitative support for this theoretical argument, we calculated expected maximum distances at which the near-field would transition to the far-field (Table 5). For a specific array one can estimate the distance at which the near-field transitions to the far-field by:

$$D = \frac{L^2}{4\lambda}$$

with the condition that $D >> \lambda$, and where D is the distance, L is the longest dimension of the array, and λ is the wavelength of the signal (Lurton, 2002). Given that λ can be defined by:

$$\lambda = \frac{v}{f}$$

where f is the frequency of the sound signal and v is the speed of the sound in the medium of interest, one can rewrite the equation for D as:

$$D = \frac{fL^2}{4v}$$

and calculate D directly given a particular frequency and known speed of sound (here assumed to be 1,500 meters per second in water, although this varies with environmental conditions).

To determine the closest distance to the arrays at which the source level predictions in Table 5 are valid (*i.e.,* maximum extent of the near-field), we calculated D based on an assumed frequency of 1 kHz. A frequency of 1 kHz is commonly used in near-field/far-field calculations for airgun arrays (Zykov and Carr, 2014; MacGillivray, 2006; NSF and USGS, 2011), and based on representative airgun spectrum data and field measurements of an airgun array used on the *Langseth,* nearly all (greater than 95 percent) of the energy from airgun arrays is below 1 kHz (Tolstoy *et al.,* 2009). Thus, using one kHz as the upper cut-off for calculating the maximum extent of the near-field should reasonably represent the near-field extent in field conditions.

If the largest distance to the peak sound pressure level threshold was equal to or less than the longest dimension of the array (*i.e.,* under the array), or within the near-field, then received levels that meet or exceed the threshold in most cases are not expected to occur. This is because within the near-field and within the dimensions of the array, the source levels specified in Appendix A of L–DEO's application are overestimated and not applicable. In fact, until one reaches a distance of approximately three or four times the near-field distance the average intensity of sound at any given distance from the array is still less than that based on calculations that assume a directional point source (Lurton, 2002). The 3,300-in^3 airgun array planned for use during the proposed survey has an approximate diagonal of 18.6 m, resulting in a near-field distance of approximately 58 m at 1 kHz (NSF and USGS, 2011). Field measurements of this array indicate that the source behaves like multiple discrete sources, rather than a directional point source, beginning at approximately 400 m (deep site) to 1 km (shallow site) from the center of the array (Tolstoy *et al.,* 2009), distances that are actually greater than four times the calculated 58-m near-field distance. Within these distances, the recorded received levels were always lower than would be predicted based on calculations that assume a directional point source, and increasingly so as one moves closer towards the array (Tolstoy *et al.,* 2009). Given this, relying on the calculated distance (58 m) as the distance at which we expect to be in the near-field is a conservative approach since even beyond this distance the acoustic modeling still overestimates the actual received level. Within the near-field, in order to explicitly evaluate the likelihood of exceeding any particular acoustic threshold, one would need to consider the exact position of the animal, its relationship to individual array elements, and how the individual acoustic sources propagate and their acoustic fields interact. Given that within the near-field and dimensions of

the array source levels would be below those assumed here, we believe exceedance of the peak pressure threshold would only be possible under highly unlikely circumstances.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of mid-frequency cetaceans to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not believe that Level A harassment is a likely outcome for any mid-frequency cetacean and do not propose to authorize any Level A harassment for these species.

The Level A and Level B harassment estimates are based on a consideration of the number of marine mammals that could be within the area around the operating airgun array where received levels of sound ≥160 dB re 1 μParms are predicted to occur (see Table 1). The estimated numbers are based on the densities (numbers per unit area) of marine mammals expected to occur in the area in the absence of seismic surveys. To the extent that marine mammals tend to move away from seismic sources before the sound level reaches the criterion level and tend not to approach an operating airgun array, these estimates likely overestimate the numbers actually exposed to the specified level of sound.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016; Roberts and Halpin, 2022) represent the best available information regarding marine mammal densities in the survey area. The density data presented by Roberts *et al.* (2016 and 2022) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/*. Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016 and 2022).

Monthly density grids (*e.g.,* rasters) for each species were overlaid with the Survey Area and values from all grid cells that overlapped the Survey Area (plus a 40 km buffer) were averaged to determine monthly mean density values for each species. Monthly mean density values within the Survey Area were averaged for each of the two water depth categories (intermediate and deep) for the months May to October. The highest mean monthly density estimates for each species were used to estimate take.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to the predicted isopleth corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the harassment thresholds. The distance for the 160-dB Level B harassment threshold and PTS (Level A harassment) thresholds (based on L–DEO model results) was used to draw a buffer around the area expected to be ensonified (*i.e.,* the survey area). The ensonified areas were then increased by 25 percent to account for potential delays, which is the equivalent to adding 25 percent to the proposed line km to be surveyed. The highest mean monthly density for each species was then multiplied by the daily ensonified areas, increased by 25 percent, and then multiplied by the number of survey days (28) to estimate potential takes (see Appendix B of L–DEO's application for more information).

L–DEO generally assumed that their estimates of marine mammal exposures above harassment thresholds to equate to take and requested authorization of those takes. Those estimates in turn form the basis for our proposed take authorization numbers. For the species for which NMFS does not expect there to be a reasonable potential for take by Level A harassment to occur, *i.e.,* mid-frequency cetaceans, we have added L–DEO's estimated exposures above Level A harassment thresholds to their estimated exposures above the Level B harassment threshold to produce a total number of incidents of take by Level B harassment that is proposed for authorization. Estimated exposures and proposed take numbers for authorization are shown in Table 6.

TABLE 6—ESTIMATED TAKE PROPOSED FOR AUTHORIZATION

Species	Stock	Estimated take		Proposed authorized take		Stock abundance	Percent of stock
		Level B	Level A	Level B	Level A		
North Atlantic right whale	Western North Atlantic	0.03	0	0	0	368	n/a
Humpback whale	Gulf of Maine	0.06	0	[1] 2	0	1,396	0.14
Fin whale	Western North Atlantic	4	0	4	0	6,802	0.06
Sei whale	Nova Scotia	8	0	8	0	6,292	0.13
Minke whale	Canadian East Coast	10	0	10	0	21,968	0.05
Blue whale	Western North Atlantic	1	0	1	0	402	0.17
Sperm whale	North Atlantic	405	1	406	0	4,349	9.34
Kogia spp		678	31	678	31	15,500	0.04
Cuvier's beaked whale	Western North Atlantic	394	2	396	0	5,744	6.89
Mesoplodont Beaked whales		418	2	420	0	30,321	1.38
Pilot whales		384	1	385	0	15,500	2.48
Rough-toothed dolphin	Western North Atlantic	82	0	82	0	136	10.79
Bottlenose dolphin	Western North Atlantic Offshore	1,473	4	1,477	0	62,851	2.35
Atlantic white-sided dolphin	Western North Atlantic	0	0	[1] 14	0	93,233	0.02
Pantropical spotted dolphin	Western North Atlantic	114	0	114	0	6,593	1.73
Atlantic spotted dolphin	Western North Atlantic	1,232	5	1,237	0	39,921	3.1
Spinner dolphin	Western North Atlantic	41	0	41	0	4,102	1.00

TABLE 6—ESTIMATED TAKE PROPOSED FOR AUTHORIZATION—Continued

Species	Stock	Estimated take		Proposed authorized take		Stock abundance	Percent of stock
		Level B	Level A	Level B	Level A		
Clymene dolphin	Western North Atlantic	79	0	79	0	4,237	1.87
Striped dolphin	Western North Atlantic	19	0	[1] 45	0	67,036	0.07
Fraser's dolphin	Western North Atlantic	62	0	[2] 163	0	unk	.....
Risso's dolphin	Western North Atlantic	189	0	189	0	35,215	0.54
Common dolphin	Western North Atlantic	56	0	56	0	172,947	11.99
Melon-headed whale	Western North Atlantic	58	0	[2] 83	0	3,965	2.15
Pygmy killer whale	Western North Atlantic	6	0	6	0	unk	.....
False killer whale	Western North Atlantic	1	0	[2] 6	0	1,791	0.34
Killer whale	Western North Atlantic	2	0	[1] 4	0	unk	.....
Harbor porpoise	Gulf of Maine/Bay of Fundy	0.01	0	[1] 3	0	95,543	0.00

[1] Proposed take increased to mean group size from AMAPPS (Palka et al., 2017 and 2021).
[2] Proposed take increased to mean group size from OBIS (2023).

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSO)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the shutdown zone (SZ), within which observation of certain marine mammals requires shutdown of the acoustic source, but also a buffer zone and, to the extent possible depending on conditions, the surrounding waters. The buffer zone means an area beyond the SZ to be monitored for the presence of marine mammals that may enter the SZ. During pre-start clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the SZ in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m SZ, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). This 1,000-m zone (SZ plus buffer) represents the pre-start clearance zone. Visual monitoring of the SZ and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to marine mammals that may be in the vicinity of the vessel during pre-start clearance, and (2) during airgun use, aid in establishing and maintaining the SZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the SZ.

L–DEO must use dedicated, trained, NMFS-approved PSOs. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs (discussed below) aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the pre-start clearance zone must begin no less than 30 minutes prior to ramp-up, and monitoring must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free

from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the shutdown and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.,* anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the SZ) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Passive Acoustic Monitoring

Acoustic monitoring means the use of trained personnel (sometimes referred to as PAM operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an SZ around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

PAM would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals vocalize, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V *Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional 5 hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable EZ in the previous 2 hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of 5 hours in any 24-hour period.

Establishment of Shutdown and Pre-Start Clearance Zones

An SZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum SZ with a 500-m radius. The 500-m SZ would be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source would be shut down.

The pre-start clearance zone is defined as the area that must be clear of marine mammals prior to beginning ramp-up of the acoustic source, and includes the SZ plus the buffer zone. Detections of marine mammals within the pre-start clearance zone would prevent airgun operations from beginning (*i.e.,* ramp-up).

The 500-m SZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL_{cum} and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500-m SZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions. The pre-start clearance zone simply represents the addition of a buffer to the SZ, doubling the SZ size during pre-clearance.

An extended SZ of 1,500 m must be enforced for all beaked whales and *Kogia* species. No buffer of this extended SZ is required.

Pre-Start Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-start clearance observation (30 minutes) is to ensure no protected species are observed within the pre-clearance zone (or extended SZ, for beaked whales and *Kogia* spp.) prior to the beginning of ramp-up. During pre-start clearance period is the only time observations of marine mammals in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn marine mammals of pending seismic survey operations and

to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zone (and extended SZ) for 30 minutes prior to the initiation of ramp-up (pre-start clearance);
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;
- One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;
- Ramp-up may not be initiated if any marine mammal is within the applicable shutdown or buffer zone. If a marine mammal is observed within the pre-start clearance zone (or extended SZ, for beaked whales and *Kogia* species) during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as pilot whales);
- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;
- PSOs must monitor the pre-start clearance zone (and extended SZ) during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;
- If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable SZ. For any longer shutdown, pre-start clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-start clearance watch of 30 minutes is not required; and
- Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-start clearance of 30 min.

Shutdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable SZ. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable SZ and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable SZ, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the SZ. If the acoustic PSO cannot confirm presence within the SZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the SZ. The animal would be considered to have cleared the SZ if it is visually observed to have departed the SZ (*i.e.,* animal is not required to fully exit the buffer zone where applicable), or it has not been seen within the SZ for 15 minutes for small odontocetes, or 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, *Kogia* species, and large delphinids, such as pilot whales.

The shutdown requirement is waived for small dolphins if an individual is detected within the SZ. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins (*Delphinus, Lagenodelphis, Stenella, Steno, and Tursiops*).

We include this small dolphin exception because shutdown requirements for small dolphins under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012, Barkaszi and Kelly, 2018). The potential for increased shutdowns resulting from such a measure would require the *Langseth* to revisit the missed track line to reacquire data, resulting in an overall

increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinids) are no more likely to incur auditory injury than are small dolphins, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the *Langseth.*

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger SZ).

L–DEO must implement shutdown if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the takes have been met, approaches the Level A or Level B harassment zones. L–DEO must also implement shutdown if any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult) and/or an aggregation of six or more large whales are observed at any distance. Finally, L–DEO must implement shutdown upon detection (visual or acoustic) of a North Atlantic right whale at any distance.

Vessel Strike Avoidance

Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena and (2) broadly to identify a marine mammal as a whale or other marine mammal.

Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales and 100 m from sperm whales and all other baleen whales.

All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).

When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

All survey vessels, regardless of size, must observe a 10-kn speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes. These include all Seasonal Management Areas (SMA) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.

Operational Restrictions

L–DEO must limit airgun use to between May 1 and October 31. Vessel movement and other activities that do not require use of airguns may occur outside of these dates.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations. During seismic survey operations, at least five visual PSOs would be based aboard the *Langseth.* Two visual PSOs would be on duty at all time during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 × 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel; and
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within 1 week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

- Vessel names (source vessel and other vessels associated with survey) and call signs;
- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Date and participants of PSO briefings;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

The following information should be recorded upon visual observation of any protected species:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;

- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:

- An acoustic encounter identification number, and whether the detection was linked with a visual sighting;
- Date and time when first and last heard;
- Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and
- Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

Reporting

L–DEO must submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. A final report must be submitted within 30 days following resolution of any comments on the draft report. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations and including an estimate of those that were not detected, in consideration of both the characteristics and behaviors of the species of marine mammals that affect detectability, as well as the environmental factors that affect detectability.

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Species of Concern

Although not anticipated, if a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, L–DEO must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North Atlantic right whale sightings in any location must also be reported to the U.S. Coast Guard via channel 16.

Reporting Injured or Dead Marine Mammals

Discovery of injured or dead marine mammals—In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, the L–DEO shall report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS South East Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Vessel strike—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, L–DEO shall report the incident to OPR, NMFS and to the NMFS South East Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;
- Description of the behavior of the animal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Actions To Minimize Additional Harm to Live-Stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise L–DEO of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following: If at any time, the marine mammal the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise the IHA-holder that the shutdown around the animals' location is no longer needed. Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises L–DEO that all live animals involved have left the area (either of their own volition or following an intervention).

If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the IHA-holder will be required to determine what measures are necessary to minimize that likelihood (*e.g.,* extending the shutdown or moving operations farther away) and to

implement those measures as appropriate.

Additional Information Requests—if NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to L–DEO indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information:

- Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
- If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.,* within 48 hours and 50 km) and immediately after the discovery of the stranding.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between species or stocks they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's planned survey, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section above, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that the majority potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

We are proposing to authorize a limited number of instances of Level A harassment of two species (pygmy and dwarf sperm whales, which are members of the high-frequency cetacean hearing group) in the form of PTS, and Level B harassment only of the remaining marine mammal species. Any PTS incurred in marine mammals as a result of the planned activity is expected to be in the form of a small degree of PTS, and would not result in severe hearing impairment, because of the constant movement of both the *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time. Additionally, L–DEO would shut down the airgun array if marine mammals approach within 500 m (with the exception of specific genera of dolphins, see Proposed Mitigation), further reducing the expected duration and intensity of sound, and therefore the likelihood of marine mammals incurring PTS. Since the duration of exposure to loud sounds will be relatively short it would be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would likely move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. Accordingly, we expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected Level B harassment zone around the survey vessel is 2886 m for water depths greater than 1000 m (and up to 4329 m in water depths of 100 to 1000 m). Therefore, the ensonified area surrounding the vessel is relatively small compared to the overall distribution of animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the short duration (28 days) and temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

Marine Mammal Species With Active UMEs

As discussed above, there are several active UMEs occurring in the vicinity of L–DEO's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The proposed mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 1, including those with active UMEs, to the level of least practicable adverse impact. In particular they would provide animals the opportunity to move away from the sound source throughout the survey area before seismic survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or proposed for authorization for species with active UMEs.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The proposed activity is temporary and of relatively short duration (28 days);
- The anticipated impacts of the proposed activity on marine mammals would be temporary behavioral changes due to avoidance of the area around the vessel;
- The availability of alternative areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity is readily abundant;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey would be temporary and spatially limited, and impacts to marine mammal foraging would be minimal;
- The proposed mitigation measures are expected to reduce the number of takes by Level A harassment (in the form of PTS) by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers; and
- The proposed mitigation measures, including visual and acoustic shutdowns are expected to minimize potential impacts to marine mammals (both amount and severity).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only 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 fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance for all species with available abundance estimates (in fact, take of individuals is less than fifteen percent of the abundance of the affected stocks, see Table 6). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may be encountered multiple times in a day, but PSOs would count them as separate individuals if they cannot be identified.

NMFS considers it appropriate to make a small numbers finding in the case of a species or stock that may potentially be taken but is either rarely encountered or only expected to be taken on rare occasions. In that circumstance, one or two assumed encounters with a group of animals (meaning a group that is traveling together or aggregated, and thus exposed to a stressor at the same approximate time) should reasonably be considered small numbers, regardless of consideration of the proportion of the stock (if known), as rare encounters resulting in take of one or two groups should be considered small relative to the range and distribution of any stock. In this case, NMFS proposes to authorize take resulting from a single exposure of one group each for Fraser's dolphin and killer whale (using average group size), and find that a single incident of take of one group of either of these species represents take of small numbers for that species.

For pygmy killer whale, we propose to authorize six incidents of take by Level B harassment. No abundance information is available for this species in the proposed survey area. Therefore, we refer to other SAR abundance estimates for the species. NMFS estimates that the Hawaii stock of pygmy killer whales has a minimum abundance estimate of 5,885 whales (Carretta *et al.,* 2020). In the Gulf of Mexico, NMFS estimates a minimum abundance of 613 whales for that stock (Hayes *et al.,* 2020). Therefore, NMFS assumes that the estimated take number of six would be small relative to any reasonable estimate of population abundance for the species in the Atlantic.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of

such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the ESA Interagency Cooperation Division within NMFS' Office of Protected Resources (OPR).

NMFS is proposing to authorize take of fin whales, sei whales, and sperm whales, which are listed under the ESA. The OPR Permits and Conservation Division has requested initiation of section 7 consultation with the OPR Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting a marine geophysical survey at the Cape Fear submarine slide complex off North Carolina in the Northwest Atlantic Ocean during the spring/summer of 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed seismic survey. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA); and
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 15, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the first session of the 118th Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws/current.html*.

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H.J. Res. 26/P.L. 118–1
Disapproving the action of the District of Columbia Council in approving the Revised Criminal Code Act of 2022. (Mar. 20, 2023; 137 Stat. 3)

S. 619/P.L. 118–2
COVID–19 Origin Act of 2023 (Mar. 20, 2023; 137 Stat. 4)

Last List January 10, 2023

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